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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560-AG96

Tobacco Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the Tobacco Payment Program authorized by the Agricultural Assistance Act of 2003. Section 205 of that Act requires the Commodity Credit Corporation to provide assistance to producers of tobacco. This rule is intended to implement this legislative mandate. Other provisions of the Agricultural Assistance Act of 2003 will be implemented under separate rules.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Misty Jones at (202) 720-0200, or via electronic mail at Misty_Jones@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 217 of Title II of Division N of the Consolidated Appropriations Resolution, 2003, (Pub. L. 108-7) (Agricultural Assistance Act of 2003) requires that the regulations to implement this program be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). Thus, this rule is final as published.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order

12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.073—Crop Disaster Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 217(c) of the Agricultural Assistance Act of 2003 ("2003 Act"), Pub. L. 108-7, requires CCC to use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), to forgo the usual 60-day delay in the effective date of major rules required by SBREFA (5 U.S.C. 801(a)(3)(A)(ii)). This rule affects a number of agricultural producers who may have a strong urgent need of the payments to be provided under it. For these reasons and in accord with 5 U.S.C. 808(2), CCC has determined that delay is contrary to public interest and this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 217(c) of the Agricultural Assistance Act of 2003 requires that these regulations be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, that the collection of the information would have on the public do not have to be approved by the Office of Management and Budget or be subject to the 60-day public comment period required by 5 CFR 1320.8(d)(1).

Background

Section 205 of the Agricultural Assistance Act of 2003 directs the Secretary of Agriculture to use funds of the Commodity Credit Corporation (CCC) to provide assistance to persons associated with certain 2002-crop tobaccos. Tobaccos with an established 2002 acreage allotment or poundage quotas are eligible for payment. Eligible persons include owners of the land with an established 2002 acreage allotment or

quota, as well as growers, and in some cases, controllers of farms with quotas or allotments. This rule promulgates regulations governing payment eligibility in accord with the legislation.

As provided for by statute and set out by rule, each eligible kind of tobacco will have its own fund. For each kind, the fund amount will be based on multiplying the national quota or allotment (converted by a formula to pounds) by 5.55 cents per pound. For flue-cured tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55), the fund will be divided into two parts, one for eligible owners and the other for eligible growers. The other eligible tobaccos “pot” will be divided into three equal parts, one for eligible owners, the other for eligible controllers and the remaining part for growers. The other eligible tobaccos are burley tobacco (type 31), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and Virginia sun-cured tobacco (type 37). Eligible persons will share in the sub-accounts based on basic or effective quota or allotment amounts as specified in the rule (irrespective of the actual production amounts that may or may not have occurred on a particular farm so long as the participants meet other program rules for payment).

Similar programs have been provided for in the past in part 1400. As with those programs, eligibility determinations will be made as of July 1 of the calendar year that corresponds with the crop year covered (2002 in this case). It is understood that, to the extent practicable, Congress has intended that this program be run in the same manner as its predecessors in part 1400. There is nothing in the history of this statute to indicate a view to the contrary, as would be expected were significant changes intended. This rule has been drafted accordingly. The statute specifies which tobaccos are eligible for payment and the factors for converting allotments to pounds. The statute sets a payment date of June 1, 2003. Payments will be made in advance of that date, if possible.

Cost/Benefit Assessment

Payments to eligible persons in 2003 are estimated to total \$55 million dollars.

List of Subjects in 7 CFR Part 1464

Agricultural commodities, Acreage allotments, Marketing quotas, Tobacco.

■ For the reasons set out in the preamble, 7 CFR part 1464 is amended as set forth below.

PART 1464—TOBACCO

■ 1. The authority citation for 7 CFR part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Pub. L. 108–7, 117 Stat. 11.

■ 2. Add subpart G to read as follows:

Subpart G—Tobacco Payment Program

Sec.

- 1464.601 Applicability and basic terms for payments.
- 1464.602 Administration.
- 1464.603 Eligibility.
- 1464.604 Definitions.
- 1464.605 Sign up.
- 1464.606 [Reserved]
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- 1464.611 Estates, trusts, and minors.
- 1464.612 Death, incompetence, or disappearance.
- 1464.613 Appeals.

Subpart G—Tobacco Payment Program

§ 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.

§ 1464.602 Administration.

This subpart shall be administered by the Executive Vice President, CCC or his designee, under the general supervision of the Farm Service Agency (FSA), Deputy Administrator for Farm Programs (Deputy Administrator). The program shall be carried out in the field by State and county FSA committees and FSA employees in accordance with this subpart.

§ 1464.603 Eligibility.

For a person to be considered an eligible person for purposes of this part, such person must own or control (in some cases only) a farm for which on the status date a basic 2002 crop quota or allotment for eligible tobacco was established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*). Also, growers of that tobacco are eligible for payments to the extent provided for in this part.

§ 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

Eligible tobacco means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

Grower means for flue-cured tobacco and cigar binder tobacco, a “producer,” as defined below, for all other eligible tobaccos, as “grower/tenant,” as defined below.

Grower/tenant means a person or entity who provides labor to produce tobacco and share in the risk of production.

Owner means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of

that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing or the tobacco crop are not considered to share in the risk of production.

TOPP means the Tobacco Payment Program.

§ 1464.605 Sign up.

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.606 [Reserved]

§ 1464.607 Payment benefits.

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national poundage amount for that kind by 5.55 cents per pound.

(c) The national poundage amount of a kind shall be, for those tobaccos for which poundage quotas were established for individual farms, the national basic quota, in total, for all farms. For all other tobaccos, the 2002 crop national poundage amount shall be determined by multiplying the national basic acreage allotment for that kind of tobacco by the following per acre conversion factors:

- (1) For fire-cured tobacco (type 21) 1,746 pounds;
- (2) For fire-cured tobacco (types 22–23) 2,676 pounds;
- (3) For dark air-cured tobacco (types 35–36) 2,475 pounds; and
- (4) For Virginia sun-cured tobacco (type 37) 1,502 pounds.

(d) Once the national payment amount is determined for the eligible tobacco kind, it will for flue-cured

tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55) be divided into two equal parts, one for eligible owners and the other for eligible growers. Shares in the sub-accounts will be determined using basic poundage quota amounts for flue-cured tobacco and basic allotments for the cigar filler types. For cigar filler type allotments, a conversion to pounds will be made using the same conversion factor provided in paragraph (b) of this section.

(e) For those eligible tobaccos not covered in paragraph (d) of this section, the national payment amount fund as determined under paragraph (b) of this section will be divided into three equal parts. Those parts shall be: one for eligible owners; one for eligible controllers; and one for eligible growers. Shares in each sub-account will be determined for burley tobacco using:

- (1) Basic poundage quota amounts for owners; and
- (2) Effective quota amounts for controllers and growers.

(f) For all other tobaccos covered by paragraph (e) of this section, shares in each sub-account will be determined using:

- (1) Basic allotments for owners; and
- (2) Effective allotment amounts for controllers and growers. Allotments will be converted to pounds using the conversion factors in paragraph (c) of this section. “Effective quotas” and “effective allotments” means the amount of quota or allotment before any transfer which, as determined by the Deputy Administrator, occurred after a disaster.

(g) Growers who otherwise meet the terms of this part, will qualify based on the full amount of the basic quota or effective quota or allotment, as the case may be, for the kind involved, even though they did not fully produce the operative pounds. Such growers must meet the labor, active engagement in farming, and risk of production elements of the “grower” definition of § 1464.604, as applicable to their kind of tobacco. The Deputy Administrator may provide other elements of eligibility as necessary to accomplish the provisions of this part in accord with the operative legislation.

(h) Payments will be made as soon as practicable.

(i) The amount of TOPP funds allocated to the eligible persons in Georgia will be disbursed only if the State of Georgia agrees to use an equal amount of funds (not to exceed \$13,000,000) to make payments in the same manner as provided for in this section.

(j) All payments under this part are subject to the eligibility of funds. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the goal that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.

§ 1464.608 Offsets and assignments.

(a) TOPP payments, or a portion thereof, shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. However, offsets and withholdings of TOPP payments may be taken in accordance with part 1403 of this chapter.

(b) TOPP payments may be assigned as provided in part 1404 of this chapter.

§ 1464.609 Misrepresentation and scheme or device.

(a) A person who is determined to have misrepresented any fact with the intention of affecting a TOPP program determination or received payments as a result of such misrepresentation shall not be entitled to payments and must refund all payments, plus interest in accordance with 7 CFR part 1403.

(b) A person determined to have knowingly adopted a scheme or device that tends to defeat the purpose of the program, or made any fraudulent representation shall refund all payments, plus interest determined in accordance with 7 CFR part 1403 and shall not receive any payment not yet made.

(c) Persons who are party to the TOPP application must refund any excess or unearned TOPP payments to CCC, plus interest, made under such application.

§ 1464.610 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such

person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.611 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such persons furnish evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.612 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons as specified in part 707 of this title may receive such assistance.

§ 1464.613 Appeals.

Determinations made under this part may be appealed as provided in parts 11 and 780 of this title.

Signed in Washington, DC, on April 7, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03-9319 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-05-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on availability of official records in three areas. The amendments require those who submit documents claimed to contain proprietary or other confidential information to specifically

mark those portions of the document containing such information to decrease the chances of inadvertent public release of the information by the NRC, codify NRC's practices and delineate the circumstances under which the agency will not return confidential documents that have been submitted to the NRC, and codify NRC's practices of making as many copies of copyrighted material submitted to the agency as it needs to perform its regulatory and licensing functions. The amendments are necessary to conform the NRC's regulations regarding the availability of official records to case law and agency practice.

EFFECTIVE DATE: June 16, 2003.

ADDRESSES: The comments received in response to NRC's proposed rule for availability of official records are available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Copies of comments received also may be examined at the NRC Public Document Room (PDR), One White Flint North, First Floor, 11555 Rockville Pike, Rockville, Maryland or by contacting 1-800-397-4209 or 301-415-4737, or by email at pdrc@nrc.gov. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received also may be viewed via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; email CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Catherine M. Holze, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-1560, email CMH@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Responses to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis

X. Small Business Regulatory Enforcement Fairness Act

I. Background

Procedures governing the submission of proprietary information to the NRC are found at 10 CFR 2.790. Under this regulation, absent extraordinary circumstances, material determined to be proprietary is protected by the NRC and not released to the public. The regulations set forth procedures that submitters may use to challenge an NRC determination that material is not proprietary, or a decision by the agency to release proprietary information to the public. The regulations also address the circumstances under which the agency would (or would not) return a document containing proprietary information to the submitter. In the past, the regulation had not addressed the right of the NRC to reproduce copyrighted material submitted to it.

On December 23, 1992 (57 FR 61013), the Commission published proposed amendments to § 2.790 explaining the need for standardized markings on proprietary documents submitted to the NRC, expanding the circumstances under which the NRC would not return proprietary information to the submitter, and clarifying that the agency would reproduce copyrighted material submitted to it, as necessary to carry out its regulatory and licensing functions. The proposed changes were not intended to modify agency policy or practice regarding the public disclosure of proprietary information submitted to the NRC. However, public commenters on the proposed rule expressed concern over the potential for increased public disclosure of proprietary submittals, probably due to NRC's failure to make clear that NRC's refusal to return a proprietary document to its submitter did not mean that the NRC intended to release the document to the public. The earlier commenters also indicated that the established process worked fairly well, that overly-prescriptive document marking procedures would be cumbersome and unnecessary, but that the proposed copyright provisions seemed reasonable.

In response, the NRC issued a revised proposed rule for comment on October 17, 2001 (66 FR 52721). The revised proposal made the regulation easier to understand, and proposed additional changes and clarifications. Specifically, the proposed rule, as revised, differentiated between the discrete determinations of document withholding from the public and document return to the submitter, and incorporated additional "exceptions" to the document return rule. It did not

propose any changes to the document withholding criteria nor to the previously proposed copyright provision.

In the revised proposed rule, the NRC also responded in detail to the comments it had received on the December 23, 1992, proposed rule. Some of the comments received on the October 17, 2001, proposed rule make arguments that the Commission rejected in that notice. After reviewing these arguments again, the Commission stands by its explanation set forth in the October 17th notice and will not address those same arguments again.

II. Responses to Comments

A. Overview

The Commission received six comments in response to its October 17, 2001, notice of proposed rulemaking. The comments were from an individual, two nuclear industry vendors, one electric generation company, and two nuclear industry trade organizations. The comment period ended on December 31, 2001, but the NRC gave full consideration to comments received after that date. The comments pertained to the proposed changes in all three categories: document return, including disclosure of proprietary information; document marking; and copyright handling. Most of the comments considered the proposed document return regulations as overly broad, particularly as they apply to the functions of the Office of Investigations. The proposed document marking provisions also were criticized and commonly viewed by commenters as unnecessary, unworkable, or burdensome, and the proposed copyright handling procedures were deemed either unnecessary or unauthorized. The specific comments are addressed below.

B. Document Disclosure

1. *Comment.* Some commenters focused on the issue of disclosure of proprietary information over the submitter's objections, which was not the subject of this rulemaking, rather than the core issue regarding return to the submitter of documents claimed to contain proprietary information. Although the Commission does not propose changes in its current document disclosure policy or practice, this issue warrants a response as it represents a fairly widespread concern among the comments received. Certain commenters objected to the potential for disclosure of proprietary information pursuant to a balancing test, a long-standing provision of 10 CFR

2.790(b)(5), giving the Commission discretionary disclosure authority. The objection is based on a claim that balancing is not within the Commission's authority once a determination is made that the submitted information is proprietary and falls within exemption 4 of the Freedom of Information Act (FOIA).¹ Rather, the commenters asserted, the balance already has been struck by Congress in favor of the protection of proprietary information. Additionally, one commenter argued that the Trade Secrets Act, 18 U.S.C. 1905, prohibits disclosure of information falling within exemption 4 of FOIA.

Response. The Commission is not making any changes to § 2.790(b)(5). Current regulations, which are based on sound judicial case law,² recognize the NRC's authority to balance the public's interest in disclosure against the potential harm that such disclosure would cause the submitter. This authority has not been enhanced by the proposed changes and there is nothing in the FOIA, FOIA case law, or the Trade Secrets Act that prohibits a balancing of this type.

Courts have expressly acknowledged that, when determining whether to disclose information that falls within exemption 4 of the FOIA, agencies may balance the public's interest in disclosure against the harm that would be caused by disclosure to the provider of the information. *See Public Citizen Health Research Group v. FDA*, 185 F. 3d 898 (D.C. Cir. 1999); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 293–94 (1979) (holding that Congress did not intend FOIA exemptions to be mandatory bars to disclosure). The public interest to be weighed in this balance has been narrowly defined as an interest in determining the bases for and effects of agency action (*i.e.*, determining “what the government is up to”), and does not include incidental benefits from disclosure that may be enjoyed by members of the public. *Public Citizen*, 185 F. 3d at 904, 905. Section 2.790(b)(5), which weighs the public's interest in being “fully apprised

as to the bases for and effects of the proposed action,” currently reflects this understanding of the interests that the Commission may properly consider when deciding whether to disclose proprietary information. There is no need to alter the balancing test the Commission has long used.

One commenter argued that the Trade Secrets Act, 18 U.S.C. 1905, prohibits the use of a balancing test to determine whether to disclose information considered proprietary under FOIA exemption 4. According to the Supreme Court, in order for an agency to disclose information considered proprietary and otherwise prohibited from disclosure under the Trade Secrets Act, the agency must act pursuant to properly promulgated rules based on a federal statute other than FOIA itself. *See Chrysler Corp.*, 441 U.S. at 301–05, 308. Section 2.790(b)(5) of the Commission's regulations, which permits the use of a balancing test to determine whether to disclose proprietary information, was enacted pursuant to the Commission's rulemaking authority under the Atomic Energy Act of 1954, as amended (AEA). *See* 42 U.S.C. 2201(p). This rulemaking authority enables the Commission to make such rules as may be necessary to carry out the purposes of the AEA, one of which is the dissemination of unclassified scientific and technical data. *See* 42 U.S.C. 2013(b), 2201(p). Because § 2.790(b)(5) was properly promulgated under the authority of the AEA, using rulemaking procedure required by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, it authorizes the Commission to disclose information that would otherwise be prohibited from disclosure under the Trade Secrets Act. *See Chrysler Corp.*, 441 U.S. at 301–05, 308.

Finally, the proprietary determination decisionmaking process provides several opportunities for the submitter to make a case for withholding information from public disclosure. As a practical matter, the final determination may be the outcome of a series of exchanges between the agency and the submitter, almost always resulting in the protection of truly confidential and privileged portions of the material, while making available enough of the rest to inform the public adequately of the vital details that the public needs to understand and inquire into the Commission's actions. The Commission stresses that it rarely, if ever, has released proprietary information over the objection of a submitter. The Commission emphasizes that there is nothing in the final rule that will result in a more liberal release

¹ This exemption protects “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (2000).

² Indeed, this very regulatory authority of the NRC was tested in court nearly twenty years ago and remains good law today. *General Electric Co. v. NRC*, No. 80–2244 (C.D. Ill. Nov. 30, 1983), motion to vacate denied (C.D. Ill. June 26, 1984), *aff'd in part, rev'd in part and remanded*, 750 F. 2d 1394 (7th Cir. 1984). That same case also provides fundamental legal authority for the proposition that a rule permitting withdrawal of documents before public release would be inapplicable once the agency was in receipt of a FOIA request for the information.

of information deemed to be proprietary.

C. Document Return

2. *Comment.* Some commenters urged that, to protect proprietary information adequately, the NRC should implement presubmission review procedures during which a document would not be considered an "agency record" under the FOIA. The purpose of the procedure would be to allow submitters an absolute right to withdraw documents for which proprietary protection is denied during the "presubmission" period. One commenter requested clarification of the return provision to indicate that information would not be returned automatically if a withholding request is denied, but may be returned upon request. This commenter also wished to see the procedures for supplementing information pursuant to a potential denial of proprietary treatment and for the negotiation process on the matter.

Response. These comments seek a period of delay before a submitted document would have legal status as an agency record. The scheme suggested by the comments would allow documents to be tendered to the Commission on an informal basis along with a withholding request, pending a Commission determination on whether to grant or deny the withholding request. Then, should the Commission decide that the submitted information would not be withheld, the submitter could exercise an absolute right to withdraw the information, thereby avoiding any possibility of document capture (and possible release) under the FOIA.

The Commission finds this suggested approach to be legally flawed. A document becomes an "agency record" subject to capture under the FOIA if: (1) It is created or obtained by the agency; and (2) it is under the control of the agency at the time of an FOIA request. *United States Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989). According to the Supreme Court, "[b]y control we mean that the materials have come into the agency's possession in the legitimate conduct of its official duties." *Id.*, 492 U.S. at 145. In this context, "control" is a broad concept, and exists at the moment the agency gains possession of documents submitted in the normal course of agency business. Therefore, the Commission does not believe that establishing presubmission review procedures would produce the commenter's desired legal effect of forestalling a document's becoming an agency record subject to capture under the FOIA.

Moreover, if presubmission procedures were seen as an attempt to evade or circumvent FOIA, the Commission would not expect them to survive judicial scrutiny. At least one court has held that an agency may not exclude documents from the legal ambit of the FOIA through presubmission procedures. See *Teich v. FDA*, 751 F. Supp. 243 (D.D.C. 1990). In fact, the court discredited procedures similar to those proposed by the commenter, stating that "presubmission review is nothing more than an attempt to get around the FOIA." *Id.* at 248.

While the Commission is not prepared to institute document presubmission procedures, commenter's concerns are mitigated by case law, which in recent years, has broadened the definition of what constitutes proprietary information. Additionally, the Commission historically has worked closely with submitters to negotiate a version acceptable for public release for information initially claimed to be proprietary but upon which there is ultimate mutual agreement that proprietary treatment is not appropriate. Indeed, we reiterate that the NRC has rarely, if ever, publicly released purportedly proprietary information over the objection of a submitter, and such a release only would be undertaken after considerable thought and discourse between the parties. Thus, the Commission is not revising its regulations to provide for presubmission procedures.

The commenter is correct in that the proposed rule does not call for automatic return of documents denied proprietary status. Commission policy is to return a document only upon request, subject to the document return exceptions. The rule neither addresses the negotiation process for obtaining the grant of a withholding request, nor how submittal of supplemental supporting documentation in support of the proprietary claim fits into the scheme. It is unclear that singling out this aspect of the administrative process for elaboration would be helpful. It would entail a fuller description than the other parts of the rule. This is viewed as unnecessary and potentially too limiting to be useful, and our regulations customarily do not go into that level of administrative detail.

3. *Comment.* One commenter asserted that the provisions for determining what constitutes proprietary information make no distinction between documents containing proprietary information that the Commission requires applicants, licensees, or others to submit, which are subject to the disclosure criteria set forth in *National Parks & Conservation*

Association v. Morton, 498 F. 2d 765 (D.C. Cir. 1974), and those that are voluntarily submitted, which are subject to the disclosure criteria set forth in *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992). A commenter suggested that the rule be revised to distinguish between voluntary and mandatory submittals to reflect the dichotomy in standards applied to the proprietary determination for these documents.

Response. FOIA exemption 4 authorizes agencies to withhold from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Until the *Critical Mass* case, the test for whether information could be withheld as confidential under exemption 4 was two-pronged: disclosure had to be likely either to impair the Government's ability to obtain information in the future or to cause substantial harm to the competitive position of the submitter. *National Parks & Conservation Association v. Morton*, 498 F. 2d 765 (D.C. Cir. 1974). In *Critical Mass*, the court established a new and broader standard of categorical protection for information voluntarily submitted to an agency. For such information, the court found that there is a governmental interest to be protected, namely that of maintaining the continued and full availability of the information to the agency. In addition, the court held that the exemption also recognizes the submitter's interest in protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'." *Critical Mass*, 975 F.2d at 878, citing *Sterling Drug, Inc. v. FTC*, 450 F. 2d 698, 709 (D.C. Cir. 1971). Thus, the court found that there was broad protection for voluntarily submitted information, provided it is not customarily disclosed to the public by the submitter.

Currently, § 2.790 does not explicitly distinguish between voluntary and mandatory submittals. Instead, the Commission's rules provide that in determining whether a submittal is proprietary, a number of factors are considered. In the Commission's view, this approach allows for maximum flexibility in accommodating the continually evolving legal standards governing the classification of proprietary information. Explicitly defining specific standards for voluntary submittals and mandatory submittals in the text of the final rule would remove this flexibility and potentially require revisions to the rule as judicial case law

changes. Therefore, the Commission has chosen to maintain its present approach to the classification of proprietary information in the text of the rule, with a slight modification intended to capture the precise standard for voluntarily submitted information set forth in *Critical Mass*. Under the current rule, one factor to be considered when determining whether a submittal is proprietary is "whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor." 10 CFR 2.790(b)(4)(ii). In response to this comment, and in order to align the Commission's rules with the holding of *Critical Mass*, the final rule eliminates any inquiry into whether there is a rational basis for withholding voluntarily submitted information if it is of a type customarily held in confidence by its owner. In cases of mandatory submittals, the rational basis factor may be weighed along with the others listed in § 2.790(b)(4) in order to determine proprietary status. In cases of voluntarily submitted information, the only factor to be considered in determining whether the information is proprietary is the "customarily held in confidence" factor, in accordance with *Critical Mass*. Thus, the final rule will accurately reflect the standard of *Critical Mass* while retaining the flexibility to accommodate future changes to the legal criteria for determining when submitted information is considered to be proprietary.

4. *Comment.* A few of the commenters considered the proposed rule to sweep too broadly with respect to retention of documents obtained during investigations conducted by the NRC Office of Investigations (OI) and preferred to see the rule provision restricted to "evidence" obtained during an ongoing OI investigation. Some commenters were concerned about the additional release under FOIA of confidential information inadvertently revealed at Advisory Committee or at open Commission meetings. One of these commenters also objected to the proposed change from the 30-day period after denial of a withholding request to a "reasonable time" after which the information in question would be publicly released, assuming no other resolution was reached sooner.

Response. The Commission does not agree with the suggestion that only those documents that specifically form the basis of the OI's decision, *i.e.*, "evidence," should be subject to the return exception, or for that matter, only those documents relied upon to make an official finding or to develop a report,

decision, or policy by an advisory committee or the Commission in Sunshine Act meetings. Such an interpretation would add nothing to the provisions that provide for retention of documents that form the basis of a final decision or agency action. The Commission would not compound a mistake by deliberating making publicly available confidential information that had been inadvertently or erroneously released at an Advisory Committee or an open Commission meeting. The Commission takes pains to ensure that inappropriate disclosures do not occur. However, in the unusual circumstance that it should happen, the NRC would not simply publish the information under the theory that "the horse is already out of the barn."

As for the issue regarding a suitable period of time to provide the submitter after denial of a withholding request, the Commission has changed it from 30 days to a "reasonable time" to allow maximum flexibility, particularly in situations in which time may be of the essence and a 30-day period is simply untenable. The regulation merely substitutes the less definitive qualifier "reasonable time" for the specific but rigid quantifier 30 days. In no case would the submitter be afforded inadequate notice; notice is guaranteed and the amount of time to be provided is specified in the notice itself. This modification will permit an informed decision of the amount of time that may be afforded judiciously for the submitter to address the denial without jeopardizing any of the Commission's competing responsibilities. Even where a brief period is deemed necessary, the submitter still will be provided adequate opportunity to address the matter.

D. Document Marking

5. *Comment.* The proposed rule used the term "confidential" to encompass all types of information that might be susceptible to protection under 10 CFR 2.790. One commenter was troubled by the potential for confusion because the same term is used in the context of classified national security information. The commenter suggested an alternative.

The Commission's proposed rule also would require submitters of documents containing proprietary or other confidential information to mark those portions of the documents claimed to be withholdable from the public and would provide direction on how this is to be done. The comments on the proposed document marking provisions were largely oriented toward pragmatic concerns over the potential burdens of

performing "adjacent" marking and top-of-page marking, calling them duplicative, time-consuming, impractical, and unnecessary. Some commenters viewed the marking provisions as too prescriptive and suggested that a general requirement, combined with submitters' self-interest, would accomplish the Commission's goal of reducing the risk of inadvertent disclosure of proprietary or otherwise confidential material. Two commenters generally supported the proposed marking requirement, one requesting clarification to determine whether the "first page" to which the proposed regulation referred was the cover letter or a substantive page, and if the cover letter, whether it also must bear an indication of confidential content. The commenter suggested a "decontrolling" provision for the cover letter when separated from the remaining material. This commenter believes that identification in the affidavit of the location of confidential material by page number should be adequate. One commenter requested guidance on how portion marking might be done (*e.g.*, would bracketing of material to be withheld be appropriate?), and on identification in the affidavit of the location of information to be withheld.

Response. The proposed rule used the term "confidential" because it was already employed in the existing version of the rule and because exemption 4 of the FOIA, the primary statutory provision for withholding information from public disclosure that serves as the model for this section, as well as the judicial case law, utilize that term. Thus, there is value in employing it. Changing the term now might produce confusion, particularly since it will be at variance with both the statutory language and the interpretive case law. Thus, the Commission has decided to retain the term "confidential" in accordance with established usage and case law, with the understanding that the intent is to interpret the term consistently with that usage and not as a reference to classified national security information.

In response to the comments regarding the marking requirements for documents containing confidential information, *e.g.*, proprietary or personal privacy information, the Commission's final rule provides submitters of confidential information greater leeway. As to the need for adjacent marking, it is noted that, while some parties may submit one type of confidential information (*e.g.*, proprietary information), others may submit documents or packages with mixed, or more than one, type of

confidential information (e.g., both proprietary and personal privacy information). This was the primary reason for the "adjacent" marking requirement. While this identification still could be confined to any required affidavit, the benefit to the Commission of adjacent marking is in obviating the need for NRC personnel to cross-reference the document to the affidavit to determine which particular portions should be protected and under what basis.

It will be acceptable to employ a bracketing approach akin to that commonly used in the FOIA process, in which portions of documents subject to particular exemptions are enclosed with brackets and marked with the statutory (exemption) basis for withholding. This is a reasonable way to handle the adjacent marking requirement, where less than an entire page is affected by the marking, and without marking each paragraph. However, the Commission's intention is not to be overly-prescriptive in the particulars of either the marking language or the mechanics, in order for submitters to have broad latitude for whatever is most sensible in each case.

The Commission does not agree that the reference to "first page" of the document is ambiguous; the provision refers to "document, or a portion of it," sought to be withheld. The reference does not encompass a "cover letter," unless the cover letter itself reveals confidential material, in which case it should be marked accordingly. Obviously, submitters are free to place any legend they choose on cover correspondence to indicate public availability where only the attachments are to be withheld from the public.

There seemed to be a consensus among commenters that a less prescriptive form of document marking would work as well as the proposed marking language and that a general requirement, coupled with the submitter's self-interest, would produce the same results. The Commission agrees with this observation and has decided to relax this requirement to reflect a less rigid standard, relying on the submitter to identify proprietary or other confidential material appropriately. The Commission will accept any marking that clearly indicates the material to be withheld from public disclosure, or the affected portion thereof, such as by the following legends: "withhold from public disclosure under 10 CFR 2.790," "proprietary," or "confidential." Any cover letter, likewise, should provide notice of confidential content in the enclosure, although there would be no reason to withhold from public

disclosure a cover letter that itself contained no confidential material. As for the affidavit, identification of confidential material by page number should be adequate, as suggested by one of the commenters. Ultimately, the Commission will honor any legend that signifies the same sense of restriction intended to be conveyed by the prescribed marking, as described more fully in response to the following comment.

6. Comment. Another commenter expressed concern that confidential documents not be vulnerable to disclosure for inadvertent or immaterial failure to follow the prescribed marking requirements and sought clarification of handling procedures in such situations, as well as a reasonable opportunity for the submitter to rectify the situation upon discovery of the error. This commenter also objected to the redaction and affidavit requirement for personal privacy information, indicating that imposing the document marking requirement for this type of information presented an administrative burden without a corresponding benefit. The commenter suggested a categorical exemption to withhold in the entirety medical, personnel, and operator examination records, and possibly other documents containing personal privacy information, arguing that it usually is clear when a document contains privacy information and the need to protect it normally requires no further justification. Finally, the commenter sought clarification of the affidavit requirement for privacy information to state that a licensee official might sign the affidavit, rather than the subject of the personal information.

Response. As noted in this comment, the proposed rule attempted to provide reassurance that submitters would not be penalized for inadvertent failure to follow prescribed marking procedures. The Commission reiterates its position that it prefers use of the standardized language set forth in the final rule because it does not believe that requiring standardized language will result in a serious hardship on submitters, especially since the NRC intends to use standardized marking language as a processing tool and not as a means of limiting access to the withholding request procedure. The NRC will not impose a penalty, however, for failure to use the precise wording prescribed. Language substantially similar to that prescribed will be equally acceptable.³

³ "The point is not to enforce a standard rigidly for its own sake, but to afford appropriate protection to submitter's confidential information,

The Commission continues to have concerns when submitters intend that the NRC treat information as proprietary or confidential, yet do not request this treatment or request this treatment without identifying those portions warranting such treatment. A major purpose of the rule is to put the public on notice that the NRC will not place itself in the position of having to comb through documents searching for confidential information that had not been identified by the submitter and for which there was no reasonable designation. There is, however, ample opportunity to resolve situations cooperatively where the submitter inadvertently neglects to mark confidential information and subsequently seeks to have it so designated. There is no need to codify such a process, and in response to admonishments not to be overly-prescriptive, the final rule does not address every type of situation that may be encountered, nor the manner in which each would be handled. Moreover, preserving the flexibility for treating each circumstance in the most appropriate fashion would seem to counsel against such codification.

As to the objection regarding the affidavit requirement for personal information, the Commission agrees with the comment that an affidavit need not accompany a request to withhold personal privacy information. The affidavit requirement is better suited to submittals containing proprietary information. The final rule thus does not require that an affidavit accompany submittals containing personal privacy information. Nonetheless, the submitter needs to identify personal privacy information in accordance with the marking requirements, to assist in the avoidance of inadvertent release.

Finally, although no comment was received on this point, the proposed rule contained a provision in § 2.790(e)(2) for the Commission to "waive the requirements of this paragraph on request, or on its own initiative, in circumstances the Commission deems appropriate." The waiver was intended to apply to the affidavit requirement. Therefore, the language has been moved to paragraph (b)(1)(ii), which pertains to affidavits, and revised to reflect that correction.

as economically and efficiently as possible. The NRC would work with submitters, as it always has, to resolve any discrepancies of which it was aware within a particular request." NRC Proposed Rule on Availability of Official Records (October 17, 2001; 66 FR 52721, 52723).

E. Copyright Handling

7. *Comment.* The Commission proposed to codify its practices regarding the copying of copyrighted material submitted to it. Two commenters suggested that, under the “fair use” doctrine of copyright law, the Commission already is authorized to make copies of submittals as necessary to perform its official responsibilities, and that § 2.790(e) is unnecessary. One commenter was concerned that proposed § 2.790(e) violates the Copyright Act (17 U.S.C. 101 *et seq.*) by allowing the Commission an unrestricted right to make and distribute copies as a condition of providing the Commission with information. Two commenters objected to the “hold harmless” provision, which was intended to limit liability of NRC employees for inadvertent copyright infringement in making copies of documents when the submitter lacked the requisite authority to grant reproduction permission (proposed § 2.790(e)(1)(ii)). These commenters considered this an improper attempt to shield the Commission from responsibility for wrongful acts arising out of potential copyright abuses. Finally, one commenter suggested that it is unfair for the Commission to require, as a condition of acceptance for any submittal, that the submitter grant a license to the Commission to make copies because the submitter may not in fact have the legal authority to do so.

Response. The Commission agrees with the comment that, under the “fair use” doctrine, the Commission is authorized to make such copies of information submitted to it as necessary to perform its official responsibilities. The purpose of § 2.790(e) is simply to codify and give public notice of the Commission’s intent to make copies of documents submitted to it as necessary to perform its mission, and to make explicit its view that such activity *per se* constitutes “fair use.” Section 2.790(e) is intended to eliminate any confusion about how the Commission will make use of information submitted to it.

The Commission recognizes that § 2.790(e) is coextensive with the “fair use” doctrine, and does not grant the Commission an unrestricted right to copy material submitted to it. Rather, the Commission’s right to copy submittals is linked directly to the need to perform its statutory mission of protecting the public health and safety and promoting the common defense and security. The Commission disagrees with the comment that § 2.790(e) would give it a virtually unlimited right to

reproduce copyrighted material. The Commission does not intend to make or distribute copies of submittals in a manner inconsistent with traditional copyright protections. The Commission makes copies available pursuant to its responsibilities under the Federal Records Act and the Administrative Procedure Act. The NRC will continue its practice of placing copyrighted documents into the electronic record-keeping system for inspection. This does not entitle non-NRC parties to copy documents not otherwise authorized by copyright laws, much as with volumes maintained by public libraries.

Commenters expressed further concern that the “hold harmless” provision, proposed § 2.790(e)(1)(ii), was an improper attempt to shield the Commission from liability for copyright infringement. This provision sought to limit liability resulting from unauthorized reproduction or distribution of documents submitted to the NRC. The Commission never intended to shield from liability for copyright infringement NRC employees who go beyond fair use. The intent of the “hold harmless” provision was simply to make clear that NRC personnel must not be held liable for making copies of materials utilized pursuant to the proper performance of their official responsibilities. As proposed, the specific goal of § 2.790(e)(1)(ii) was the prevention of suits by third parties who might claim copyright infringement in the event their copyrighted material was submitted by another to the NRC and copied by the Commission without the copyright holder’s knowledge or consent. However, under the fair use doctrine, no liability should attach to the copying and internal distribution of submittals as necessary to carry out the Commission’s regulatory responsibilities. Thus, upon further reflection, because the fair use doctrine permits the copying necessary to carry out its official duties, the Commission has concluded that the proposed provision is unnecessary. It has been deleted from the final rule.

Because § 2.790(e) is based upon the fair use doctrine, and because the fair use doctrine provides that copies may be made without the consent of the copyright holder, the remaining provisions of §§ 2.790(e)(1) and 2.790(e)(2)⁴ also are unnecessary. These provisions would have required that, as a condition for the Commission’s accepting any submittal, the submitter

explicitly authorize the Commission to make and distribute copies of the submittal, and provided notice of the Commission’s “hold harmless” position. However, in the Commission’s view, any submittal may be copied as necessary to support the agency’s mission, regardless of any stated copyright restrictions accompanying the submittal or any objections from copyright holders. Similarly, these copies may be distributed within the agency for use in carrying out the Commission’s official responsibilities. The fair use doctrine requires no express grant of permission and thus, such a requirement is not needed in the regulation. Moreover, it may create problems for those submitters who are unable to make such a warranty over the objection of third-parties who may hold copyrights in some or all of the information being submitted. Finally, the “hold harmless” provision, likewise, is deemed unnecessary and has been removed.

In sum, in response to these comments, and in order to avoid confusion regarding the Commission’s intent in promulgating § 2.790(e), changes have been made in the final rule. Sections 2.790(e)(1) and 2.790(e)(2) have been deleted. Section 2.790(e) has been retained to give explicit notice of the Commission’s intent to copy and distribute submittals within the agency as necessary to carry out its official responsibilities, consistent with the fair use doctrine.

III. Final Action

The NRC is amending its regulations on availability of official records to provide specific guidance for marking information a submitter seeks to have withheld from public disclosure on the basis of proprietary content or other confidential information, to codify NRC practices concerning circumstances under which submitted documents will not be returned to the submitter, and to explain and clarify NRC’s practices regarding handling of copyrighted material submitted to it.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule the Commission is codifying its practices regarding the treatment of proprietary information and copyrighted material. This action does not constitute the

⁴ One portion of § 2.790(e)(2) addressed affidavit waivers and has been relocated in the regulation to clarify that point, as explained above.

establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule brings NRC's regulations concerning the availability of official records into conformance with case law and current Commission practice. This rule informs the public of document marking requirements for submitted information, of four additional exceptions to a submitter's limited right to withdraw submitted information, and of Commission practice concerning the reproduction and distribution of submitted copyright material. The rule reflects Commission administrative and procedural practice and has only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters already mark documents consistent with the requirements in this rule. For others, the rule will shift some responsibility to the submitter for ensuring that its confidential material is identified and protected. It also codifies the Commission's practices regarding its dissemination of copyrighted material.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth new document marking requirements for submitted information, clarifies the right of the submitter of information to have certain information returned on request, and provides notice of Commission practice concerning the reproduction and distribution of copyrighted material. The rule does not impose substantial obligations or have significant financial impact on entities,

including any regulated entities that may be "small entities," as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)), or under the Size Standards adopted by the NRC in 10 CFR 2.810.

IX. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter 1.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, the NRC has determined that this action is not a major rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552. Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373

(28 U.S.C. 2461 note.) Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. Section 2.790 is amended by revising the introductory text of paragraph (a); adding introductory text to paragraph (b); revising paragraphs (b)(1), (b)(4)(ii); and (c); redesignating paragraph (e) as paragraph (f); and adding new paragraph (e), to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (c), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room, except for matters that are:

* * * * *

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged or confidential commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review

documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Website, <http://www.nrc.gov> or at the NRC Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: "confidential information submitted under 10 CFR 2.790;" "withhold from public disclosure under 10 CFR § 2.790;" or "proprietary" to indicate it contains information the submitter seeks to have withheld.

(B) Each document, or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (*i.e.*, trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is not subject to the affidavit requirement, the request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in § 2.790(a);

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been

specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

(4) * * *

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;

* * * * *

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with a statement of reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Website, <http://www.nrc.gov>. The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR Part 9, Subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

* * * * *

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and to distribute sufficient copies to carry out the Commission's official responsibilities.

* * * * *

Dated in Rockville, Maryland, this 7th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03-9438 Filed 4-16-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM237; Special Conditions No. 25-230-SC]

Special Conditions: Boeing Model 777 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are for Boeing Model 777 series airplanes. This airplane will have novel or unusual design features associated with the installation of an overhead flightcrew rest and an overhead flight attendant rest. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: The effective date of these final special conditions is April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM-115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2195; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2001, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington 98124, applied for a change to Type Certificate No. T00001SE for a design change to install an overhead flight crew rest (OFCR) and an overhead flight attendant rest (OFAR) in the Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths and two seats. Occupancy of the OFCR will be limited to a maximum of four occupants. Several different OFAR compartments are being proposed under this design change. The OFAR adjacent to Door 3 will have berths for a maximum of seven occupants. The OFAR adjacent to Door 5 will have three compartment options available, with berths for a maximum of six, eight or ten occupants.

Both crew rests, the OFCR and OFAR, will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for each compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. These compartments will only be occupied in flight, not during taxi, takeoff, or landing.

Crew rest compartments have been previously installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment of the Boeing Model 777 series airplanes. Also, overhead crew rest compartments have been installed on the Boeing Model 747 series airplanes.

The FAA has previously issued special conditions that contain the additional safety standards that must be met for the overhead crew rest compartments on Boeing Model 747 series airplanes. The FAA certified the lower lobe flight attendant rest compartment on the Boeing Model 777 series airplanes by an equivalent level of safety finding to the requirements of § 25.819. In addition, the FAA recently issued Special Conditions No. 25-169-SC, dated December 1, 2000, amended on May 2, 2001, for Boeing Model 777 series airplanes for overhead crew rest compartments for Flight Structures Inc. of Arlington, Washington. The FAA also issued Special Conditions No. 25-192-

SC, dated November 6, 2001, for Model 777 series airplanes for overhead crew rest compartments for the Boeing Commercial Airplane Group—Wichita Division Designated Alteration Station (DAS) of Wichita, Kansas.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21-69, effective September 16, 1991, Boeing Commercial Airplane Group must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21-77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777 series airplanes include 14 CFR part 25, as amended by Amendments 25-1 through 25-82. The U.S. type certification basis for the Boeing Model 777 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21-69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same

type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21-69, effective September 16, 1991.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the overhead crew rest compartment installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead crew rest compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of an overhead crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

While the installation of an overhead crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been installed and certified in the main passenger cabin area of the Boeing Model 777-200 and -300 series airplanes and the overhead area of the passenger compartment of the Model 777-200. Other crew rest compartments have been installed below the passenger cabin area adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 series airplanes. The modification is evaluated with respect to the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this overhead crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Operational Evaluations and Approval

These special conditions outline requirements for overhead crew rest

compartment design approvals (*i.e.*, type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an overhead crew rest compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the overhead crew rest compartment for crew occupation. Additionally, if an operator wishes to utilize an overhead crew rest compartment as "sleeping quarters," the crew rest compartment must undergo an additional evaluation and approval (Reference §§A121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of part 121 or part 135.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations should be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved overhead crew rest compartment configuration that affect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the overhead crew rest compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit. In the event a fire source is not immediately self-evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the primary exit first, then proceed to check areas in such a manner that the fire source, when found, would not be between the firefighter and the primary exit. Procedures describing

methods to search the overhead crew rests for fire source(s) must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

Discussion of the Special Conditions

In general, the requirements listed in these special conditions are similar to those previously approved in earlier certification programs, such as for the Boeing Model 777-200 series airplanes and Boeing Model 747 overhead crew rest compartments. These special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the overhead crew rest compartment. In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the crew rest compartment are required. These items are necessary because of turbulence and/or decompression. When applicable, the requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

Special Condition No. 1

This special condition requires the seats and berths must be certified to the maximum flight loads. Due to the location and configuration of the overhead crew rest compartment, occupancy during taxi, takeoff, and landing is prohibited, and occupancy is limited to crewmembers during flight. Occupancy would be limited to four in the OFCR or the combined total of approved seats and berths in the OFCR whichever is less. Occupancy would be limited to twelve in an OFAR, or the combined total of approved seats and berths in the OFAR, whichever is less. This special condition has the requirements for door access and locking and the installation of ashtrays, and for appropriate placards to prohibit passenger access, access by crewmembers not trained in evacuation procedures, smoking and hazardous quantities of flammable fluids, explosives, or other dangerous cargo. The phrase "hazardous quantities" as used in this SC permits trained crewmembers to continue to carry baggage containing minute quantities of flammable fluids (*e.g.*, finger nail polish, aerosol hairspray, etc.) that would pose no threat to the airplane or its occupants. This wording is consistent with the existing wording of §§ 25.831(d), 25.855 (h)(2), 25.857 (b)(2), (c)(3) & (e)(4) and 25.1353(c)(3).

Special Condition No. 2

This special condition precludes occupants from being trapped in the crew rest compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes, or alternatively two other emergency routes must be provided. The intent of Special Condition No. 2(b) is to ensure that one of the two routes would be clear of moving occupants under most foreseeable circumstances.

The following clarifies the intent of Special Condition No. 2(b) concerning the utility of the egress routes. There are three issues that should be considered. First, occupied passenger seats are not considered an impediment to the use of an egress route (for example, the egress route drops into one row of seats by means of a hatch) provided that the seated occupants do not inhibit the opening of the egress route (for example, a hatch).

Second, an egress route may utilize areas where normal movement of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means (a hatch in this design) opens into a main aisle, cross aisle, or galley complex to an extent that it contacts a standing ninety-fifth percentile male, then the contact should only momentarily interrupt the opening of the egress hatch. The interruption to the egress means can be considered momentary if the egress means would continue to open normally once the person has moved out of the way.

Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers can not prevent the overhead crew rest occupants from using the escape route. The crew should be able to stow the escape hatch prior to landing.

Training requirements for the occupants of the overhead crew rest area are included in this special condition.

New qualitative and quantitative criteria have been added to this special condition since the issuance of Special Conditions No. 25-192-SC to clarify how compliance can be shown to Special Condition No. 2(a).

Special Condition No. 3

This special condition requires that each evacuation route must be designed and procedures specified to allow for removal of an incapacitated person from the crew rest compartment to the main deck. Additional assistants to evacuate an incapacitated person may ascend up to one half the elevation change from the main deck to the overhead compartment, or to the first landing, whichever is lower. This special condition allows for five passenger seats to be emptied for the purpose of demonstrating evacuation of an incapacitated person, where the escape route is over seats.

Special Condition No. 4

This special condition requires the provision of exit signs, placards for evacuation routes, illumination for signs, placards and door handles. This special condition allows for exit signs with a reduced background area to be used. The material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent levels of safety for small transport executive jets.

Special Condition No. 5

This special condition requires an emergency lighting system to prevent the occupants from being isolated in a dark area due to loss of the normal crew rest compartment lighting. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Special Condition No. 6

This special condition requires a two-way voice communications and public address speaker(s) to alert the occupants to an in-flight emergency. Also required is a system to alert the occupants of the overhead crew rest compartment in the event of decompression and to don oxygen masks.

Special Condition No. 7

This special condition requires occupants of each overhead crew rest to be informed of an emergency situation via emergency alarm means, use of the public address system, or crew interphone system. Also, power is to be maintained to the emergency alarm system for a specific duration after certain failures.

Special Condition No. 8

This special condition requires a means that is readily detectable by

seated or standing occupants of the overhead crew rest compartment to indicate when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the crew rest compartment. It would not be essential that the sign be visible from every possible location in the crew rest compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Special Condition No. 9

This special condition requires the overhead crew rest compartment, which is remotely located from the passenger cabin, to be equipped with these tools specified to fight a fire should a fire occur: a hand-held fire extinguisher, protective breathing equipment (PBE), and a flashlight.

This requirement has been modified from previously issued Special Conditions No. 25–192–SC to clarify how it should be interpreted relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, “In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.” The requirements of § 25.1439(a) apply to the overhead crew rest compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the overhead crew rest compartment is novel and unusual in terms of the number of occupants. In 1976 when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses overhead crew rest compartments that can accommodate up to 12 crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, the occupant’s first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all overhead crew rest compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for the occupant’s emergency

evacuation and possibly interfere with efforts to extinguish the fire.

Special Condition No. 10

This special condition requires a smoke detection system and appropriate warnings since the overhead crew rest compartment is remotely located from the main passenger cabin and will not always be occupied. The smoke detection system must be capable of detecting a fire in each occupiable area of the compartment created by the installation of a curtain or door.

Special Condition No. 11

This special condition requires the overhead crew rest compartment to be designed such that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the crew rest compartment to become smoke filled, making it difficult to locate the fire source.

Special Condition No. 12

This special condition requirement concerning fires within the compartment was developed for, and applied to, lower lobe crew rest compartments in Boeing Model 777–200 and –300 series airplanes. It was not applied to the overhead crew rest compartment in earlier certification programs such as the Boeing Model 747 airplanes. The Model 747 special conditions were issued before the new flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied overhead crew rest compartment could spread into the passenger compartment or affect other vital systems, before it could be extinguished. This special condition would require either the installation of a manually activated fire containment system that is accessible from outside the overhead crew rest compartment, or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration where the crewmember is responding to the alarm.

The overhead crew rest compartment smoke or fire detection and fire

suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309-1A, "System Design and Analysis." In addition, the FAA considers failure of the overhead crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an overhead crew rest fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309-1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309-1A). In addition, it should be noted that hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the overhead crew rest compartment, a prohibition addressed in Special Condition No. 1(a)(5).

The requirements to enable crewmember(s) quick entry to the overhead crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the overhead crew rest compartment. The overhead crew rest compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The FAA accepts the fact that during the one-minute smoke detection time that penetration of a small quantity of smoke from this overhead crew rest design into an occupied area on this airplane configuration would be acceptable based upon the limitations placed in this and other associated special conditions. The FAA position is predicated on the fact that these special conditions place sufficient restrictions in the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced on the main cabin.

Special Condition No. 13

This special condition requires that the oxygen equipment and a supplemental oxygen deployment warning for the overhead crew rest compartment must be equivalent to that provided for main deck passengers. Procedures for occupants of the

overhead crew rest area in the event of decompression must be established.

Special Condition No. 14

This special condition has the requirements for a divided overhead crew rest compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

The wording in the Special Condition No. 14(a) was modified from previously issued special conditions to clarify that oxygen masks are not required in common areas where seats or berths are not installed. A visual indicator to don oxygen masks is required in these areas. The visual indicator is in addition to the aural alert for donning oxygen masks.

Special Condition No. 15

This special condition eliminates the requirements for flight deck communication as required by Special Condition No. 6, and emergency fire fighting and protective equipment as required by Special Condition No. 9, for lavatories or other small areas within an overhead crew rest compartment.

Special Condition No. 16

This special condition requires that where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Special Condition No. 17

This special condition requires that the materials in the crew rest compartment must meet the flammability requirements of § 25.853(a), and the mattresses must meet the fire blocking requirements of § 25.853(c).

Special Condition No. 18

This special condition requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. Overhead crew rest compartment lavatories are required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the crew rest compartment must also meet the requirements of Special Condition No. 10 for smoke detection due to placement within this remote area.

Special Condition No. 19

This special condition has requirements for fire protection requirements for overhead crew rest stowage compartments as a function of size (compartment interior volume). The special condition has been revised from

the special conditions previously issued due to the introduction of larger stowage compartments into the overhead crew rest compartment. The fire protection requirements for stowage compartments in the overhead crew rest compartment are more stringent than those for stowage in the main passenger cabin because the overhead crew rest compartment is a remote area that can remain unoccupied for long periods of time in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft³ the safety objective of these requirements is to contain the fire. The FAA research indicates that properly constructed compartments meeting the material requirements will prevent burn through. For stowage compartments greater than 25 ft³ but less than 200 ft³ the safety objective of these requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The fire protection requirements are intended to provide a level of safety for the overhead crew rest compartment that is equivalent the level of safety established by the existing regulations for the main cabin.

These special conditions along with the original type certification basis provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

The addition of galley equipment or a kitchenette incorporating a heat source (*e.g.*, cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the overhead crew rest compartment, may require further special conditions to be considered. A hot water heater is acceptable without further special conditions consideration.

Previous Comment

During a previous publication of substantially identical special conditions, a comment was received after the comment period closed. The commenter thought that requiring placards prohibiting storage of "hazardous quantities of flammable fluids" was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specifically, "Provisions for Dangerous Goods Carried by Passengers or Crew." The FAA concurs with the commenter

that the placard requirement is similar to the IATA requirement, therefore, the requirement for the placard has been removed.

Discussion of Comments Received on Special Conditions No. 25–216–SC

Notice of final special conditions; request for comments, No. 25–216–SC, for Boeing Model 777 series airplanes was published in the **Federal Register** on October 11, 2002 (67 FR 63250). Three commenters responded to the notice.

The First Commenter

The first commenter requests changing the title of the special conditions to read “Boeing Model 777 Series * * *” since it is the intent to utilize these special conditions on various models of the 777. The FAA concurs with this comment and the change is incorporated.

Next, this commenter requests a revision to the section of the preamble entitled “Operational Evaluations and Approval.” This commenter has a concern that a prescribed procedure in a dynamic situation, such as a crew rest fire, could be detrimental to the ability of the firefighter to address the fire threat. The FAA agrees and this comment is incorporated.

In the preamble material for Special Condition No. 13, the commenter suggests adding the following text: “Training requirements for the occupants of the overhead crew rest area in the event of decompression are included in the requirement.” The commenter feels this clarification is needed to ensure consistency with Special Condition No. 13. The FAA concurs and the intent of this comment is incorporated.

The commenter’s next request is for an editorial correction in the preamble material for Special Condition No. 14; it should read Special Condition No. 14(a). The FAA concurs with the commenter and the editorial correction is made.

The commenter requests that Special Condition No. 2 be revised to add the phrase “if the open panel would impede evacuation from the main deck.” The FAA disagrees. This comment is not incorporated as it deals with the method of compliance. The current statement adequately states the objectives of the requirement.

The commenter requests that Special Condition No. 8 be changed to include the statement “Consideration can be given to bunks, walls, partitions, etc. that can be utilized to brace oneself during turbulence.” The FAA disagrees and this comment is not incorporated.

The suggested statement would be considered a method of compliance. The current statement adequately states the objectives of this requirement.

Additionally, the commenter requests that in the preamble for Special Condition No. 10, the term “* * *occupiable area* * *” be included to better clarify the intent. The FAA concurs and the words “occupiable area” are added to Special Condition No. 10.

The commenter’s next request is to add a paragraph requiring procedures describing methods to search the crew rest for fire sources. This requirement would ensure that the proper procedures are transmitted to the operators. The FAA agrees and this change is incorporated in Special Condition No. 11.

Another request by the commenter concerns an editorial change to Special Condition No. 13. The commenter suggests deleting the final paragraph because it is redundant to the text that immediately precedes it. The FAA agrees and the paragraph is deleted.

The commenter also requests that Special Condition No. 14(d) be revised to include the phrase, “except for curtained bunks.” The FAA agrees and this comment is incorporated in Special Condition No. 14 as it helps clarify the intent of the requirement.

The Second Commenter

The second commenter’s request concerns the requirements of Special Condition No. 9(b) that requires the installation of two protective breathing equipment (PBE) devices, or one PBE for each hand-held fire extinguisher, whichever is greater. The commenter however, does not feel that it would provide any additional safety benefit to require additional PBEs for all of the fire extinguishers. The FAA disagrees and this comment is not incorporated. The current statement adequately states the objective of the requirement. This special condition is intended to clarify the requirements of § 25.1439(a), that requires one PBE for each occupant of isolated, separate compartments; and § 121.337(b)(9)(iv), that requires a PBE for each required hand held fire extinguisher. As stated this requirement provides protection for each person engaged in fighting a fire.

Another request by this commenter addresses Special Condition No. 19. The commenter believes that the stowage areas in the entry vestibule should not be considered remote, and should be treated like similar compartments on the main deck such as a closet. The FAA disagrees, and this comment is not incorporated. The current statement

adequately states the objective of the requirement. All areas behind the overhead crew rest entry door are considered remote, the area is unoccupied during taxi, takeoff and landing, and the area is not required to be occupied during flight.

The Third Commenter

The third commenter requests that Special Condition No. 1 be revised as follows: “1: The occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. When being used for required flight crew rest, the maximum occupancy of the OFCR compartment is two. The maximum occupancy in the OFAR is twelve.”

The FAA disagrees and this comment is not incorporated. This issue should be covered during the Operational Evaluation and Approval as described in the preamble in the paragraph “Operational Evaluations and Approval.” The number of occupants in a specific phase of flight, such as when it is being used as a required flight crew rest, is an operational issue and is outside the scope of these special conditions. Also, these special conditions are for this specific project for an overhead crew rest and do not pertain specifically to either a Overhead Flight Crew Rest (OFCR) or an Overhead Flight Attendant Rest (OFAR), again, this is an operational issue is outside the scope of these special conditions.

The next comment concerns occupying the crew rest during taxi, takeoff, and landing. These special conditions do not cover occupancy during taxi, takeoff, and landing, therefore, this comment is not incorporated.

The commenter’s last request encompasses both Special Conditions No. 6 and 7. The commenter views the OFCR as being an extension of the flight deck. Except for emergency notifications, all communications to the OFCR should come from the flight deck. The FAA agrees and this comment is incorporated into Special Condition No. 6 to include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest. Special Condition No. 7 remains unchanged.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should the

Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21-69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes with overhead crew rest compartments. These special conditions apply to both overhead flight crew rest (OFCR) compartments and/or overhead flight attendant rest (OFAR) compartments, unless specifically stated otherwise.

1. Occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. The maximum occupancy is four in the OFCR and twelve in the OFAR.

(a) There must be appropriate placards, inside and outside each entrance to the overhead crew rest compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is prohibited during taxi, take-off and landing, and

(4) That smoking is prohibited in the overhead crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the overhead crew rest compartment.

(c) There must be a means to prevent passengers from entering the overhead crew rest compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the overhead crew rest compartment and passenger cabin to be capable of being quickly

opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the overhead crew rest compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition¹

(a) The routes must be located with sufficient separation within the overhead crew rest compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

Compliance to the requirements of Special Condition No. 2(a) may be shown by inspection or by analysis. Regardless which method is used, the maximum acceptable exit separation is 60 feet measured between exit openings.

Compliance by Inspection

An overhead crew rest compartment in which the evacuation routes are located such that each occupant of the seats and berths has an unobstructed route to at least one of the evacuation routes regardless of the location of a fire would be acceptable by inspection. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, exits which are located at absolute opposite ends (*i.e.*, adjacent to opposite end walls) of the crew rest would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show the overhead crew rest compartment configuration and interior features provide for all occupants of the overhead crew rest to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the overhead crew rest compartment considered separately and the design elements used to reduce the available fuel for the fire,

(2) Design elements to reduce the fire ignition sources in the overhead crew rest compartment,

(3) Distribution and quantity of emergency equipment within the overhead crew rest compartment,

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.*, seats, folding berths, contents of stowage compartments, etc),

(5) An incapacitated person blocking the evacuation routes,

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. The design features that should be considered include but are not limited to seat back break over, the elimination of rigid structure that reduces access from one part of the compartment to another, the elimination of items that are known to be the cause of potential hazards, the availability of emergency equipment to address fire hazards, the availability of communications equipment, supplemental restraint devices to retain items of mass that could hinder evacuation if broken loose and load path isolation between components that contain the evacuation routes.

Analysis of the fire threats should be used in determining the placement of required fire extinguishers and PBEs and should take into consideration the possibility of fire in any location in the overhead crew rest compartment. The location and quantity of PBEs and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the overhead crew rest compartment.

The intent of this special condition is to provide sufficient exit separation, therefore the exit separation analysis described above should not be used to approve exits which have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For overhead crew rest compartments with one exit located near the forward or aft end of an overhead crew rest compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 50 percent of the total overhead crew rest compartment length.

For overhead crew rest compartments with neither required exit located near the forward or aft end of the overhead crew rest compartment (as measured by

not having the centroid of either exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 30 percent of the total overhead crew rest compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.*, main aisle, cross aisle or galley complex) that would impede egress from the overhead crew rest compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the overhead crew rest compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the overhead crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the overhead crew rest compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the overhead crew rest compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment.

These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the overhead crew rest compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the overhead crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal overhead crew rest compartment lighting system, for emergency illumination to be automatically provided for the overhead crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the overhead crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the overhead crew rest compartment. There must also be two-way communications between the occupants of the overhead crew rest compartment and each flight attendant station required to have a public address

system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system will include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest compartment (*e.g.*, fire in flight, aircraft depressurization, preparation of the compartment occupants for landing, etc.).

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the overhead crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the overhead crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.*, sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of an isolated galley, the following equipment must be provided in the overhead crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur,

(b) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)-C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater, and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, (beyond the minimum numbers prescribed in Special Condition No. 9 may be required as a result

of the egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the overhead crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the overhead crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The overhead crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source. Procedures describing methods to search the overhead crew rests for fire sources(s) must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the overhead crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the overhead crew rest compartment and, if applicable, when accessing the overhead crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the overhead crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the overhead crew rest compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to

manually fight a fire in the overhead crew rest compartment (the amount of smoke entrained by a firefighter exiting the overhead crew rest compartment through the access is not considered hazardous). During the one-minute smoke detection time, penetration of a small quantity of smoke from the overhead crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the overhead crew rest compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the overhead crew rest compartment. The system must provide an aural and visual warning to warn the occupants of the overhead crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the overhead crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to overhead crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the overhead crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require

that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the overhead crew rest compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the overhead crew rest compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as

described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main overhead crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

- (1) No smoking placards (Special Condition No. 1);
- (2) Emergency illumination (Special Condition No. 5);
- (3) Two-way voice communication (Special Condition No. 6);
- (4) Emergency alarm system (Special Condition No. 7);
- (5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8);
- (6) Emergency firefighting and protective equipment (Special Condition No. 9); and
- (7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25-83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25-83.

18. The addition of a lavatory within the overhead crew rest compartment would require the lavatory to meet the

same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 10 for smoke detection.

19. All enclosed stowage compartments within the overhead crew rest compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.*, bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft³ in interior volume are not addressed by this special condition. The in flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	Less than 25 cubic feet	25 cubic feet to 57 cubic feet	57 cubic feet to 200 cubic feet
Materials of Construction ¹	Yes	Yes	Yes.
Detectors ²	No	Yes	Yes.
Liner ³	No	Yes	Yes.
Locating Device ⁴	No	Yes	Yes.

¹ *Material:* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft³ in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

² *Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft³ in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide: (a) A visual indication in the flight deck within one minute after the start of a fire, (b) An aural warning in the overhead crew rest compartment, and (c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

³ *Liner:* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25-93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft³ in interior volume but less than 57 ft³ in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft³ in interior volume but less than or equal to 200 ft³, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

⁴ *Location Detector:* Overhead crew rest compartment which contain enclosed stowage compartments exceeding 25 ft³ interior volume and which are located away from one central location such as the entry to the overhead crew rest compartment or a common area within the overhead crew rest compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane

Directorate, Aircraft Certification Service.

[FR Doc. 03-9505 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-99-AD; Amendment 39-13114; AD 2003-08-03]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models. This amendment requires repetitive inspections for chafing or potential chafing of the wiring for the throttle control module (TCM) on the center pedestal in the flight deck compartment, corrective actions if necessary, an inspection of the TCM to determine its part number and configuration, and modification of the TCM. Doing this modification terminates the repetitive inspections. The actions specified by this AD are intended to prevent chafing

of wiring inside the TCM, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 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: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5343; 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 DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 3, 2003 (68 FR 305). That action proposed to require an inspection of the throttle control module (TCM) on the center pedestal in the flight deck compartment to determine its part number and configuration, modification of the TCM, repetitive inspections for chafing or potential chafing of the TCM wiring, 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 Proposal

The Air Transport Association of America (ATA) states that its members support the intent of the proposal. In a comment attached to the ATA's comment, one ATA member states that it appreciates the FAA's decision in the supplemental NPRM to extend the compliance time for the proposed actions to 5 years.

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 as proposed.

Cost Impact

There are approximately 401 Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes of the affected design in the worldwide fleet. The FAA estimates that 321 airplanes of U.S. registry will be affected by this AD.

We estimate that it will take approximately 2 work hours per airplane to perform the required inspections, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be \$38,520, or \$120 per airplane, per inspection cycle.

It will take approximately 15 work hours per airplane to accomplish the required modification at an average labor rate of \$60 per work hour. Required parts will cost approximately \$1,712 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be \$838,452, or \$2,612 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:

2003-08-03 McDonnell Douglas:

Amendment 39-13114. Docket 2001-NM-99-AD.

Applicability: Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes; as listed in Boeing Alert Service Bulletin DC10-76A048, Revision 01, dated January 29, 2002; 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 prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit, accomplish the following:

Repetitive Inspections for Chafing

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for chafing or potential chafing of the wiring of the throttle control module located on the center pedestal in the flight compartment, per Boeing Alert Service Bulletin (ASB) DC10-76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002. Thereafter, repeat the inspection at intervals not to exceed 18 months, until the actions specified in paragraph (c) of this AD are 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 for Chafing or Potential Chafing

(b) If any evidence of chafing or potential chafing is found during any inspection required by paragraph (a) of this AD, before further flight, repair the chafed wires or reposition wires, as applicable, per Boeing ASB DC10-76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002.

Inspection and Modification

(c) Within 5 years after the effective date of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, per Boeing ASB DC10-76A048, excluding the Evaluation Form, dated August 6, 2001; or Revision 01, excluding the Evaluation Form, dated January 29, 2002.

(1) Do an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, which will identify the group applicability information.

(2) Modify the throttle control module on the center pedestal in the flight deck

compartment per the applicable figure in the service bulletin. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

(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) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10-76A048, excluding the Evaluation Form, dated August 6, 2001, or Boeing Alert Service Bulletin DC10-76A048, Revision 01, excluding the Evaluation Form, dated January 29, 2002; and Boeing Alert Service Bulletin DC10-76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002; 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; 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 May 22, 2003.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-8894 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-SW-37-AD; Amendment 39-13117; AD 2003-08-06]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter model helicopters that requires fireproofing the engine oil tank breather pipe (breather pipe) where it passes through the firewall from the engine compartment to the main gearbox compartment. This amendment is prompted by the discovery of a design deficiency that permitted the installation of a non-fireproof breather pipe. The actions specified by this AD are intended to prevent the spread of fire between two designated fire zones of the helicopter, additional structural damage, and a decrease in the time available to execute an emergency landing.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2003.

ADDRESSES: 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: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5355, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter France (Eurocopter) Model AS350B, B1, B2, BA, and D helicopters was published in the **Federal Register** on November 4, 2002 (67 FR 67131). That action

proposed to require modifying the breather pipe by installing a protection sheath, part number ASNA0199-024, on the segment of the engine oil tank breather pipe between the engine and the main gearbox compartments.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on specified Eurocopter model helicopters. The DGAC advises that the breather pipe should be made fireproof by fitting it with a heat-resistant silicone sheath.

Eurocopter has issued AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000, which specifies modifying the engine oil tank breather pipe with a high-temperature silicone glass sheath, then inspecting for oil leaks. The service bulletin states that it relates to MOD 072793. It further states that the high-temperature silicone glass sheath, part number (P/N) ASNA0199-024, is included in modification kit 350A0727930071. The DGAC classified this service bulletin as mandatory and issued AD No. 2000-268-078(A), dated June 28, 2000, to ensure the continued airworthiness of these helicopters in France.

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 we should add the following statement to the AD: "Those aircraft modified in accordance with STC SH3324NM do not apply." The commenter has a Supplemental Type Certificate that includes the installation of a fire sleeve, which he believes satisfies the intent of this AD. We agree that there may be other methods of compliance that provide an acceptable level of safety; however, we are not changing the AD since Note 1 and paragraph (b) of the AD allow an owner/operator to request approval for an alternate method of compliance if the helicopter has been modified, altered, or repaired so that the performance of the requirements of the AD is affected.

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, except in paragraph (a) of this AD, the part number is corrected to read ASNA0199-024, and the reference to the manufacturer's service bulletin is corrected to refer to paragraph "2.B." instead of "2.A." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 470 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$25 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$39,950.

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:

2003-08-06 Eurocopter France:

Amendment 39-13117. Docket No. 2002-SW-37-AD.

Applicability: Eurocopter France Model AS350B, B1, B2, BA, and D helicopters, 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 before flight, unless accomplished previously.

To prevent a fire from spreading from the engine compartment through the firewall to the main gearbox due to a non-fireproof engine oil tank breather pipe (breather pipe), additional structural damage, and a decrease in the time available to execute an emergency landing, accomplish the following:

(a) Modify the engine oil tank breather pipe to make it fireproof by installing a high-temperature silicone glass protective sheath, part number ASNA0199-024, in accordance with the Accomplishment Instructions, paragraph 2.B., in Eurocopter AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000.

(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 a 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 modification shall be done in accordance with Eurocopter AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, and 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.

(e) This amendment becomes effective on May 22, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2000-268-078(A), dated June 28, 2000.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 03-9014 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-SW-52-AD; Amendment 39-13115; AD 2003-08-04]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model EC120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified model Eurocopter France (ECF) helicopters that requires inspecting the attachment of the bolted assemblies of the cyclic pitch flight control torque tube (torque tube) for an appropriate locking device. If a bolted assembly is single-locked, the AD requires, if necessary, tightening the self-locking nuts at certain intervals and modifying the torque tube after a certain time. This amendment is prompted by the discovery that some of the attachments of the torque tube were fastened with a single-locking device instead of the intended double-locking device. The actions specified by this AD are intended to prevent separation of the cyclic pitch stick yokes from the torque tube, loss of cyclic control, and subsequent loss of control of the helicopter.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2003.

ADDRESSES: 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: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5116, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model ECF helicopters was published in the **Federal Register** on February 14, 2002 (67 FR 6883). That action proposed determining whether the attachment of the bolted assembly of the torque tube is a single or double-locking device; and if the bolted assembly is single-locked, repetitively inspecting and, if necessary, tightening the self-locking nuts to a specified torque. The AD also proposed modifying the torque tube to provide double locking for the attachment pins of the cyclic pitch stick yokes to the torque tube after a specified time interval.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model EC120B helicopters. The DGAC advises that the design fails to provide double-locking of the attachment pins of the cyclic pitch stick yokes to the torque tube.

ECF has issued Alert Service Bulletin No. 67A003, dated August 2, 2001 (ASB), which specifies inspecting single-locking devices within 50 hours time-in-service (TIS) and modifying single-locking devices to make them double locking within 500 hours TIS or 24 months, whichever occurs first. The DGAC classified this ASB as mandatory and issued AD 2001-373-008(A), dated August 22, 2001, to ensure the continued airworthiness of these helicopters in France.

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, the manufacturer, states that the compliance time should be changed to 500 hours TIS or 24 months, whichever occurs first, in accordance with DGAC AD No. 2001-373-008(A). The commenter thinks the more restrictive compliance time proposed in the AD is unnecessary and will unnecessarily penalize U.S. operators. The commenter believes the initial and periodic checks required in the AD provide an adequate measure of safety until the modification is accomplished at the less restrictive compliance time. The commenter believes that with these checks an unsafe condition is not justified.

The FAA agrees that the inspections in the ASB provide a temporary measure of safety. However, we strongly prefer terminating action in lieu of inspections for unsafe conditions. In this case, certain ECF Model EC120B helicopters were manufactured with a single locking device on the pins that connect the cyclic pitch stick yokes to the pitch torque tube. These pins must be retained by two separate locking devices in accordance with 14 CFR § 27.607. Additionally, self-locking nuts must incorporate a nonfriction locking device in addition to the self-locking device. In determining the compliance time for modifying the torque tube, we considered the consequences of missed inspections and the seriousness of this unsafe condition, possible loss of cyclic pitch control. The FAA has determined that, due to the seriousness of this unsafe condition, the torque tube must be modified within the next 250 hours TIS or 12 months, whichever occurs first. This is more than ample time for U.S. operators to install a relatively simple fix to terminate the inspections. Considering the safety implications, these compliance times do not unnecessarily penalize U.S. operators; therefore, the compliance time will remain as proposed.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. The regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 44 helicopters of U.S. registry, and the required actions will take approximately 5 work hours per helicopter to accomplish at an average labor rate of \$60 per work hour. Required parts will cost approximately \$195. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$21,780.

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:

2003-08-04 Eurocopter France:

Amendment 39-13115. Docket No. 2001-SW-52-AD.

Applicability: Model EC120B helicopters, serial numbers 1001 through 1029 inclusive, 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 (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 cyclic pitch stick yokes from the cyclic pitch flight control torque tube (torque tube), loss of cyclic control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), determine whether each attachment of the bolted assembly of the torque tube (attachment) has a single or double-locking device in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter France Alert Service Bulletin No. 67A003, dated August 2, 2001 (ASB).

(1) If the attachment has a double-locking device (a castellated self-locking nut with a cotter pin), no further action is required by this AD.

(2) If the attachment has a single-locking device (a castellated self-locking nut without a cotter pin or a self-locking nut only), in accordance with the Accomplishment Instructions, paragraph 2.B.1., of the ASB, before further flight:

(i) Torque each nut to 0.4 to 0.5 mdaN (36 to 44 inch-lbs), and

(ii) Apply a slippage mark on the nut and torque tube.

(b) At intervals not to exceed 50 hours TIS, inspect the attachment for movement of the locking device indicated by a misalignment of the slippage mark.

(1) If no movement has occurred, record the inspection.

(2) If movement has occurred, replace, retorque, and reapply the slippage mark to the nut in accordance with the Accomplishment Instructions, paragraph 2.B.2., of the ASB.

(c) Within 250 hours TIS or 12 months, whichever occurs first, modify the torque tube in accordance with the Accomplishment Instructions, paragraph 2.B.3., of the ASB.

(d) Modifying the torque tube in accordance with paragraph (c) of this AD is terminating action for the requirements of this AD.

(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, 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.

(f) 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.

(g) The inspection of the attachment of the bolted assembly of the torque tube and modification of the torque tube shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1., 2.B.2., and 2.B.3., of Eurocopter Alert Service Bulletin No. 67A003, dated August 2, 2001. The Director of the Federal Register approved this incorporation by reference 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.

(h) This amendment becomes effective on May 22, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, (France) AD 2001-373-008(A), dated August 22, 2001.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03-9013 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14847; Airspace Docket No. 03-ACE-32]

Modification of Class E Airspace; Eureka, KS

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 18, ORIGINAL Standard Instrument Approach Procedure (SIAP) to serve Eureka Municipal Airport, Eureka, KS. This modification of Class E airspace at Eureka, KS provides additional controlled airspace at and above 700 feet Above Ground Level (AGL) to contain the new SIAP.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, S.W., Washington, DC 20590-0001. You must identify the docket number FAA-2003-14847/ Airspace Docket No. 03-ACE-32, 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 on the Dockets Office between 9 a.m. to 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 part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Eureka, KS. The FAA has developed an RNAV (GPS) RWY 18, ORIGINAL SIAP to serve Eureka Municipal Airport, Eureka, KS. Additional controlled airspace at and above 700 feet AGL is required to contain the new SIAP within controlled airspace, and thereby segregate aircraft operating under Instrument Flight Rules (IFR) in instrument conditions from those aircraft operating under visual flight rules. This amendment brings the legal description of the Eureka, KS Class E 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-2003-14847/Airspace Docket No. 03-ACE-32." 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 74009.9K, 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 KS E5 Eureka, KS

Eureka Municipal Airport, KS
(Lat. 37°51'06" N., long. 96°17'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eureka Municipal Airport.

* * * * *

Issued in Kansas City, MO, on April 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03-9508 Filed 4-16-03; 8:45 am]

BILLING CODE 4819-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14846; Airspace Docket No. 03-ACE-31]

Modification of Class E Airspace; Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Aurora Municipal Airport, NE has been renamed Aurora Municipal-Al Potter Field Airport, NE. The Aurora Nondirectional Radio Beacon (NDB) will be decommissioned effective July 10, 2003. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodates NDB Standard Instrument Approach

Procedures (SIAPs) at Aurora, NE will no longer be needed.

The intended effect of this rule is to amend the airport name in the Aurora, NE Class E airspace area legal description, provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Aurora, NE, delete the Aurora NDB and coordinates from the legal description and comply with the criteria of FAA Order 7400.2E.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 20, 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-2003-14846/Airspace Docket No. 03-ACE-31, 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: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Aurora, NE. It modifies the name of the airport at Aurora, NE from "Aurora Municipal Airport" to "Aurora Municipal-Al Potter Field Airport." The Aurora NDB is decommissioned effective July 10, 2003. NDB SIAPs that serve Aurora Municipal-Al Potter Field Airport will no longer be applicable. Controlled airspace extending upward from 700 feet AGL that accommodates these SIAPs will no longer be needed. The amendment to Class E airspace at Aurora, NE provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at Aurora Municipal-Al Potter Field Airport. Additional Class E airspace necessary for the NDB SIAPs is revoked. The Aurora NDB and coordinates, and reference to these, are deleted from the

legal description of Aurora, NE Class E airspace. It 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-2003-14846/Airspace Docket No. 03-ACE-31." 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 NE E5 Aurora, NE

Aurora Municipal-Al Potter Field Airport, NE
(Lat 40°53'39" N., long 97°59'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Aurora Municipal-Al Potter Field Airport.

* * * * *

Issued in Kansas City, MO, on April 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03-9507 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2003-14868; Airspace Docket No. 2003-ANE-103]

Amendment to Class E Airspace; Windsor Locks, Bradley International Airport, CT

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E Airspace area at Windsor Locks, Bradley International Airport, CT (BDL) to provide for adequate controlled airspace for those aircraft using Instrument Approach Procedures to the airport.

DATES: Effective 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 19, 2003.

ADDRESSES: Send comments on the rule 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-2003-14868/Airspace Docket No. 2003-ANE-103, 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 at 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 located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA

01803-5299. Call the Manager, Airspace branch, ANE-520, telephone (781) 238-7520, fax (781) 238-7596, to make prior arrangements for your visit.

FOR FURTHER INFORMATION CONTACT:

David T. Bayley, Air Traffic Division, Airspace Branch, ANE-520, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7552; fax (781) 238-7596.

SUPPLEMENTARY INFORMATION: This action revises the extensions to the controlled airspace in the vicinity of Bradley International Airport, Windsor Locks, CT. Amendments to existing standard Instrument Approach Procedures (SIAPs) and implementation of new Area Navigation (RNAV) procedures have eliminated the need for controlled airspace extending upward from the surface on each side of the Bradley Vortac 314° radial extending to the northwest. This action also widens the controlled airspace extending to the southwest of the Bradley International Airport, Windsor Locks, CT. This extension of protected airspace is defined using the CHUPP Non-Directional Beacon (NDB) instead of referencing the Bradley Vortac coordinates. The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Bradley International Airport, CT.

Class E airspace designations for airspace areas extending upward from the surface designated as an extension to a Class C surface area are published in Paragraph 6003 of FAA Order 7400.9K, dated August 8, 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 this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative

comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended to withdrawn in light of the comments received. Factual information that supports for commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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 rule.

The FAA has determined that this regulation is non-controversial 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) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

■ 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.

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

Subpart E—Class E Airspace

* * * * *

Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area

* * * * *

ANE CT E3 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International Airport, CT

(Lat. 41°56'20"N, long. 72°41'00"W)
CHUPP NDB

(Lat. 41°52'39"N, long. 72°45'58")

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Issued in Burlington, MA, on April 10, 2003.

Thomas R. Davidson,

Manager, Air Traffic Division, New England Region.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket Nos. 93N–0182 and 82N–0166]

RIN 0910–AA01

Labeling for Oral and Rectal Over-the-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Reye's Syndrome Warning

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend its regulations to revise the Reye's syndrome warning required for oral and rectal over-the-counter (OTC) human drug products containing aspirin and to require a warning on OTC drug products containing nonaspirin salicylates as active ingredients. The revised warning will inform consumers of the symptoms of Reye's syndrome and advise that aspirin and nonaspirin salicylate drug products should not be given to children or teenagers who have or are recovering from chicken pox or flu-like symptoms. This final rule also finalizes FDA's notice of proposed rulemaking to require a Reye's syndrome warning for orally administered OTC drug products for relief of symptoms associated with overindulgence in food and drink (overindulgence drug products) that contain bismuth subsalicylate that published in the **Federal Register** of May 5, 1993 (58 FR 26886). FDA is issuing this final rule after considering public comment on the agency's notices of proposed rulemaking and all relevant data and information that have come to the agency's attention.

DATES:

Effective Date: This final rule is effective April 19, 2004.

Compliance Dates: The compliance date for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales greater than \$25,000 is April 19, 2004. The compliance date for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales less than \$25,000 is April 18, 2005. The compliance date for OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under a new drug application (NDA) or abbreviated

new drug application (ANDA) is October 18, 2004. The compliance dates for all other OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under an OTC drug monograph (for internal analgesic, antipyretic, and antirheumatic drug products, or for menstrual drug products) will be established when the final monographs for those drug products are published in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 5, 1993 (58 FR 26886), FDA published a notice of proposed rulemaking to require a Reye's syndrome warning for OTC overindulgence drug products that contain bismuth subsalicylate (the May 1993 proposed rule). The proposed warning stated: "Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness." The agency did not propose this warning for OTC antidiarrheal drug products that contain bismuth subsalicylate because bismuth subsalicylate was not a proposed monograph ingredient for that use at that time.

This warning was intended to inform consumers of the earliest recognizable symptoms of Reye's syndrome and advise that OTC overindulgence drug products containing bismuth subsalicylate should not be used during the period when children or teenagers have, or are recovering from, the flu or chicken pox. The agency mentioned that it was considering revising the Reye's syndrome warning currently required for products containing aspirin in § 201.314(h)(1) (21 CFR 201.314(h)(1)) to be the same as the proposed warning for products containing bismuth subsalicylate.

In the **Federal Register** of October 20, 1993 (58 FR 54228), FDA published a notice of proposed rulemaking to revise the Reye's syndrome warning required for OTC drug products containing aspirin to be consistent with the proposed warning for OTC overindulgence drug products containing bismuth subsalicylate (the October 1993 proposed rule). The

agency also proposed to extend the warning to OTC drug products containing nonaspirin salicylates, such as choline salicylate, magnesium salicylate, and sodium salicylate, but did not specify whether the warning would apply to products containing salicylates used as inactive ingredients.

In response to the two proposals, the agency received comments from two manufacturers and two professional associations. These comments are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 under Docket No. 82N-0166 or 93N-0182.

The agency has determined that the two proposals should be combined so that all Reye's syndrome warnings appear in one place (§ 201.314(h)(1)), with an appropriate cross reference in the individual ingredient monographs. Thus, there is no need for a separate rule for overindulgence drug products containing bismuth subsalicylate. This Reye's syndrome warning also applies to OTC antidiarrheal drug products containing bismuth subsalicylate because bismuth subsalicylate is a monograph ingredient for this use at this time.

In the proposed rules to amend parts 201 and 257 (21 CFR parts 201 and 357), the agency advised that any final rule based on the proposals will be effective 6 months and 12 months, respectively, after the date of publication in the **Federal Register**. The agency is setting the effective date for this final rule at 12 months, but is establishing varying compliance dates for this final rule. (*See Compliance Dates* in the **DATES** section and section II, comment 11 of this document.) Any OTC drug product that is subject to this final rule that is initially introduced or initially delivered for introduction into interstate commerce after the compliance dates for the rule will be considered misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 352(a) and (f)) if it does not contain the new warning required by this final rule. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates of

the rule must comply with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce.

II. The Agency's Conclusions on the Comments

(Comment 1) One comment supported the agency's proposal to require a Reye's syndrome warning on products containing nonaspirin salicylates. Other comments asserted that there are no scientific data establishing an association between nonaspirin salicylates and Reye's syndrome. The comments argued that numerous epidemiological studies of the etiology of Reye's syndrome have failed to suggest an association with nonaspirin salicylates. One comment included published reports of the Ohio Department of Health study (Ref. 1), the Public Health Service (PHS) pilot and main studies (Refs. 2 and 3), and the Yale study (Ref. 4) and cited two reports from Australia published in 1987 (Ref. 5) and 1990 (Ref. 6). The comment also included unpublished data (Ref. 7) based on the Ohio Department of Health study and the PHS pilot study.

The comments contended that the low incidence of Reye's syndrome, in spite of widespread use of nonaspirin salicylates and the presence of naturally occurring salicylates in food, strongly argues against an association with nonaspirin salicylates. The comments added that the case reports associating Reye's syndrome with the use of bismuth subsalicylate, calcium salicylate, and choline salicylate cited in the proposal provided insufficient detail to support such an association. The comments also criticized the *in vitro* data cited by the agency and questioned whether mitochondrial swelling, seen in the presence of salicylates in the studies, is relevant to the pathogenesis of Reye's syndrome. One comment suggested that aspirin's acetylation mechanism may be responsible for the association between aspirin and Reye's syndrome.

The agency has reviewed the epidemiologic studies submitted by the comment and agrees that they did not find an association between nonaspirin salicylates and Reye's syndrome.

However, these studies lacked sufficient subjects to adequately evaluate such an association.

The PHS pilot study (Ref. 2) reported an association between Reye's syndrome and salicylate use, but did not differentiate between aspirin and other salicylates. In the main study (Ref. 3), the independent risk of Reye's syndrome with nonaspirin salicylates could not be assessed because only two cases were not exposed to aspirin. The Ohio Department of Health study (Ref. 1) reported a significant association between aspirin use and Reye's syndrome (relative risk 11.5; confidence interval 2.7 - 48.4; $p < 0.001$). Further analysis (Ref. 7) of data from the second year of this study and the PHS pilot study showed that the Ohio study had a higher percentage of nonaspirin salicylate use in the Reye's syndrome cases than in the controls (25 percent versus 16.8 percent), whereas the findings for the PHS pilot study were mixed (14.8 percent versus 21.1, 31.6, and 12.7 percent). None of these findings were significant.

The agency notes that the Yale study (Ref. 4) investigated the validity of the reported association of aspirin and Reye's syndrome by evaluating potential bias associated with earlier studies. The authors concluded that there is a strong association between aspirin and Reye's syndrome, as reported in other studies, but the study did not evaluate the association of nonaspirin salicylates and Reye's syndrome. The two Australian studies mentioned by the comment (Refs. 5 and 6) did not show an association between salicylate ingestion (including aspirin) and Reye's syndrome.

The agency is aware of a number of reports linking bismuth subsalicylate-containing products to Reye's syndrome (Ref. 8). As of May 1999, the agency found 27 cases of potential neurologic reaction for these products reported from 1989 through 1997 in its Spontaneous Reporting System (SRS). Fifteen of these cases had a possible diagnosis of Reye's syndrome, and most of these were children. The remaining 12 cases (6 pediatric and 6 adult) included a variety of neurological disorders. Table 1 summarizes the 15 reports.

TABLE 1.—CASE REPORTS OF REYE'S SYNDROME OR SUSPECTED REYE'S SYNDROME IN PEOPLE WHO TOOK BISMUTH SUBSALICYLATE

FDA Number ¹	Age ²	Gender ³	Event (year)	Other drugs ⁴	Outcome ⁵
578534 and 725706	6Y	F	1989	APAP (only)	D
823003	P	M		U	U
823007 ¹	P	U	1985 or 1986	U	U
824682	P	F	1989	U	D

TABLE 1.—CASE REPORTS OF REYE'S SYNDROME OR SUSPECTED REYE'S SYNDROME IN PEOPLE WHO TOOK BISMUTH SUBSALICYLATE—Continued

FDA Number ¹	Age ²	Gender ³	Event (year)	Other drugs ⁴	Outcome ⁵
824683	12Y	F		U	D
830479 ¹	between 8 and 15Y	U	1978	ASA	H
830513	U	U	1989	U	U
830516 ¹	between 8 and 15Y	U	1978	ASA	H
952481	6Y	M	1991	NR	D
957562	12Y	F	1992	ASA, D	D
958922	34M	F	1992	NR	D
947149	3Y	F	1993	NR	D
1502057 ¹	14Y	M	1994	APAP, CC	H
1623073	4Y	F	1995	APAP, D	D
1855719	2Y	M	1996	NR	D

¹ Also literature report

² M = months, Y = years, P = pediatric, U = unknown

³ F = female, M = male, U = unknown

⁴ ASA = aspirin, APAP = acetaminophen, CC = cough/cold preparation, D = diphenhydramine, NR = none reported, U = unknown

⁵ D = died, H = hospitalized, U = unknown

Because of the limited information available on these cases, it is not certain that bismuth subsalicylate was the cause of Reye's syndrome. However, most of the reports identified bismuth subsalicylate use only prior to the diagnosis of Reye's syndrome. Death was reported in 60 percent of the cases.

The agency notes that a recent report by Orłowski (Ref. 9) suggested that many people originally diagnosed with Reye's syndrome may have had metabolic disorders. To test this hypothesis, Orłowski evaluated the medical records of subjects in the Australian studies (Refs. 5 and 6) that had not shown an association with aspirin or salicylate ingestion and Reye's syndrome. The medical records of 26 people who were originally diagnosed with Reye's syndrome and survived were reassessed using more precise diagnostic criteria. Eighteen (69 percent) of these were subsequently diagnosed as having other diseases (15 with inborn errors of metabolism). The most common metabolic disorder was medium-chain acyl-coenzyme-A dehydrogenase deficiency. Orłowski speculated that the disappearance of Reye's syndrome in the 1980s may be more related to the discovery of, and ability to diagnose, inborn errors of metabolism that mimic Reye's syndrome clinically, biochemically, and pathologically than to warning labels and the reduced use of aspirin. Although some people previously diagnosed with Reye's syndrome have been found to have metabolic disorders that may meet the criteria for a diagnosis of Reye's syndrome, and some people with metabolic disorders may be predisposed to developing Reye's syndrome, the agency finds there is no definitive evidence at this time that Reye's syndrome can generally be

attributed to metabolic disorders. As discussed previously, other studies (Refs. 1, 2, and 3) have shown an association with aspirin ingestion and Reye's syndrome.

The agency notes one comment's statement that the incidence of Reye's syndrome is low despite many foods with naturally occurring salicylates. Salicylates occur in many foods at low concentrations and in certain foods at relatively high concentrations. For instance, a few herbs and spices contain as much as 200 milligrams salicylate per 100 grams (Ref. 10). However, these food products are generally consumed in small amounts. The agency has no information to suggest that salicylates in food are associated with Reye's syndrome. Although salicylates are present in a wide range of foods, the amount consumed from foods is generally lower than the therapeutic doses in drugs.

The references submitted by the comment that suggested that the acetylation mechanism of aspirin may be responsible for Reye's syndrome did not provide adequate information to support this suggestion. The references included discussion of the hydrolysis of acetylsalicylic acid into acetyl and salicylic acid moieties and the further hydrolysis of the acetyl moiety to acetate, which is ultimately metabolized to carbon dioxide. Up to 50 percent of orally administered doses of acetylsalicylic acid are hydrolyzed before they reach the blood stream because of esterases located in the gut wall and the clearance of the compound by the liver (Ref. 11). Packham (Ref. 12) noted that the acetyl moiety can rapidly acetylate cyclo-oxygenase in platelets at micromolar concentration. However, it may not remain in the circulation long enough to acetylate other proteins to an

extent that alters their function. Salicylic acid is the circulating drug form which is shared by all salicylate products. It undergoes direct renal excretion and hepatic biotransformation through several enzymatic systems.

As noted in the October 1993 proposed rule (58 FR 54228 at 54229) there are some in vitro biochemical data that suggest salicylate may contribute to mitochondrial injury that is characteristic of Reye's syndrome. Based on a more recent in vitro study, Trost and Lemasters (Ref. 13) suggested that induction of the mitochondrial permeability transition (MPT) is a common pathophysiological mechanism causing mitochondrial injury in Reye's syndrome. In that study, MPT induction by aspirin required alkaline hydrolysis. Because aspirin spontaneously decomposes to salicylate, the authors said it is likely that salicylate, rather than acetylsalicylate, is the primary inducer of MPT.

While some in vitro studies (Refs. 14 and 15) suggest salicylate is responsible for mitochondrial injury that may be responsible for the pathogenesis of Reye's syndrome, the agency agrees with the comment that the evidence is not sufficient to show the salicylate moiety is responsible for Reye's syndrome. The pathogenesis of Reye's syndrome is not known. None of the submitted references link Reye's syndrome to either the salicylate or acetyl drug moiety.

Although the agency does not have definitive evidence that drugs containing nonaspirin salicylates significantly increase the risk of Reye's syndrome, a number of case reports (Ref. 8) suggest an association. Because of the serious consequences of Reye's syndrome, the agency has determined, in the interest of safe use of OTC drug

products containing nonaspirin salicylates, these products should bear a warning to alert consumers that children and teenagers recovering from chicken pox or flu-like symptoms should not use these products.

(Comment 2) Several comments contended that requiring a Reye's syndrome warning on the large number of drug products containing salicylates as inactive ingredients would reduce its effectiveness for products such as aspirin for which the warning is justified. The comments noted that salicylates are commonly used as flavorings in many OTC drugs, including mouth rinses, toothpastes, cough medications, stomach remedies, laxatives, stool softeners, and other mint-flavored oral medications. These flavorings impart a distinctive characteristic that cannot be readily duplicated using other ingredients.

The comments added that salicylates are used as buffers, stabilizing agents, and preservatives. Replacing salicylates with alternative excipients as buffering agents does not provide comparable hydrogen-ion concentration (pH) control, thereby increasing the risk of microbial contamination. Further, alternative buffering agents do not provide adequate suspension of the active ingredient, potentially leading to misdosing. The comments contended that practical replacements for salicylate excipients do not exist.

One comment concluded that the widespread presence of salicylates in prescription and OTC drugs, and foods, together with the very low reported incidence of Reye's syndrome in recent years, strongly suggests that exposure to nonaspirin salicylate inactive ingredients is not a risk factor for developing Reye's syndrome. The comment argued that a Reye's syndrome warning is not needed for drug products containing nonaspirin salicylates as inactive ingredients unless the products could be used to self-treat symptoms such as nausea, diarrhea, and vomiting (which may be early signs of Reye's syndrome). The comment projected a significant economic impact in the cost of relabeling drugs containing salicylates as inactive ingredients.

The agency discussed one report in the October 1993 proposed rule (58 FR 54228 at 54229) of Reye's syndrome associated with a drug product containing a nonaspirin salicylate as an inactive ingredient. This case resulted in the death of a child treated with a theophylline drug product that contained calcium salicylate as an emulsifying agent. The report provided minimal information. Other than this case report, the agency is not aware of

any data supporting an association of Reye's syndrome with salicylate inactive ingredients. The concentration of salicylates contained as inactive ingredients in OTC drug products is generally low and the mechanism of action responsible for the development of Reye's syndrome is unknown. Therefore, the agency does not have sufficient data and information at this time to require a Reye's syndrome warning on OTC drug products containing salicylates as inactive ingredients. In the event additional data become available on the association of salicylates, as inactive ingredients, with Reye's syndrome, the agency will reconsider this position.

(Comment 3) Several comments asserted that the use of the same warning for OTC drug products containing bismuth subsalicylate and aspirin is inappropriate. The comments stated that the purpose of the current voluntary warning on OTC overindulgence drug products containing bismuth subsalicylate is different from that for aspirin-containing OTC drug products, in that it is intended to discourage attempts to self-treat symptoms (nausea and vomiting) that may be early signs of Reye's syndrome. Because the intended uses for aspirin (minor aches and pains and fever) are different, the comments contended that the warnings should be different.

The agency agrees that the warning on bismuth subsalicylate products that mentions nausea and vomiting is helpful in discouraging self-treatment of symptoms that may be early signs of Reye's syndrome and in encouraging prompt medical attention. Likewise, people who take an aspirin product for aches and pains and fever related to the flu could also have nausea and vomiting. Regardless of the product's indication, the warning statement is intended to alert consumers when they should not use the products and that prompt medical attention should be sought if certain symptoms are present. Therefore, based on the information available suggesting that Reye's syndrome is associated with both aspirin and nonaspirin salicylates, the agency has determined that the warning statement in this final rule should be the same for all OTC drug products containing salicylates as an active ingredient.

(Comment 4) One comment urged the agency not to include Reye's syndrome symptoms on aspirin-containing products, asserting that this additional language is beyond the scope of traditional or appropriate label warnings, *i.e.*, providing sufficient

information for consumers' safe and effective use of an OTC drug product. The comment suggested that knowledge of Reye's syndrome symptoms may be important for the safe use of OTC drug products containing bismuth subsalicylate, but it is not needed for the safe and effective use of aspirin. Noting the agency's rejection of a recommendation to include symptoms in the Reye's syndrome warning in current § 201.314(h)(1) (*see* the March 7, 1986, final rule (51 FR 8180 at 8181)), the comment suggested that the agency's rationale still applies today. The comment further suggested that the listing of symptoms in the warning may cause consumers to believe that the common symptoms of nausea and vomiting or fever should prompt a call to a doctor.

Another comment suggested that the addition of nausea, vomiting, and fever to the Reye's syndrome warning is redundant because consumers are already familiar with these common symptoms of flu. Pointing out that the labeling type size is already small due to the amount of required label information, the comment asserted that this additional verbiage would decrease label readability and the conspicuousness of the warning.

The agency disagrees with the comment's assertion that including the symptoms in the warning is beyond the scope of traditional or appropriate OTC drug label warnings. Warnings for certain ingredients caution consumers to consult a doctor or to discontinue use of the product if specific symptoms appear. For example, the warning in § 340.50(c)(1) (21 CFR 340.50(c)(1)) alerts consumers of the specific symptoms of excessive caffeine consumption, stating in part: “* * * too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart beat.” A proposed warning for products containing aspirin and other salicylates states: “If ringing in the ears or a loss of hearing occurs, consult a doctor before taking any more of this product.” (*See* 53 FR 46204 at 46256, November 16, 1988.) Thus, symptoms have traditionally been included in warnings for certain OTC drug products.

As one comment noted, the agency rejected a recommendation for including symptoms in the Reye's syndrome warning in 1986. FDA has reconsidered this position, and now recognizes increased value in information on the symptoms of Reye's syndrome that can be particularly helpful to alert consumers of the potential situations where problems could arise with the use of these

products. Listing the early symptoms of Reye's syndrome will help alert consumers to contact a doctor during the early stages of the syndrome, when a better outcome is expected.

(Comment 5) Noting that the medical literature demonstrates that fever is not a symptom of Reye's syndrome, two comments recommended that the agency modify the proposed warning by deleting "fever" from the list of Reye's syndrome symptoms. The comments also cited a conclusion from the National Institutes of Health Consensus Development Conference (Ref. 16) that "neither fever nor jaundice is usually present" as a symptom of Reye's syndrome.

One comment stated that the proposed list of Reye's syndrome symptoms is incomplete because important symptoms (e.g., lethargy, confusion, aggressiveness) were not included. The comment noted that by omitting some important symptoms from the list, parents may not seek emergency treatment for a child with Reye's syndrome. The comment added that the proposal overwarns by including fever, and parents may call a doctor whenever a fever is present.

Fever is not a generally recognized symptom of Reye's syndrome. Thus, the term "fever" is being deleted from the proposed warning. While nausea and vomiting are easily recognizable, early symptoms of Reye's syndrome, the agency agrees with the comment that adding other associated symptoms would more accurately reflect the situation in which parents and young people need to be concerned about the possibility of Reye's syndrome. The agency has also considered that label space is limited and believes the broad term "changes in behavior" is understood by consumers and covers the symptoms mentioned by the comment. When changes in behavior are associated with nausea and vomiting it is important to seek medical care as soon as possible. Therefore, the warning statement includes the phrase, "if changes in behavior with nausea and vomiting occur."

(Comment 6) One comment contended that there is no scientific evidence of an association between Reye's syndrome and the use of aspirin by children and teenagers who "are recovering from" chicken pox, flu, or flu symptoms. The comment stated that while a warning about the recovery period from a preceding illness may be appropriate for products used to treat, and possibly mask, the early symptoms of Reye's syndrome, such a warning on aspirin is not supported by the studies that have been reported to show an

association with aspirin. Further, such a warning is inconsistent with the message repeatedly given to the public that aspirin should not be used for the symptoms of flu or chicken pox.

The comment stated that the studies used by FDA to support the regulation provide no evidence that aspirin taken while recovering from chicken pox or flu (but not for chicken pox or flu symptoms themselves) increases the risk of Reye's syndrome. Unless further studies show that there is a risk in taking aspirin for situations other than the symptoms of flu or chicken pox, the comment contended there is no basis for the proposed change. Any use of aspirin while "recovering from" these illnesses would be for residual symptoms of chicken pox or flu and therefore would be covered by the current warning.

The agency disagrees with the comment. As stated in the agency's May 1993 proposed rule (58 FR 26886 to 26887), Reye's syndrome most commonly occurs following influenza, chicken pox, and several other common viral infections. As symptoms of the initial viral illness begin to diminish or clear, the dramatic symptoms of Reye's syndrome (i. e., intractable vomiting, lethargy, or delirium) begin (Ref. 17). It is not clear that aspirin or other salicylate use in children is safe at any time from onset to complete recovery from the initial viral illness. Some of the residual symptoms, including fever, associated with the initial viral illness may still be present at the time that symptoms of Reye's syndrome develop. Although fever is not usually a symptom of Reye's syndrome and aspirin is not used to treat the symptoms of Reye's syndrome, it may be used to treat lingering symptoms of the initial viral illness in some people. Thus, the agency believes it is important that aspirin and other salicylates not be given to children and teenagers when flu symptoms are present or when the symptoms are disappearing and the child seems to be recovering from the illness (58 FR 26886 at 26887). The warning for OTC aspirin drug products should be consistent with that for other salicylates and include a broad warning not to use the product both during the illness and during recovery. Therefore, the agency is retaining the proposed phrase "who have or are recovering from" in this final rule.

(Comment 7) Two comments recommended that the word "flu" not be included in the proposed Reye's syndrome warning. One comment noted that, in issuing the current aspirin label regulation in 1988, FDA refused to expand the warning beyond "chicken pox or flu symptoms," based on the PHS

study on which it relied for scientific justification for the warning requirement. The comment asserted that adding the word "flu" would provide no new information and may confuse consumers who are unable to differentiate "flu" from flu symptoms. The other comment recommended that the words "flu symptoms" not be included in the warning because they are redundant and likely to confuse consumers. The comment recommended that the agency use only one of these in the warning.

The agency disagrees with the comments that use of the words "flu symptoms" along with the word "flu" is redundant, but agrees that including both in the warning may confuse some consumers who may be unable to differentiate "flu" from "flu symptoms." Therefore, the agency is replacing "flu" and "flu symptoms" with "flu-like symptoms," as this description broadens the warning to help consumers who may not be sure the symptoms are due to the flu.

(Comment 8) One comment asserted that the proposed amendment would remove the reference to consult a doctor, and would significantly undermine a doctor's ability to prescribe aspirin under certain circumstances despite the reported risk of Reye's syndrome. The comment stated that the proposed warning simply directs children and teenagers not to use the drug, whereas the current warning cautions against use "before a doctor is consulted about Reye's syndrome." Further, while there may be no conditions for which bismuth subsalicylate should be used in children or teenagers having chicken pox or flu symptoms, aspirin has other important uses that might justify a physician's recommendation that it be used, despite the warning. The comment explained that if a doctor believes that a child suffering from the pain and disability of juvenile rheumatoid arthritis should use aspirin, and the benefits outweigh the risks, the doctor should be able to make a patient-specific assessment of risks, and consumers should not be afraid to follow the doctor's advice. The comment concluded that without justification, it is inappropriate to reverse the reasoned position held by the agency in 1982 (47 FR 57886 at 57895, December 28, 1982) in which the suggested warning against salicylate use in children did not apply to all circumstances, but included the phrase "unless directed by a doctor." The agency stated that the possible benefits of salicylates might outweigh the risk of Reye's syndrome in certain cases such as juvenile rheumatoid arthritis.

The agency disagrees with the comment that a doctor's advice to take an aspirin-containing drug in limited circumstances will be undermined or that consumers will be frightened from using the drug at the direction of a doctor if the revised Reye's syndrome warning is used in the product's labeling. Salicylates (including aspirin) should not be given to, or used by, children and teenagers who have or are recovering from certain viral illnesses. In most conditions for which aspirin is indicated there are alternative medications that doctors can recommend. In rare instances where other medications are contraindicated, a patient's doctor may determine that the benefits of aspirin use outweigh the risks. In those cases, it is still possible for the doctor to override the label warning if, in his or her judgment, aspirin should be used. The agency believes the revised warning continues to reflect the agency's 1982 position.

(Comment 9) One comment recommended that the agency modify the proposed warning to include "while using this medication" as follows: "If nausea, vomiting, or fever occur while using this medication, consult a doctor because these symptoms could be an early sign of Reye's syndrome, a rare but serious illness." The comment stated that reference to indications and adverse effects that are similar may be confusing to consumers, who may assume that the presence of nausea, vomiting, or fever alone is an absolute indication of Reye's syndrome. The comment suggested this change would convey a clearer message that this drug, when used to treat the symptoms of a viral illness in children and teenagers, may precipitate Reye's syndrome.

The agency does not believe the proposed warning suggests that any individual symptom is an absolute indication of Reye's syndrome. However, the agency has deleted "fever" and added "changes in behavior" to the list of symptoms to more accurately reflect the symptoms associated with the development of Reye's syndrome. (See section II, comment 5 of this document.) The agency is adding the phrase "when using this product" to convey a clearer message that the drug, when used to treat the symptoms of a viral illness, may precipitate Reye's syndrome.

(Comment 10) Noting that pediatric nurse practitioners have been a source of primary health care to children and teens for over 25 years, one comment suggested amending the proposed Reye's syndrome warning by replacing "doctor" with "health-care professional."

The agency agrees with the comment that health care professionals play important roles in delivering clinical services directly to consumers and may sometimes serve as primary medical care providers. However, because of the serious consequences of Reye's syndrome the agency believes that a doctor should be consulted if symptoms associated with Reye's syndrome (e.g., changes in behavior with nausea and vomiting) occur after taking a salicylate. In addition, the agency believes that the use of the term "doctor" is consistent with other OTC drug product labeling warnings. As discussed in the OTC labeling requirements final rule (64 FR 13254 at 13261, March 17, 1999), the agency determined that questions related to certain conditions and symptoms are best answered by a doctor who is trained and licensed specifically to make a differential diagnosis and to treat disease entities. Therefore, the agency is retaining the term "doctor" in the warning.

(Comment 11) Two comments stated that due to economic hardship, 6 months was too short to revise labels, dispose of existing label stock, relabel product, and initiate the distribution process. Therefore, one comment requested that the agency consider an 18-month implementation date instead of the proposed 6 months. Another comment requested 12 months. One comment stated that labeling changes could be made more efficiently if multiple rulings for similar products become effective simultaneously. The comment suggested that the agency incorporate all revisions into the final monograph for OTC internal analgesic drug products to decrease costs.

The agency agrees with the comments that 6 months may not be a reasonable amount of time for manufacturers to implement the required warning for salicylate-containing drug products. The labeling for most OTC drug products (those containing aspirin) covered by this final rule already includes a Reye's syndrome warning similar to the warning in this final rule, and most manufacturers would need to make only minor labeling revisions. Because of the large number of affected products and because many of these products are internal analgesics that contain aspirin and already have a Reye's syndrome warning, the agency is providing that the compliance dates for those products to incorporate the new warning will be established when the final monographs for OTC internal analgesic, antipyretic, and antirheumatic drug products and OTC menstrual drug products are published in a future issue of the **Federal Register**. Thus, all of the

labeling revisions required by those final monographs and the new Reye's syndrome warning can be implemented at the same time. The agency currently expects those final monographs or portions of the final monographs to publish within the next 18 to 24 months. Thus, any economic hardship on manufacturers of these products is greatly reduced or eliminated.

Manufacturers of OTC antidiarrheal drug products have 12 or 24 months to implement the new Reye's syndrome warning, which will be done concurrently with implementation of the labeling in the final monograph for those drug products, published elsewhere in this issue of the **Federal Register**. Because the Reye's syndrome warning is only one small part of the labeling for OTC antidiarrheal drug products containing bismuth subsalicylate, the agency is requiring all labeling for those products to be implemented at the same time. Manufacturers of OTC overindulgence drug products also have 12 or 24 months to implement the new Reye's syndrome warning. Because the agency does not currently expect the final rule for those products to publish in the next 18 to 24 months, it is requiring those products to include the Reye's syndrome warning before the final monograph is published. There are a limited number of affected products in this product category, and any economic costs for manufacturers of those products should be minimal. All manufacturers are encouraged to incorporate this new warning information into product labeling if they print new labeling before the required implementation times.

Although this final rule may have an economic impact on a few manufacturers, the agency concludes that the potential benefits of the rule, including reduced risk of adverse effects, override these economic concerns. (See section II, comment 1 of this document.)

III. The Agency's Final Conclusions

The agency has determined that the Reye's syndrome warning should apply to all oral and rectal OTC drug products containing salicylates as active ingredients, regardless of their intended use. Therefore, the requirement for a Reye's syndrome warning for aspirin and nonaspirin salicylates (including bismuth subsalicylate) will appear in one location (§ 201.314(h)). A reference to this warning is included in § 335.50(c)(2)(i)(A) (21 CFR 335.50(c)(2)(i)(A)) of the final monograph for OTC antidiarrheal drug products. A reference will also be

included in 21 CFR part 343 in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and in part 357, subpart J, in the final monograph for OTC overindulgence drug products, when the monographs for those products are finalized. Other labeling that was proposed in § 357.950 for drug products for the relief of symptoms associated with overindulgence in food and drink will be finalized in a future issue of the **Federal Register**. The OTC drug product labeling format and content requirements in § 201.66(c)(5)(ii)(A) state that the warning in § 201.314(h)(i) shall follow the subheading "Reye's syndrome:".

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks (see 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter v. Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, final rule, 67 FR 72555 (December 6, 2002).

IV. 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). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million (adjusted annually for inflation). The rules that led to the development of this final rule were published in 1993, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This 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. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this final rule is to revise the Reye's syndrome warning that is already required for OTC drug products that contain aspirin for use by children and adolescents and to extend the requirement to those products that contain nonaspirin salicylates (including bismuth subsalicylate) as active ingredients. The revised warning is similar to the voluntary warning already included on some OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate. This final rule is intended to bring uniformity and consistency to the labeling of OTC drug products containing aspirin and nonaspirin salicylates.

A. Benefits

The revised warning will inform consumers of the symptoms of Reye's syndrome and advise that aspirin or nonaspirin salicylate (including bismuth subsalicylate) drug products should not be given to children or

teenagers who have or are recovering from chicken pox or flu-like symptoms. As stated in the October 1993 proposed rule (58 FR 54228), the agency has reconsidered the need to include all OTC drug products containing salicylates in this required warning. Fifteen adverse drug reports linking bismuth subsalicylate with Reye's syndrome have been entered into the agency's database since March 1991, when the first Reye's syndrome death associated with bismuth subsalicylate was reported to the agency (Refs. 8 and 18). Most of these cases occurred in children, and deaths were reported in the majority of these cases.

FDA cannot quantify the expected benefits of this rule, because it lacks the data to conduct a quantitative risk assessment. The agency notes, however, that in most disease surveillance systems, reported cases are recognized to represent only a fraction of the actual total. Reye's syndrome is manifested by a change in mental status ranging from lethargy to delirium, seizures, and respiratory arrest (Ref. 19). Mortality is related to the stage of coma at the time of hospital admission and has been estimated to be as high as 40 percent (Ref. 19). It has been estimated that 30 percent of Reye's syndrome patients who deteriorate to the stage of neurologic seizure, and survive, develop serious neurologic sequelae. Thus, alerting consumers to the early symptoms of Reye's syndrome is essential so that prompt medical treatment can be obtained, with a better prognosis for the patient.

B. Costs

Based on information in the agency's drug listing system, there are between 900 and 1,500 manufacturers and distributors that together produce about 5,000 OTC drug products containing salicylates as an active ingredient that will be affected by this final rule. Over 90 percent of these products are internal analgesic, antipyretic, and antirheumatic drug products, which may have more than one stock keeping unit (SKU) (individual products, packages, and sizes). Because the majority of the products already include a warning statement that is similar to the labeling required by this final rule, most changes will be minor. Further, the cost to implement the new warning statement should be negligible because the agency is providing that the warning can be coordinated with the other labeling changes that will be included in a future final monograph for those products.

As discussed elsewhere in this issue of the **Federal Register**, about 8 percent

(400) of the affected products are antidiarrheal drug products that contain bismuth subsalicylate as the active ingredient. The cost to implement the new Reye's syndrome warning for those products is significantly mitigated because the warning will be incorporated into the new labeling for those products as a result of publication of the final monograph for OTC antidiarrheal drug products.

The remaining 2 percent (100) of affected products includes OTC drug products containing aspirin and nonaspirin salicylates marketed under an NDA or ANDA or marketed under the tentative final monograph for OTC overindulgence drug products. A number of the overindulgence drug products that contain bismuth subsalicylate as the active ingredient also bear antidiarrheal claims and, thus, will need to be relabeled as a result of publication of the final monograph for those drug products. The cost to add a warning to product labeling generally averages about \$2,000 to \$3,000 per SKU. Thus, the cost for these products to be relabeled is estimated to be between \$200,000 and \$300,000.

C. Small Business Impacts

Census data provide aggregate industry statistics on the total number of manufacturers for Standardized Industrial Classification Code 2384 Pharmaceutical Preparations by establishment size, but do not distinguish between manufacturers of prescription and OTC drug products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

The agency's drug listing system indicates that between 900 and 1,500 marketers will need to relabel as the result of this final rule. Thus, the agency believes that many of the manufacturers affected by this final rule would be small. However, the cost of relabeling of private label products is incurred by the private label manufacturers, not the individual small marketers. The effect on individual firms will vary with the number of the firm's SKUs that require relabeling and the size and cost of the firm's labeling inventory. Most small firms will not incur significant regulatory costs because they manufacture few affected SKUs and use less expensive labeling stock. Because most firms will be able to incorporate these required changes when

incorporating other regulatory requirements, this final rule should have a minimal economic impact on small entities.

D. Alternatives

The agency considered and rejected a more costly alternative that would have required all products to be relabeled within 12 to 18 months of publication of this final rule in the **Federal Register**, with a multimillion dollar cost to industry based on the potential number of affected products. Because 80 percent of the products (a number of which have multiple SKUs) already have a Reye's syndrome warning on their label, the agency concluded that the incremental benefits of a reworded warning did not outweigh the costs. As discussed in section II, comment 11 of this document, the agency has set the implementation date of this final rule for the Reye's syndrome warning for OTC antidiarrheal drug products that contain bismuth subsalicylate as an active ingredient to coincide with the compliance dates for the final monograph for those drug products. The agency considers this a reasonable time for manufacturers to implement these final rules, and the costs associated with implementation will be less for one label change than for two label changes. The agency has also set the compliance dates for the majority of the products (internal analgesic, antipyretic, and antirheumatic) affected by this final rule to coincide with the final monograph for those drug products, to be published in the future. The agency encourages manufacturers to relabel their products voluntarily, if new labeling is implemented before that final monograph publishes.

The agency considered, but rejected, an exemption from coverage for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, longer compliance dates are being provided for antidiarrheal and overindulgence drug products containing bismuth subsalicylate with annual sales less than \$25,000 (an additional 12 months) and for products containing aspirin and nonaspirin salicylates marketed under an NDA or ANDA (an additional 6 months).

E. Conclusion

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The

current inflation adjusted statutory threshold is about \$110 million.

This analysis shows that the agency has considered the burden to small entities and provided compliance dates that should significantly reduce the burden. Thus, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

FDA concludes that the warning statement set forth in this final rule is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the required labeling is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) 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.

VII. 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 responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following references are on display in the Dockets Management Branch (*see* section I of this document) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Halpin, T. et al., "Reye's Syndrome and Medication Use," *Journal of the American Medical Association*, 248:687-723, 1982.
2. Hurwitz, E. et al., "Public Health Service Study of Reye's Syndrome and Medications: Report of the Pilot Study," *New England Journal of Medicine*, 313:849-857, 1985.

3. Hurwitz, E. et al., "Public Health Service Study of Reye's Syndrome and Medications: Report of the Main Study," *Journal of the American Medical Association*, 257:1905-1911, 1987.

4. Forsyth, B. et al., "New Epidemiologic Evidence Confirming that Bias Does Not Explain the Aspirin/Reye's Syndrome Association," *Journal of the American Medical Association*, 261:2517-2524, 1989.

5. Orlowski, J. et al., "A Catch in the Reye," *Pediatrics*, 80:638-642, 1987.

6. Orlowski, J. et al., "Reye's Syndrome: A Case Control Study of Medication Use and Associated Viruses in Australia," *Cleveland Clinic Journal of Medicine*, 57:323-329, 1990.

7. Biometric Research Institute, "Analysis of Exposure to Non-Aspirin Salicylates Among Subjects from the Ohio Department of Health Survey and the Public Health Service Pilot Study on Reye Syndrome," June 13, 1986, in comment C2, Docket No. 93N-0182, Dockets Management Branch.

8. Adverse Drug Reaction Reports, in OTC Vol. 03RSFR, Docket No. 93N-0182, Dockets Management Branch.

9. Orlowski, J. P., "Whatever Happened to Reye's Syndrome? Did It Ever Really Exist?" *Critical Care Medicine*, 27:1582-1587, 1999.

10. Swain, A., "Salicylates in Foods," *Journal of the American Dietetic Association*, 85:950-960, 1985.

11. Reigelman, S., "The Kinetic Disposition of Aspirin in Humans," in *Aspirin, Platelets, and Stroke* (Chapter X), edited by W. S. Fields and W. K. Hess, W. H. Green Inc., St. Louis, MO, pp. 105-114, 1971.

12. Packham, M., "Mode of Action of Acetylsalicylic Acid," in *Acetylsalicylic Acid: New Uses for an Old Drug*, edited by H. Barnett et al., Raven Press, New York, NY, pp. 63-82, 1982.

13. Trost, L. C., and J. J. Lemasters, "The Mitochondrial Permeability Transition: A New Pathophysiological Mechanism for Reye's Syndrome and Toxic Liver Injury," *The Journal of Pharmacology and Therapeutics*, 278:1000-1005, 1996.

14. Martens, M. E., and C. Lee, "Reye's Syndrome: Salicylates and Mitochondrial Functions," *Biochemical Pharmacology*, 33:2869-2876, 1984.

15. Yoshida, Y. et al., "Effect of Salicylic Acid on Mitochondrial Peroxisomal Fatty Acid Catabolism," *Pediatric Research*, 23:338-341, 1988.

16. National Institutes of Health, Consensus Conference, "Diagnosis and Treatment of Reye's Syndrome," *Journal of the American Medical Association*, 246:2441-2444, 1981.

17. Wolinsky, J. S., "Reye's Syndrome," in *Cecil Textbook of Medicine*, 19th ed., edited by J. B. Wyngaarden et al., W. B. Saunders Co., Philadelphia, PA, pp. 2194-2195, 1992.

18. Adverse Drug Reaction Reports, in OTC Vol. 03RSNPR, Docket No. 93N-0182, Dockets Management Branch.

19. Betts, R., "Influenza," in *Principles and Practices of Infectious Diseases*, 4th ed., edited by G. L. Mandell, J. E. Bennett, and R. Dolin, Churchill Livingstone, New York, NY, pp. 1546-1567, 1995.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.314 is amended by revising paragraphs (h)(1) and (h)(4) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter drug products containing aspirin or nonaspirin salicylates as active ingredients subject to this paragraph is required to prominently bear the following warning: "Reye's syndrome [subheading in bold type]: Children and teenagers who have or are recovering from chicken pox or flu-like symptoms should not use this product. When using this product, if changes in behavior with nausea and vomiting occur, consult a doctor because these symptoms could be an early sign of Reye's syndrome, a rare but serious illness."

* * * * *

(4) Any product subject to paragraphs (h)(1), (h)(2), and (h)(3) of this section that is not labeled as required by these paragraphs and that is initially introduced or initially delivered for introduction into interstate commerce after the following dates is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

(i) Compliance by October 18, 2004, for OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under a new drug application or abbreviated new drug application.

(ii) Compliance by April 19, 2004, for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales greater than \$25,000.

(iii) Compliance by April 18, 2005, for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales less than \$25,000.

(iv) Compliance dates for all other OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under an OTC drug monograph (for internal analgesic,

antipyretic, and antirheumatic drug products, or for menstrual drug products) will be established when the final monographs for those products are published in a future issue of the **Federal Register**. In the interim, these products should continue to be labeled with the previous Reye's syndrome warning that appears in paragraph (h)(1) of this section.

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9382 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 335, and 369

[Docket No. 78N-036D]

RIN 0910-AA01

Antidiarrheal Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antidiarrheal drug products (to control the symptoms of diarrhea) are generally recognized as safe and effective and not misbranded. This final rule is part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph (TFM), and all new data and information on OTC antidiarrheal drug products that have come to the agency's attention. Also, this final rule amends the regulation that lists nonmonograph active ingredients by adding those OTC antidiarrheal active ingredients that have been found to be not generally recognized as safe and effective.

DATES: *Effective Date:* This rule is effective April 19, 2004.

Compliance Dates: The compliance date for products with annual sales less than \$25,000 is April 18, 2005. The compliance date for all other OTC antidiarrheal drug products is April 19, 2004.

Comment Date: Comments on specific labeling items discussed in section IX of the **SUPPLEMENTARY INFORMATION** section

of this document are due by July 16, 2003.

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

FOR FURTHER INFORMATION CONTACT: Mary S. Robinson or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under § 330.10(a)(6) (21 CFR 330.10(a)(6)) an advance notice of proposed rulemaking to establish a monograph for OTC antidiarrheal drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the panel), which evaluated these drug classes. The agency's proposed regulation for OTC antidiarrheal drug products was published in the **Federal Register** of April 30, 1986 (51 FR 16138), in the form of a TFM. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency issued a final rule establishing that certain active ingredients, including some antidiarrheal active ingredients, in OTC drug products are not generally recognized as safe and effective or are misbranded. These antidiarrheal active ingredients are listed in § 310.545(a)(3) (21 CFR 310.545(a)(3)). This final rule adds nine ingredients to that section.

On or after the compliance dates established in this final rule (*see* **DATES** section) no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application (NDA) or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the conditions in this final monograph as soon as possible.

In the TFM (51 FR 16138 at 16148), the agency proposed monograph status for activated attapulgite, calcium polycarbophil, and polycarbophil. The agency has reevaluated the data for these ingredients and classified them as nonmonograph conditions (*see* section III of this document). Kaolin and bismuth subsalicylate were category III (*see* § 330.10(a)(6)(iii)) in the TFM. They are monograph conditions in this final rule.

In the **Federal Register** of March 17, 1999 (64 FR 13254), the agency established a standardized format and content for the labeling of all OTC drug products (*see* § 201.66 (21 CFR 201.66)). The labeling in this final monograph incorporates those requirements. The agency is specifically soliciting comments on the labeling for bismuth subsalicylate and kaolin. If the comments justify a change, the agency will propose to amend the final monograph accordingly at a later date.

All "OTC Volumes" cited throughout this document refer to information on public display in the Dockets Management Branch (*see* **ADDRESSES**).

II. The Agency's Conclusions on the Comments

(Comment 1) One comment requested the agency to increase the proposed dose for activated attapulgite (51 FR 16138 at 16149) from a maximum of 8.4 grams (g) per day to a maximum of 9 g per day for adults and children 12 years of age and over. The comment also recommended higher daily doses for children under 12 years old. The comment submitted three clinical studies to support these higher doses (Refs. 1, 2, and 3).

The agency has determined that the studies are insufficient to support an increase in the daily dose. The studies were neither designed nor analyzed to support the requested increase of the maximum daily dose. The data do not provide information as to the basis or need for an increased dose, do not establish a target population for such a dose, and do not directly compare the two dose levels in order to establish that the higher dose is as safe and provides any additional benefit. The agency's detailed comments and evaluation of the studies are on file in the Dockets Management Branch (Ref. 4). Moreover, based on a reevaluation of the studies submitted to support the effectiveness of attapulgite (51 FR 16138 at 16142), the agency concludes that additional effectiveness data are needed to support monograph status (*see* section III of this document).

(Comment 2) One comment submitted a safety study (Ref. 5) and two clinical

studies (Refs. 6 and 7) to support the use of bismuth subsalicylate for the prophylaxis of travelers' diarrhea.

The agency has determined that the data are insufficient to support use of bismuth subsalicylate for prophylaxis of travelers' diarrhea. The safety study (Ref. 5) evaluated a dose that was 50 percent higher and given for a time period that was 50 percent longer than planned for the travelers' diarrhea study, which was a 17-week, double-blind, parallel, randomized study conducted in 93 healthy, adult volunteers. One objective was to determine the blood levels and urinary excretion of bismuth resulting from long-term dosing. Average blood bismuth concentration, after 6 weeks of dosing, was significantly higher for the bismuth subsalicylate four times a day group than the two times a day group. Blood levels slowly decreased through a 9-week followup period. None of the subjects in either placebo group exhibited a detectable blood bismuth level.

One clinical study (Ref. 6) was a 14-day double-blind, randomized, placebo-controlled comparison of the prophylactic effects of two doses of bismuth subsalicylate on the incidence of travelers' diarrhea in 390 subjects traveling to destinations where the incidence of travelers' diarrhea was at least 20 percent. Depending upon the group assigned, subjects were given either 525 milligrams (mg) bismuth subsalicylate two times a day (low dose), 1,050 mg bismuth subsalicylate two times a day (high dose), or lactose placebo tablets two times a day.

The primary efficacy parameter was the incidence rate of travelers' diarrhea. The investigators concluded that both doses provide a statistically significant reduction in the occurrence of diarrhea. Additional analyses were done. In one analysis, the data were evaluated strictly according to the inclusion/exclusion criteria and the definition of diarrhea as stated in the protocol. Results indicated that the significant advantage of each dose regimen claimed in the original analyses was not maintained. A further (intent-to-treat) analysis was done using all subjects, *i.e.*, inclusion/exclusion criteria were ignored and all subjects were included. This evaluation also did not confirm the statistical advantage of each dose regimen claimed in the original analysis. In addition, this study is inadequate because there was a 47 percent rate of protocol violations and differences in definitions of diarrhea used (in the protocol and in the evaluable subjects) raise questions about the adequacy of the blinding of the study.

The other clinical study (Ref. 7) was a 21-day, double-blind, randomized, placebo-controlled clinical study comparing two dose levels of bismuth subsalicylate in the prevention of travelers' diarrhea. Subjects were randomly assigned bismuth subsalicylate either 1.05 g per day (262.5 mg four times a day) (low dose), 2.1 g per day (525 mg four times a day) (high dose), or 7.15 g lactose (two placebo tablets four times a day). Additional analyses were also done. In the original analysis, the difference in diarrheal incidence rate from placebo was only statistically significant for the high-dose regimen. Supplemental comparisons done only for subjects who completed all 21 days of the study or who contracted diarrhea ("four or more unformed stools in a 24-hour period") were consistent with the primary efficacy comparisons. The investigators concluded that 525 mg bismuth subsalicylate four times a day provides a statistically significant reduction in the occurrence of diarrhea for up to 3 weeks and that 262.5 mg four times a day provides a marginal benefit that could be considered in the range of the minimum effective dose. However, this significant reduction in the incidence of diarrhea was not discernible when the data from both analyses were evaluated. Similarly, when the effects of the "high" and "low" bismuth subsalicylate dose were compared, no significant difference in the incidence of diarrhea was detected.

Only the second clinical study (Ref. 7) showed that bismuth subsalicylate tablets in a dosage of 525 mg four times a day may be effective in the prevention of travelers' diarrhea. However, an additional double-blind, randomized, placebo-controlled study by another independent investigator is needed to substantiate the study findings. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 8).

The agency is concerned about the benefit-to-risk ratio associated with prophylactic use for several weeks for acute diarrhea, which itself is usually self-limiting, lasting only from 24 to 72 hours. Although there have been no reported cases of bismuth encephalopathy associated with the dosage and time period usually recommended for OTC use, the safety of prophylactic use for 3 weeks to persons traveling to high-risk diarrhea areas is not well documented. Thus, any future study of effectiveness should also include an evaluation of tinnitus and other subtle and mild central nervous system symptomatology, such as vertigo, gait disturbances, etc. An

evaluation of bismuth pharmacokinetics during the period of use would also be desirable.

(Comment 3) One comment submitted four clinical studies (Refs. 9 through 14) to support the use of bismuth subsalicylate for the treatment of diarrhea for the three labeling indications discussed in the proposal (51 FR 16138 at 16140 to 16141). The comment also requested that a travelers' diarrhea claim for bismuth subsalicylate be included in the final monograph.

The agency has determined that these studies (DuPont, Steffen-DuPont, Steffen, and Gryboski) support the use of bismuth subsalicylate to treat the symptoms of acute nonspecific diarrhea and, tentatively, travelers' diarrhea. The DuPont and Steffen-DuPont studies were double-blind, randomized, parallel group trials comparing the efficacy of bismuth subsalicylate with placebo for the treatment of acute, nonspecific diarrhea. The DuPont study (Ref. 10) involved 112 students from the United States enrolled at universities in Mexico and who were suffering from diarrhea. The subjects received placebo or bismuth subsalicylate at a dose of 525 mg per 30 milliliter (mL) solution every half hour up to a maximum of eight doses (4.2 g) per day for 2 days. The students were given diary cards on which to record the time of passage of each stool, the stool consistency, the severity of any associated symptoms, and the times and amounts of medication ingested. Diary cards were maintained for 72 hours (the 48-hour treatment period and the ensuing 24 hours). Diarrhea was defined as one or more symptoms of enteric infection (e.g., fever, abdominal discomfort, urgency, nausea) plus either three or more unformed stools in an 8-hour period or four or more such stools in a 24-hour period.

The primary effectiveness measures were reduction in the duration of diarrhea, improvement in stool consistency, and reduction of stool frequency. Results significantly favoring bismuth subsalicylate were obtained for all parameters of effectiveness. Half of the subjects who took bismuth subsalicylate experienced total relief by 27 hours. Additionally, 78 percent of the subjects treated with bismuth subsalicylate had total relief of diarrhea and all associated symptoms at the end of the 72-hour period compared with 50 percent of the placebo-treated subjects. The mean percentage of total firm stools among subjects treated with bismuth subsalicylate was numerically greater than for the placebo-treated subjects at all time intervals, and significantly greater for the first 24 hours after

treatment (36.6 percent versus 8.6 percent, $p < 0.01$). Stool frequency data also showed that the number of unformed stools was numerically lower for all time intervals after the first 12 hours for the bismuth subsalicylate subjects compared to the placebo subjects. However, only the 12- to 24-hour interval showed statistical significance ($p = 0.04$). Subjects' global assessment of relief was 92 percent for those who received bismuth subsalicylate compared to 73 percent for those who received placebo on day 1 ($p = 0.032$) and 98 percent versus 86 percent on day 2 ($p = 0.059$). The physician's global ratings showed relief in 84 percent of subjects treated with bismuth subsalicylate and 58 percent of placebo subjects ($p < 0.01$).

The Steffen-DuPont study (Ref. 10) included 130 Swiss nationals traveling in West Africa. It had essentially the same design as the DuPont study except that diarrhea was defined as one or more watery stools (pourable) or one or more pasty stools (do not retain shape). Subjects were given bismuth subsalicylate 1.05 g every hour up to a maximum of four doses (4.2 g) per day for 2 days, or placebo. Results indicated that 69 percent of subjects treated with bismuth subsalicylate had relief after 48 hours compared to 40.6 percent for placebo subjects. Stool consistency was numerically higher for subjects treated with bismuth subsalicylate than subjects who received placebo. Subject's global assessments of relief was 76 percent for those who received bismuth subsalicylate and 72 percent for those who received placebo on day 1 ($p = 0.76$). On day 2, a significantly greater percentage of subjects treated with bismuth subsalicylate reported relief (89 percent) compared to placebo subjects (73 percent), $p = 0.02$.

A subgroup analysis on subjects identified as having entry criteria (three or more unformed stools before entry) similar to subjects in the Dupont study allowed for direct comparisons of these two studies. The analysis confirmed a significant effect for bismuth subsalicylate over placebo.

The Gryboski study (Refs. 9 and 10) was a double-blind, placebo-controlled, parallel clinical trial, conducted for 7 days, that involved 29 infants and children (age range 2 to 70 months) with chronic diarrhea, defined as a change in the consistency of the stool to watery or soft (mushy) and of greater than 2 weeks duration. A bismuth subsalicylate suspension containing 525 mg/30 mL was given based on age as follows: 6 weeks to 2 years, 2.5 mL; 2 to 6 years, 10 mL. The results indicated that bismuth subsalicylate significantly

improved stool consistency and decreased stool frequency ($p < 0.05$). However, because of the small sample size and because only one child was more than 3 years of age, this study alone cannot be used to establish dosages for infants and children.

In the Steffen study (Refs. 9 and 10), 2,580 people traveling to various third world countries were randomly assigned in a double-blind manner to bismuth subsalicylate (or 1 of 5 other active drugs) or 1 of 6 respective placebos. Treatment for diarrhea began immediately after the onset of symptoms. The study results, for 530 evaluable subjects, indicated that the cure rates for subjects treated with bismuth subsalicylate were 62 percent by the end of day 1 and 76 percent by the end of day 2, $p = 0.002$ (Ref. 10). These rates were significantly greater than those in the placebo group (40 percent day 1, 55 percent day 2). While this study is supportive, the agency cannot consider it a critical study to support effectiveness for bismuth subsalicylate for several reasons: (1) The study did not provide baseline data, (2) the study did not contain objective measures of stool frequency and consistency, and (3) the raw data were not available to the agency for review.

In summary, the Dupont and the Steffen-Dupont studies support the monograph status of bismuth subsalicylate for OTC anti-diarrheal use. Each study confirms the results of the other because of the similar design. The Steffen study is supportive. The Gryboski study, although well-controlled and supportive of bismuth subsalicylate, does not provide adequate information on dosing regimens for children under 12 years of age (see section II, comment 6 of this document).

The dosage for bismuth subsalicylate is: Adults and children 12 years of age and over: oral dose is 525 mg every 1/2 to 1 hour, or 1,050 mg every hour as needed, not to exceed 4,200 mg in 24 hours. Children under 12 years of age: ask a doctor.

Because almost 50 percent of persons traveling from an industrialized to an underdeveloped country experience diarrhea, this target population was used in the clinical studies. The primary etiology of diarrhea in the United States is nonbacterial, while diarrhea occurring in foreign countries is primarily bacterial. Thus, the agency needed to consider whether studies on travelers' diarrhea (a subset of diarrhea) in foreign countries could be extrapolated to acute nonspecific diarrhea in the United States (Ref. 15).

On July 26, 1991, the agency's Gastrointestinal Drugs Advisory

Committee considered this question by evaluating the pathogens identified in the restudy stool samples in the Dupont and Steffen studies. The most common pathogen was *Escherichia coli* enterotoxin. The committee also considered the Gryboski study, in which the entry criteria included subjects with no evidence of parasitic or bacterial infection, and the Soriano study (Ref. 15), an additional study (not submitted by the comment) that was conducted in hospitalized children with acute diarrhea and focused on subjects infected with Rotavirus. The Soriano study showed that bismuth subsalicylate is superior to placebo and is also effective in subjects with diarrhea when the primary etiology is viral. The committee concluded that the studies support the use of bismuth subsalicylate in treating the symptoms of acute nonspecific and travelers' diarrhea.

In the TFM (51 FR 16138 at 16149), the agency proposed the following indications in § 335.50(b): (i) "Reduces the number of bowel movements in diarrhea," (ii) "Improves consistency of loose, watery bowel movements in diarrhea" and (iii) "Relieves cramps in diarrhea." The agency also stated (see comment 10, 51 FR 16138 at 16140 to 16141) that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" could also be used depending on the results of studies conducted on the ingredients present in a product, but these indications were not included in proposed § 335.50(b) (also, see section II, comment 13 of this document). The agency concludes that the data support monograph status for these claims for bismuth subsalicylate with the exception of "relieves cramps in diarrhea." The data support the term "controls" or "relieves" rather than the absolute cessation of diarrhea inferred in the term "stops." Therefore, the agency is using the claim "controls" or "relieves" "diarrhea" as the primary indication in this final monograph. To further simplify labeling, the agency had revised the other claims, which are optional, to "reduces number of bowel movements" and "helps firm stool" (see new § 335.50(b)(1)).

FDA tentatively concludes that the data also support use for "travelers' diarrhea." Elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the final monograph to include that indication. However, that indication may not appear in product labeling until the amendment is final. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 16).

(Comment 4) One comment disagreed with an agency recommendation (Ref. 16) that the Reye's syndrome warning for products containing bismuth subsalicylate read: "WARNING: Children and teenagers who have or are recovering from chicken pox or flu should NOT use this medicine to treat vomiting or diarrhea. If vomiting or diarrhea is present, consult a doctor because this could be an early sign of Reye syndrome, a rare but serious illness." The comment contended that this reference to diarrhea should not be included because, unlike vomiting, diarrhea is not a recognized early warning symptom of Reye's syndrome. The comment added that this warning would be incorrect and confusing to consumers and that there is no scientific data linking Reye's syndrome to bismuth subsalicylate. One comment added that the following Reye's syndrome warning it voluntarily uses in its labeling is adequate for bismuth subsalicylate: "WARNING: Children and teenagers who have or are recovering from chicken pox or flu should not use this medicine to treat nausea or vomiting. If nausea or vomiting is present, consult a doctor because this could be an early sign of Reye Syndrome, a rare but serious illness."

FDA issued the Reye's syndrome warning in 21 CFR 201.314(h) at the time when scientific research was focused primarily on the association of Reye's syndrome and aspirin rather than nonaspirin salicylates. That warning is limited to aspirin and reads: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye's syndrome, a rare but serious illness reported to be associated with aspirin."

In the **Federal Register** of May 5, 1993 (58 FR 26886), the agency proposed a Reye's syndrome warning for OTC overindulgence drug products containing bismuth subsalicylate. In a technical amendment published in the **Federal Register** of January 3, 2000 (65 FR 7), the agency corrected the word "Reye" to "Reye's." Elsewhere in this issue of the **Federal Register**, the agency is finalizing the May 5, 1993, proposal, requiring the Reye's syndrome warning for all OTC drug products that contain bismuth subsalicylate.

(Comment 5) One comment disagreed with the agency's proposal (51 FR 16138 at 16143, see comment 17) that the maximum adult daily dose of bismuth subsalicylate be limited to 4.2 g because of the potential of salicylate toxicity. The comment argued that this limitation is contrary to the up to 8 g per 1 day

limit of bismuth subsalicylate recommended by the panel (40 FR 12902 at 12930). The comment stated that 4.2 g per day is equivalent to 1.59 g per day salicylate, which is only about one-half of the maximum daily salicylate dosage limit recommended by the OTC Internal Analgesic Panel (42 FR 35346 at 35358, July 8, 1977).¹ The comment stated that it is essential that the maximum allowable dose be based on total salicylate consumption because some bismuth subsalicylate products may also contain other salicylates as excipients. Thus, the maximum daily dose should be limited by the equivalents of salicylate ingested, and that formulated products should contain a total of no more than 3.04 g of salicylate per day. The comment stated that the bismuth subsalicylate level should be established by the lowest clinically effective dose.

Based on clinical studies submitted (see section II, comment 3 of this document), bismuth subsalicylate for antidiarrheal use has been shown to be effective at a dose of 4.2 g per day. Thus, there is no rationale for increasing the daily dosage to up to 8 g. The agency is aware that products may contain other salicylates as excipients (formulation aids). Inactive ingredients must meet the requirements of § 330.1(e) (21 CFR 330.1(e)), *i.e.*, be safe and not interfere with the effectiveness or testing of the product. There is no basis at this time to place a restriction on the use of other salicylates as inactive ingredients. However, manufacturers would be prudent to use nonsalicylate inactive ingredients when bismuth subsalicylate is the active ingredient. The agency will consider a restriction should the need arise.

(Comment 6) One comment submitted a report (Ref. 17) from a Scientific Advisory Group (SAG) that evaluated pediatric dosing for bismuth subsalicylate. The SAG reviewed three studies (Refs. 18, 19, and 20) and marketing and epidemiological data. The SAG report concluded that: (1) The clinical data support the safety and effectiveness of bismuth subsalicylate to treat diarrhea in children between 3 and 12 years of age, (2) currently recommended dose regimens to treat diarrhea in children 6 to 12 years of age, based on the effective adult dose of bismuth subsalicylate, are rational and supportable. However, increasing the currently marketed labeled dose for

children 3 to 6 years old is recommended, (3) no additional clinical studies are required to treat acute diarrhea in children 3 to 12 years old, and (4) bismuth subsalicylate labeling should include a warning to maintain adequate fluid intake when treating diarrhea in young children.

Based on the SAG's recommendations, the comment requested an age range and dosage schedule different from that included in the TFM. The comment stated that its age ranges were intended to be consistent with the age ranges specified in pediatric dose schedule C of the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (42 FR 35346 at 35368). The comment explained that age groupings in that monograph were determined on the basis of body surface area, which, according to the Internal Analgesic Panel, is the most accurate parameter to use in calculating salicylate dosage. The SAG stated that the pediatric dosages on currently marketed bismuth subsalicylate containing products are rational for children ages 6 to 9 and 9 to 12 years of age. Employing extrapolations based on age (Young's rule), body-weight, and body-surface area from an effective adult dose, the SAG recommended an increase in the dose for children 3 to 6 years of age from the currently-labeled dose of 87 mg to 131 mg.

The agency has reviewed the SAG report, which discusses three controlled studies (Refs. 18, 19, and 20) in infants and children (8 weeks to under 5 years) with chronic or acute diarrhea. However, only one subject was above 3 years of age. The comment contended these studies were sufficient evidence to show effectiveness in childhood diarrhea at various doses. The doses of bismuth subsalicylate used were: (1) Gryboski study (chronic diarrhea) (Ref. 18): 44 mg every 4 hours for 7 days for infants from 8 weeks to 2 years of age (mean 5.7 mg/kilogram (kg)) and 88 mg every 4 hours for 7 days for children 2 to 6 years of age (only 1 subject in this study was above 3 years of age, 5.5 mg/kg); (2) Soriano-Brucker et al. study (Ref. 19): 20 mg/kg five times a day for 5 days, and (3) Figueroa et al. study (Ref. 20): 20 mg/kg and 30 mg/kg five times a day for 5 days. Because these studies did not include children 3 to under 12 years of age, the agency has no basis to conclude from these studies that the ingredient will be effective for these age groups. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 21).

Another comment included the results of a double-blind, placebo controlled study of bismuth subsalicylate in children 3 to 6 years of age with acute diarrhea (Ref. 22). The study involved children from 13 clinical centers located in Central and South America and the United States. Subjects were randomized to receive 131 mg bismuth subsalicylate or matching placebo every 30 minutes for a total of eight doses per day for 2 consecutive days. Observations were recorded in a diary over a 5-day period. Subjects were eligible if they had diarrhea of less than 48 hours in duration. Efficacy parameters included duration of diarrhea (primary variable), stool consistency and frequency (secondary variables). A total of 291 patients were included in the final analysis. The study demonstrated that subjects receiving bismuth subsalicylate showed a statistically significant shorter duration of diarrhea versus placebo when evaluated at 72 hours (LR (likelihood ratio) $p=0.009$) and 120 hours (LR $p=0.001$), but statistical significance was not shown at 48 hours (LR $p=0.228$). The p -values were calculated via the likelihood ratio test for comparing equality of survival curves. The comment stated that the shorter observation period of 48 hours contained more censored observation times and hence had less statistical power to detect the treatment effect than that at 72 hours.

The agency considers it reasonable to expect efficacy to be shown at 120-hours due to the self-limited nature of nonspecific diarrhea. However, failure to demonstrate a statistically significant effect at 48-hours is a cause for concern in the pediatric population due to the danger that dehydration poses to this age group. Analysis of the secondary variables, stool consistency and frequency, revealed that while subjects treated with bismuth subsalicylate as compared to those treated with placebo had a statistically significant increase in the number of formed stools at the 36 to 48 hour time interval, they only demonstrated a trend towards a decrease in the frequency of unformed stools (defined as soft or watery bowel movements) and never achieved statistical significance for the entire duration (120 hours) of the study.

The study was well designed to demonstrate the product's effectiveness as an antidiarrheal agent. On review, the majority of the reported protocol violations (*i.e.*, randomization out of sequence, discrepancy in stool analysis, use of acetaminophen, study duration, and the filling out of the study diary cards) realistically should not have

¹The panel's recommended maximum daily dosage for sodium salicylate was 4 g. Sodium salicylate contains approximately 14 percent sodium and 86 percent salicylate. Four g of sodium salicylate contains approximately 3.4 g of salicylate.

negatively impacted on the study's results. The size of the doses of bismuth subsalicylate used in this trial may have been subtherapeutic (hence the lack of a demonstrable treatment effect) since they were extrapolated from doses that have been shown to be effective in adult populations for the indication that was studied in this trial. Since bismuth subsalicylate's proposed antidiarrheal efficacy stems from various mechanisms (anti-infective, absorbent, and antisecretory) that work locally in the gastrointestinal tract, the product may not have had adequate time or surface area to work effectively in the pediatric subjects tested.

The agency concludes that another double-blind, placebo-controlled study in pediatric subjects with acute nonspecific diarrhea is needed to support the use of bismuth subsalicylate for OTC antidiarrheal use in children under 12 years of age. The agency recommends dose ranging studies using pharmacokinetic modeling to determine the doses to be used in the next trial. Accordingly, labeling for use in children 3 to under 12 years of age is not included in the monograph at this time.

(Comment 7) Two comments stated that it is generally recognized that the therapeutic value in bismuth salts is dependent on the percentage of bismuth oxide. One comment discussed two products (one containing bismuth subsalicylate and the other containing bismuth subnitrate) and stated that the dosage of the bismuth subnitrate product provides 16.75 percent more bismuth oxide than the bismuth subsalicylate product. The second comment stated that bismuth subgallate contains 9.35 mg/mL (52 to 57 percent) of bismuth oxide, bismuth subnitrate contains 75.84 mg/mL (not less than 79 percent) of bismuth oxide, and bismuth subsalicylate contains 11.20 mg/mL (62 to 66 percent) of bismuth oxide. The comment contended that bismuth subsalicylate at the recommended dosage is under dosed in effectiveness and concluded that bismuth subnitrate should be placed in category I. Another comment discussed the dose of bismuth subnitrate.

The comments did not submit any data to establish the exact mechanism of action of bismuth oxide in treating/relieving diarrhea. Bismuth subgallate, bismuth subnitrate, and bismuth subsalicylate, although chemically similar, are not chemically identical and, therefore, may not exert the same intended action. No clinical data have been submitted to show that these other bismuth compounds are acceptable for OTC antidiarrheal use. Additionally, no data have been submitted to show that

bismuth subsalicylate and bismuth subnitrate are therapeutically equivalent or that bismuth subnitrate is as effective, or more effective, than bismuth subsalicylate for use as an OTC antidiarrheal drug product. Therefore, the agency concludes that there is no basis to include bismuth subgallate or bismuth subnitrate in this final monograph.

(Comment 8) One comment submitted a clinical study (Refs. 23, 24, and 25) and requested that activated charcoal (at a dose of 1,040 mg after each bowel movement (up to 8,320 mg per day)) be reclassified from category III to category I and included in the final monograph.

The agency has determined that the data are inadequate to support effectiveness. The prospective, randomized, double-blind study (Ref. 23) was conducted at a single center where 51 subjects having nonspecific gastroenteritis with diarrhea, with or without associated abdominal cramps, completed the study. The data showed weak trends on diarrhea-related endpoints and a somewhat stronger trend on the global endpoint. There was no statistical significance for any of the three measures of outcome: (1) The patients' "global" (subjective) evaluation of treatment effectiveness, (2) the time from initiation of treatment until the last unformed stool, and (3) the time from initiation of treatment until the last cramp was reported. Because there are no well-controlled studies showing effectiveness, most likely two independently-conducted, placebo-controlled clinical trials will be needed to confirm the effectiveness of activated charcoal for antidiarrheal use. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 26).

(Comment 9) One comment requested that a product containing a combination of bismuth subnitrate and calcium hydroxide be reclassified from category III to category I. The comment stated that the product has been sold in the United States since 1900 and in Mexico since 1923 for OTC antidiarrheal use with no reports of consumer injury and contended that controlled studies are unnecessary because of the many years of usage without reported adverse side effects and the vast amount of material in the scientific literature. The comment explained that bismuth subnitrate has been used as an antidiarrheal for over 200 years and that calcium hydroxide, an antacid and astringent, extends the shelf life of the product by neutralizing the acid residue that leaches from the bismuth subnitrate into the supernatant liquid over a long-standing period. The

comment provided selected extracts from reference textbooks (Ref. 27).

The panel classified bismuth subnitrate in category III because of insufficient effectiveness data and stated that it should not be used in infants under 2 years of age because of the risk of methemoglobinemia (40 FR 12902 at 12930). The panel placed calcium hydroxide in category III and stated that, although it is claimed useful for its antacid and buffering qualities, there is no evidence of effectiveness as an antidiarrheal (40 FR 12902 at 12930). The panel also stated that the combination of an antidiarrheal and an antacid is not rational concurrent therapy for a significant portion of the population and classified it as category II (40 FR 12902 at 12927 and 12930). The panel was also unable to find evidence to demonstrate that astringent properties for calcium hydroxide confer effectiveness in diarrhea (40 FR 12902 at 12929 to 12930).

While the absence of reported adverse reactions or historical use may be used as corroborative data, they cannot generally be considered as proof of safety or effectiveness (*see* § 330.10(a)(4)(i) and (a)(4)(ii)). New relevant data can be submitted in an NDA (*see* 21 CFR part 314) or a petition to amend the final monograph (*see* §§ 330.10(a)(12) and 10.30 (21 CFR 10.30)).

(Comment 10) Two comments requested the agency to designate rhubarb fluidextract and potassium carbonate as inactive ingredients instead of category II active ingredients in products that also included bismuth subnitrate and calcium hydroxide as active ingredients. The comments stated that rhubarb fluidextract is a necessary flavoring and coloring agent, while potassium carbonate causes the rhubarb fluidextract to go into solution. The comments added that the Panel was of the opinion that the potassium carbonate should be listed as an inactive ingredient (40 FR 12902 at 12926).

Based on data the manufacturer submitted, the panel reviewed rhubarb fluidextract and potassium carbonate as single active antidiarrheal ingredients (40 FR 12902 at 12926) as well as in combination with bismuth subnitrate and calcium hydroxide (40 FR 12902 at 12932). The manufacturer claimed that the rhubarb fluidextract is an astringent and that the potassium carbonate has some antacid value in the formulation (Ref. 28). The panel concluded that evidence was lacking to support effectiveness and placed the ingredients singly and in combination in category II. The panel stated that it found no evidence that potassium carbonate

possesses any antidiarrheal properties and, thus, it should be regarded as an inactive ingredient. Likewise, the panel concluded that there was no evidence to permit classification of rhubarb fluidextract as an antidiarrheal (40 FR 12902 at 12926). No data were subsequently submitted to support these ingredients as active ingredients. Therefore, in the TFM (51 FR 16138 at 16146 to 16147), the agency placed rhubarb fluidextract and potassium carbonate singly and in combination in category II. No additional data have been submitted, and rhubarb fluidextract and potassium carbonate are nonmonograph active ingredients in this final rule.

The agency is not aware of rhubarb fluidextract or potassium carbonate being included as inactive ingredients in any OTC antidiarrheal drug products. Rhubarb garden root and rhubarb root are listed in 21 CFR 172.510 as flavors only in alcoholic beverages. Potassium carbonate is listed in 21 CFR 184.1619 as a substance affirmed as generally recognized as safe that may be added directly to human food. These ingredients would need to meet the criteria in § 330.1(e) to be acceptable inactive ingredients in products marketed under an OTC drug monograph.

(Comment 11) One comment submitted 6 clinical studies (Ref. 29) to support the use of kaolin and pectin in a "fixed" combination of 45 parts kaolin to 1 part pectin for the proposed labeling indications to treat diarrhea (51 FR 16138 at 16140 to 16141).

The agency has determined that these studies are insufficient to demonstrate that the "fixed" combination is effective. However, studies 295 and 303 demonstrate that kaolin alone, but not pectin, is effective. While only these studies are summarized in this document, the agency's detailed comments and evaluations of all the studies are on file in the Dockets Management Branch (Refs. 30 and 31). Kaolin (26.2 g) and/or pectin (583 mg) as single ingredients, or in combination, were administered in a 3 ounce (oz) dose in all six studies.

In study 303, acute nonspecific diarrhea was defined as the passage of three or more watery or mixed stools in 24 hours. In this 33-center study, the subjects were randomized as follows: 125 to receive kaolin and pectin in combination, 126 to receive kaolin, 133 to receive pectin, and 124 to receive placebo. Each subject received an initial 3-oz dose of study medication, followed by a 3-oz dose every 6 hours or after each bowel movement, whichever was more frequent (not to exceed 10 doses

per 24 hours), for a 48-hour period or until diarrhea ended. From a total of 508 subjects, 414 were evaluable for effectiveness for both the first and second days of treatment.

The results indicated reasonable statistical evidence that stool consistency is improved by kaolin and pectin in combination and kaolin alone. However, this study did not provide sufficient statistical evidence that kaolin and pectin as a "fixed" combination is superior to kaolin in terms of improving stool consistency on day 2 of treatment. There was no statistical evidence that pectin is effective in improving stool consistency.

Treatment with both kaolin and pectin in combination and kaolin alone reduced the average elapsed time from first drug dose to either last liquid (watery or mixed) stool or first formed stool by 5 to 7 hours ($p < 0.01$) in comparison to placebo during the 48-hour treatment period. The duration of diarrhea was the time from the first dose to the first formed stool, which was 37 hours with kaolin and pectin in combination and 43 hours with placebo, a 6 hour difference over the 48-hour duration of treatment. Neither kaolin and pectin in combination nor kaolin alone was superior to placebo in reducing the number of stools passed in the 48-hour treatment period.

Study 295 was a multicenter, double-blind, randomized study comparing the effectiveness of the combination with placebo to treat acute nonspecific diarrhea, which was defined as the passage of three or more liquid stools in the 24 hours immediately preceding entry into the study. The study had 213 subjects (109 received drug, 104 received placebo) who were instructed to take one 3-oz dose of medication after each bowel movement or at 6 hour intervals in the absence of a bowel movement, for a period of 48 hours or until diarrhea ended, not to exceed 10 doses in 24 hours. The subjects recorded on a diary card the date and hour of each bowel movement and the character of the stool.

The results showed improvement in the consistency of the stool in the drug group on day 2 of treatment. A statistically significant greater proportion of subjects receiving the combination had formed stools on day 2 (kaolin-pectin 51/81, 63 percent compared to placebo 30/75, 40 percent, $p < 0.005$). The mean time to the first formed stool was 35 hours with kaolin and pectin in combination and 41 hours with placebo ($p = 0.002$). The difference in the mean number of watery stools (kaolin-pectin 0.13, placebo 0.57) was 0.44 of a stool, and the difference in the

mean number of formed stools (kaolin-pectin 0.97, placebo 0.52) was 0.45 of a stool. No statistical significance was demonstrated for frequency of bowel movements on day 1 and day 2.

Numerically, the placebo group had a slightly larger mean stool frequency at baseline, which was taken 24 hours prior to entrance into the study (6.65 for drug and 7.67 for placebo), but there was little difference in the mean number of bowel movements between the two treatment groups on day 1 (3.78 for drug and 3.37 for placebo) and day 2 (2.02 for drug and 2.01 for placebo). The agency concludes that the combination resulted in a statistically significant improvement in the mean time to the first formed stool and in the consistency of the stool on day 2 of treatment.

In study 303, the improvement in stool consistency appeared to be due to the kaolin component whereas pectin seemed to perform similar to placebo. Thus, the improvement in stool consistency in study 295 appeared to be due entirely to kaolin alone. Therefore, the results indicate that kaolin alone improves stool consistency in a 24- to 48-hour period. Likewise, study 303 also showed that the combination and kaolin alone significantly reduced the duration from first drug doses to either first normal (formed) stool or last loose (watery or mixed) stool ($p < 0.05$) by 5 to 7 hours (compared to placebo) during the 48-hour treatment period. Study 295 also showed that the combination significantly reduced the duration from first dose to first normal stool ($p < 0.005$) by 7 hours.

The agency concludes that the evidence is not sufficient to show that kaolin and pectin in combination are better than kaolin alone. However, study 303 provides reasonable statistical evidence that kaolin as a single ingredient is likely to improve stool consistency in subjects with acute nonspecific diarrhea in 24 to 48 hours. Data from this and other studies have shown that pectin has no effect. Although study 295 involved a comparison of the combination only against placebo, rather than against the single ingredients, the study supports kaolin as the active ingredient in the combination product.

On April 9, 1993, the Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee (the committees) met to discuss OTC antidiarrheal drug products containing attapulgite, kaolin, and pectin (Ref. 31). The committees evaluated studies 295 and 303 and determined that the data were sufficient to support the effectiveness of kaolin as a single ingredient, recommending that

products be labeled to state the results they provide and the timeframe in which they occur. Therefore, the agency is including the following indication for kaolin in this final monograph: "Helps firm stools within 24 to 48 hours" (see section III of this document).

Kaolin is an adsorbent that can interfere with the gastrointestinal absorption of a number of oral medications, including some antibiotics, digitalis glycosides, and theophylline, resulting in decreased therapeutic effectiveness. The interaction might be avoided if kaolin is given at least 3 hours before or after taking any oral medication. Therefore, the agency is requiring a specific drug interaction precaution statement for products containing kaolin: "Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs."

The committees also noted that the available data did not address the safety and effectiveness of kaolin in children and recommended that the ingredient should not be administered to children under 12 year of age without the specific recommendations of a doctor. Further, the agency is concerned about use in children because they may have a greater potential for fluid loss and electrolyte imbalance due to diarrhea and antidiarrheal products that only improve stool consistency may mask the extent of fluid loss. Dehydration due to diarrhea in children can occur early in the disease process and may have serious consequences, such as circulatory collapse and renal failure (Ref. 32). Kaolin improves stool consistency in 24 to 48 hours. However, current information is insufficient to show whether it also reduces fluid and electrolyte loss. None of the studies demonstrated the effectiveness of kaolin in children under 12 years of age. As noted in the TFM (51 FR 16138 at 16145), one study on the use of kaolin and pectin in children 3 to 11 years old indicated some possible benefit for a greater number of formed stools and a smaller number of liquid stools from either the kaolin-pectin combination or pectin alone. However, because of the lack of sufficient information, it could not be adequately evaluated. The agency concludes that the available information is insufficient to include monograph directions for kaolin for children 3 to under 12 years of age. Adequate data from a double-blind, placebo-controlled study in pediatric subjects with acute nonspecific diarrhea is needed to support the safety and effectiveness of kaolin for use in this age group.

Based on the studies evaluated, the dosage for kaolin in this final monograph is: Adults and children 12 years of age and over: oral dosage is 26.2 g after each loose stool. Continue to take every 6 hours until stool is firm but not more than 2 days. Do not exceed 262 g in 24 hours. Children under 12 years of age: ask a doctor.

(Comment 12) One comment contended that the proposed labeling indications are too detailed and technical and, thus, will not be understood by persons of low comprehension. The comment argued that many users of OTC drug products have little education and take these products on their own without the direction of a physician, clinician, nurse, or pharmacist. To simplify the labeling for persons of low comprehension, the comment suggested that the statement of identity be "for diarrhea" instead of "antidiarrheal." The comment also suggested that the indication "Reduces the number of bowel movements in diarrhea" be changed to "Decreases bowel movements" or "Reduces bowel movements."

The agency agrees. Section 335.50(a) in this final rule gives manufacturers the option of using either "antidiarrheal" or "for diarrhea" as the statement of identity for these products. The agency modified the indication to "reduces number of bowel movements" and included it as an additional optional claim for products containing bismuth subsalicylate (see section III this document).

(Comment 13) One comment stated that there was a contradiction in the indications proposed in § 335.50(b) (51 FR 16138 at 16149). The comment noted that the agency stated that it was recommending that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" be used in the labeling of OTC antidiarrheal drug products, but these indications were not included in the proposed monograph (51 FR 16138 at 16140 to 16141). The comment also suggested that "relieves pain in diarrhea" be a monograph indication. The comment stated that these indications are good, simple, and understandable and should be adopted by the agency.

The comment is correct that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" were not included in the TFM. In comment 10 of the TFM (51 FR 16138 at 16140 to 16141), the agency stated that one or more of the following indications could be used depending upon the results of studies conducted on the ingredient contained in the

product: (1) "For the treatment of diarrhea" or "Controls (stops) diarrhea"; (2) "Reduces the number of bowel movements in diarrhea"; and (3) "Improves consistency of loose, watery bowel movements in diarrhea." Based on the data on attapulgit, calcium polycarbophil, and polycarbophil evaluated in the TFM, only the second and third indications were proposed at that time.

The agency would not object to use of the indication "relieves pain in diarrhea," provided studies support this claim. In the TFM (51 FR 16138 at 16141), the agency stated that there are other symptoms that are secondary to diarrhea, such as abdominal pain or cramps, and that some antidiarrheal ingredients may also act to relieve these symptoms. However, adequate supporting data have not been submitted to date.

(Comment 14) One comment requested revisions in the warning proposed in § 335.50(c), which stated: "Do not use for more than 2 days, or in the presence of fever, or in children under 3 years of age unless directed by a doctor." The comment recommended: "If diarrhea continues for more than 2 days or is accompanied by a fever, consult your doctor." The comment stated that the agency's proposed wording inappropriately suggests that consumers should be concerned about safety of the product if it is used for more than 2 days or in the presence of fever. The comment contended that its revision would alert consumers to the serious conditions that may be indicated by prolonged diarrhea or diarrhea accompanied by fever and would emphasize the need for medical attention because of the disease condition, not because of drug use, as might be inferred from the agency's proposed warning. The comment also recommended deletion of the part of the proposed warning regarding use in children under 3 years of age because it is redundant with information that appears in the directions section. The comment explained that the directions proposed in § 335.50(d) advise that these products should not be used in children under 3 years of age without consulting a doctor and the professional labeling proposed in § 335.80 provides health professionals information about using these products in children under 3 years of age.

The agency agrees that the information about use in children is repetitious and could be deleted. The directions in § 335.50(d) in this final monograph advise to "ask a doctor" for children under 12 years of age. The final monograph does not include proposed

§ 335.80—professional labeling, because of the lack of adequate studies to support the safety and effectiveness of the monograph ingredients in children of any age.

The OTC drug product labeling format has changed since the TFM was published. Under the current format, the word “fever” follows the subheading “Ask a doctor before use if you have.” The phrase “Do not use for more than 2 days” is now included after the subheading “Stop use and ask a doctor if” as “[bullet] diarrhea lasts more than 2 days.” Because this information is now in the final monograph, the agency is removing the warning statement for “DIARRHEA PREPARATIONS” in § 369.20 (21 CFR 369.20).

(Comment 15) One comment noted the agency’s statement that the following labeling might be required for bismuth subsalicylate: “This product may cause the stool to darken or cause a temporary darkening of the tongue” (51 FR 16138 at 16143). Although agreeing in principle, the comment stated that it should appear as a notation and not as a warning because this effect is temporary and harmless. The comment suggested the labeling read as follows: “This product may cause a temporary, but harmless, darkening of the stool and tongue.”

The agency agrees in part. Under the new OTC drug labeling format, this statement appears under the “Warnings” subheading “When using this product” as “a temporary, but harmless, darkening of the stool and/or tongue may occur”.

III. Summary of Significant Changes From the Proposed Rule

The agency has reclassified activated attapulgite from proposed category I to a nonmonograph condition in § 310.545(a)(3) because of insufficient effectiveness data. On April 9, 1993, the committees discussed the continued marketing of products containing attapulgite (Ref. 31). They reviewed effectiveness studies (Refs. 33 through 36) cited in the TFM (51 FR 16138 at 16142) and reviewed two studies (Refs. 37 and 38) not previously considered. The committees determined that the data were not sufficient to support the effectiveness of activated attapulgite for antidiarrheal use. One study (Ref. 33) was not implemented according to its protocol and adequate data were not collected or recorded in the individual patient report forms. Thus, the results were not considered interpretable. The committees questioned the method of collection and reporting of data, and the amount of lactose in the placebo used in another study (Refs. 35, 36, and 37). The

results were considered questionable because lactose can cause diarrhea in individuals with lactase deficiency. The committees concluded that replication of the study results by an independent investigator was needed.

The two new studies (Refs. 37 and 38) were active treatment-controlled, comparing attapulgite with loperamide. The authors of one study (Ref. 37) stated that the results of this bicentric, randomized, parallel-group, comparative study showed that attapulgite was as effective as loperamide in stopping diarrhea. They concluded that attapulgite offers the safety of a nonsystemic adsorbent while providing efficacy equivalent to that of loperamide, a systemic antiperistaltic drug. However, the committees determined that, because of the absence of a placebo control, the authors’ conclusions indicated a value judgment and no conclusions of efficacy could be determined from the study. The results of the other study (Ref. 38), a randomized, parallel, open-label study, suggested that loperamide, the active treatment-control, was better than attapulgite. Because no placebo control was used, the committees felt that no decision could be made as to the effectiveness of attapulgite in stopping diarrhea.

While acknowledging that FDA’s “Guidelines for the Clinical Evaluation of Antidiarrheal Drugs” (Ref. 39) indicate that a reference drug of proven efficacy may be used, the committees stated that improvement could be shown with any drug because the duration of symptoms of acute nonspecific diarrhea is 2 days. Therefore, it was the committees’ consensus that placebo-controlled studies were needed to establish the effectiveness of attapulgite.

FDA notified the OTC drug manufacturers association by correspondence dated September 14, 1993, of the agency’s intent to classify attapulgite as a nonmonograph condition (Ref. 40). The agency requested interested parties to submit any additional data on these ingredients in the form of a petition to reopen the administrative record. FDA placed this correspondence in the public docket, but has not received any additional data or other comments in response to its request. Thus, based on the above analysis and the recommendation of the committees, FDA has classified this ingredient as a nonmonograph condition in this final rule.

The agency has reclassified bismuth subsalicylate from category III to a monograph condition in § 335.10(a) (see section II, comment 3 of this document)

and included specific labeling in § 335.50(b)(1), (b)(3)(ii), (c)(2), and (d)(2) for products containing bismuth subsalicylate (see section II, comments 3, 4, 5, and 15 of this document).

The agency has reclassified calcium polycarbophil and polycarbophil from proposed category I to a nonmonograph condition in § 310.545(a)(3) because of insufficient effectiveness data. On April 9, 1993, the committees discussed the continued marketing of OTC antidiarrheal drug products containing attapulgite, kaolin, and pectin (Ref. 31). Based on the effectiveness issues the committees raised, the agency rereviewed the data cited in the TFM (51 FR 16138 at 16141 to 16142) and determined that the existing data do not support the OTC use of calcium polycarbophil and polycarbophil for acute nonspecific diarrhea (Refs. 40 and 41). Only two of the studies relied on by the panel (40 FR 12926) and the agency (51 FR 16138 at 16141) to support monograph status involved subjects with acute nonspecific diarrhea (Refs. 42 and 43). These studies were conducted in a population in which the majority (88 to 92 percent) of subjects enrolled were less than 5 years old. No placebo controls were used and the comparative drug (kaolin-pectin suspension) had not been shown to be effective at the time of the trial. There was no indication of duration of diarrhea preceding treatment or relationship to onset of relief, and the randomization scheme was unequal and unclear. The agency does not believe that these data can be extrapolated to an adult population.

The other studies previously cited in support of polycarbophil included an uncontrolled study (Ref. 44) on the effectiveness of polycarbophil for the relief of constipation, a condition not covered in this monograph. Two other studies (Refs. 45 and 46) are inadequate because chronic diarrhea was considered, the patient selection criteria were not defined, and concomitant medications were unknown.

Therefore, the agency has classified calcium polycarbophil and polycarbophil as nonmonograph conditions. Placebo-controlled studies are needed to establish their effectiveness. FDA notified the OTC drug manufacturers association by correspondence dated May 5, 1994, of the agency’s intent to classify calcium polycarbophil and polycarbophil as nonmonograph conditions (Ref. 41). FDA requested interested parties to submit any additional data concerning these ingredients to the agency. FDA placed this correspondence in the public docket, but has not received any

additional data or other comments in response to its request. New relevant data can be submitted in accordance with §§ 330.10(a)(12) and 10.30.

For products containing bismuth subsalicylate, a required indication is included in § 335.50(b)(1) as follows: “The labeling states [select one of the following: “controls” or “relieves”] “diarrhea”. Additional indications” in § 335.50(b)(3)(ii) * * * include one or both of the following * * *: “[bullet] reduces number of bowel movements” “[bullet] helps firm stool”.” The indication “Relieves pain in diarrhea” has not been included because of insufficient data to support such a claim (see section II, comment 12 of this document).

The agency is including in new § 335.50(b)(2) the following indication for kaolin: “helps firm stool within 24 to 48 hours” (see section II, comment 11 of this document).

The agency has revised the warnings included in the TFM (see section II, comments 4, 14, and 15 of this document).

Because the potential for fluid loss and electrolyte imbalance due to diarrhea may have serious consequences, the agency is adding an additional direction in § 335.50(d)(1): “The labeling states ‘[bullet] drink plenty of clear fluids to help prevent dehydration caused by diarrhea.’”

IV. The Agency’s Final Conclusions

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC antidiarrheal drug products are generally recognized as safe and effective and not misbranded. Any drug product labeled, represented, or promoted for uses as an OTC antidiarrheal drug product that contains any of the ingredients listed in § 310.545(a)(3)(i) or (a)(3)(ii) or that is not in conformance with the monograph (to be codified at 21 CFR part 335) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). Such a product cannot be marketed for antidiarrheal use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted in accordance with §§ 10.30 and 330.10(a)(12)(i). Any OTC antidiarrheal drug product initially introduced or initially delivered for introduction into interstate commerce after the compliance dates of the final

rule for § 310.545(a)(3)(i) or this final rule that is not in compliance with the regulations is subject to regulatory action.

The agency is revoking the existing warning statement in § 369.20 for diarrhea preparations at the time that this monograph becomes effective. That warning is superseded by the requirements of the final monograph.

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA’s requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the act. This judgment balances the benefits of these drug products against their potential risks (see 21 CFR 330.10(a)).

FDA’s decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter v. Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA’s authority to require such warnings, see Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, a final rule that published in the **Federal Register** of December 6, 2002 (67 FR 72555).

V. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC antidiarrheal drug products (51 FR 16138 at 16147). (Executive Order 12291 was revoked by Executive Order 12866.) The agency certified that under the Regulatory Flexibility Act the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rulemaking.

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). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was published on April 30, 1986, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. 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. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this final rule is to establish allowable monograph ingredients and labeling under which OTC antidiarrheal drug products are generally recognized as safe and effective. The agency has identified 45 manufacturers currently marketing 383 OTC antidiarrheal drug products containing bismuth subsalicylate (334), attapulgite (32), kaolin and pectin (13), polycarbophil (2), and calcium polycarbophil (2). This final rule will result in the reformulation or removal of about 50 products containing activated attapulgite, calcium polycarbophil, polycarbophil, and pectin. These products may be reformulated to contain bismuth subsalicylate or kaolin. The agency is unaware of any current marketing of bismuth subnitrate,

calcium hydroxide, charcoal (activated), potassium carbonate, or rhubarb fluidextract for antidiarrheal use.

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Some of the manufacturers of the 50 products containing nonmonograph active ingredients may elect not to reformulate (*i.e.*, they may elect to discontinue marketing of the product). For those products that need reformulation, the cost can be significant. Because of the other monograph active ingredients available for reformulation, no manufacturer should need to change its dosage form; however, it will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records in order to ensure compliance with current good manufacturing practice. (See section 501(a)(1)(B) of the act (21 U.S.C. 351(a)(1)(B) and parts 210 and 211 (21 CFR parts 210 and 211).) The agency estimates the cost of reformulation to range from \$100,000 to \$500,000 per product. Therefore, if all 50 products are reformulated, the midpoint of the cost estimate implies total costs of \$15 million. However, the agency believes the total costs will be much smaller because not all manufacturers will elect to reformulate and some may choose to discontinue a product line if sales are too low to justify the added cost and/or they also produce substitute products that do not require reformulation. Manufacturers may also elect to purchase reformulated products from another manufacturer and then be a distributor of that product.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (parts 210 and 211), all firms would have the necessary skills and personnel to perform these tasks either in-house or by contractual arrangement. The final rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

This final rule establishes the monograph for OTC antidiarrheal drug products and will require relabeling of all products covered by the monograph. Estimates of relabeling costs for the type of changes required by this rule vary greatly and range from \$500 to \$15,000 per stockkeeping unit (SKU) (individual products, packages, and sizes) depending on whether the products are nationally branded or private label. The agency assumes the same weighted average cost to relabel (*i.e.*, \$3,600 per SKU) that it estimated for the final rule

requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281). Assuming 350 to 400 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be \$1.26 to 1.44 million. Because frequent labeling redesigns are a recognized cost of doing business in the OTC drug industry, these costs may be less. Manufacturers that make voluntary market-driven changes to their labeling during the implementation period can implement the regulatory requirements for a nominal cost.

This final rule may have an economic impact on some small entities. The agency's drug listing system indicates that about 350 to 400 products will need to be relabeled, and that this relabeling will be prepared by about 45 manufacturers, most of which are private label or contract manufacturers. Based on the Small Business Administration's determination that a small firm in this industry has fewer than 750 employees, roughly 70 percent of the firms are considered small. The economic impact on any particular firm is very difficult to measure, because it will vary with the type and number of products affected, the number of SKUs per product, and the ability to coordinate these label changes with those required for other purposes. For example, assuming average industry costs, a small company that had 5 products with 3 SKUs each for a total of 15 SKUs would experience a one-time cost of \$54,000. A small private label manufacturer with the same product line and 10 customers per SKU, for a total of 150 SKUs, would experience a one-time cost of \$540,000. If one or more products needed to be reformulated, the costs would increase by \$100,000 to \$500,000 per formulation.

Some of these relabeling costs will be mitigated because the agency is allowing 12 months for manufacturers to implement the required labeling revisions for all products containing antidiarrheal active ingredients. Products with annual sales less than \$25,000 have 12 additional months. Therefore, many of the labeling revisions may be done in the normal course of business. Among the steps the agency is taking to minimize the impact on small entities are: (1) Providing enough time for implementation to enable entities to use up existing labeling stock, and (2) allowing the labeling changes required by this final monograph to be implemented concurrently with the labeling changes required by the new OTC drug labeling format final rule. The agency believes that these actions provide substantial

flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that coordination of the labeling changes resulting from implementation of the new OTC "drug facts" labeling and the antidiarrheal final rule may significantly reduce the costs of this final rule. A longer time period would unnecessarily delay the benefit of new labeling and revised formulations, where applicable, to consumers who self-medicate with these OTC antidiarrheal drug products. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than \$25,000.

This analysis shows that the agency has undertaken important steps to reduce the burden to small entities. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) 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. 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 responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

This final monograph establishes labeling for OTC antidiarrheal drug products containing bismuth subsalicylate and kaolin. The warnings for products containing bismuth subsalicylate in § 335.50(c)(2) include: (1) The Reye's syndrome warning in § 201.314(h), (2) "Allergy alert: Contains salicylate. Do not take if you are [bullet] allergic to salicylates (including aspirin), [bullet] taking other salicylate products," (3) "Do not use if you have [bullet] an ulcer [bullet] a bleeding problem," (4) "Ask a doctor or pharmacist before use if you are taking any drug for [bullet] anticoagulation (thinning the blood) [bullet] diabetes [bullet] gout [bullet] arthritis," (5) "When using this product a temporary, but harmless, darkening of the stool and/or tongue may occur," and (6) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] ringing in the ears or loss of hearing occurs [bullet] diarrhea lasts more than 2 days".

These warnings for products containing kaolin in § 335.50(c)(3) include: (1) "Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs," and (2) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] diarrhea lasts more than 2 days".

In addition, products containing either ingredient must state: (1) "Do not use if you have [bullet] bloody or black stool," and (2) "Ask a doctor before use if you have [bullet] fever [bullet] mucus in the stool". The agency notes that fever and use for more than 2 days were included in the "Do not use" warning proposed in § 335.50(c) of the TFM (51 FR 16138 at 16149).

The indications in this final rule are similar to those discussed in the TFM, and the directions in this final rule are based on the studies discussed in this document. While interested persons may comment on any portions of the labeling in this final rule, the agency would like to receive specific comments primarily on the warnings labeling in § 335.50(c).

This final rule also includes labeling requirements for products that meet the criteria established in § 201.66(d)(10) (see § 335.50(e)). This reduced labeling results from the modified labeling format for OTC drug products in § 201.66(d)(10), which did not exist when the TFM was published. Interested persons may also comment on this labeling.

The agency is particularly interested in receiving comments on the specific labeling requirements discussed in this section of this document. Comments should be identified with the docket number found in brackets in the heading of this document. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. If the comments justify a change in labeling, the agency will propose to amend the final monograph accordingly at a later date.

X. References

The following references are on display in the Dockets Management Branch (see ADDRESSES) under Docket No. 78N-036D and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C85.
2. Comment No. C92.
3. Comment No. SUP12.
4. Letter from W. E. Gilbertson, FDA, to A. R. Giaquinto, Schering-Plough Corp., coded LET20.
5. Study IB-101, Comment No. CP2.
6. Steffen Study, Protocol PB-103, Comments No. CP2 and SUP10.
7. DuPont Study, Protocol PB-114, Comments No. CP2 and SUP10.
8. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET26.
9. Comment No. SUP8.
10. Comment No. SUP13.
11. Comment No. LET23.
12. Comment No. LET24.
13. Comment No. PR3.
14. Comment No. SUP14.
15. Comment No. TR1, pp. 43-46.
16. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET27.
17. Comment No. C94.
18. Gryboski, J. D. et al., "Bismuth Subsalicylate in the Treatment of Chronic Diarrhea in Childhood," *American Journal of Gastroenterology*, 80:871, 1985.
19. Soriano-Brucker, H. et al., "Bismuth Subsalicylate in the Treatment of Acute Diarrhea in Children: A Clinical Study," *Pediatrics*, 87:18-27, 1991.
20. Figueroa, D. et al., "Bismuth Subsalicylate Reduces Volume and Duration of Watery Diarrhea in Young Peruvian

Children." *Thirty-First Interscience Conference on Antimicrobial Agents and Chemotherapy*, Chicago, IL, Prog. Abstr. 31:224 (Abstr. No. 754), 1991.

21. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET29.

22. Comment No. PR8.
23. Comment No. CP3.
24. Comment No. SUP11.
25. Comment No. PR4.
26. Comment No. LET25.
27. Comment No. C89.
28. OTC Vol. 090005.
29. Comment No. SUP09.
30. Letter from W. E. Gilbertson, FDA, to G. H. Ishler, The Upjohn Co., coded LET2.
31. Comment No. MM8.

32. *The United States Pharmacopeia Dispensing Information*, 20th ed., Vol. I, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1869-1870, 1999.

33. OTC Vol. 090133.
34. Comment No. SUP5.
35. Comment No. AMD2.
36. Comment No. SUP6.
37. De Sola Pool, N. et al., "A Comparison of Nonsystemic and Systemic Antidiarrheal Agents in the Treatment of Acute Nonspecific Diarrhea in Adults," *Today's Therapeutic Trends*, 52:31-38, 1987.

38. DuPont, H. L. et al., "A Randomized, Open-Label Comparison of Nonprescription Loperamide and Attapulgit in the Symptomatic Treatment of Acute Diarrhea," *The American Journal of Medicine*, 88 supp. 6A:20-23, 1990.

39. Food and Drug Administration, "Guidelines for the Clinical Evaluation of Antidiarrheal Drugs," September 1977, in OTC Vol. 09DFM.

40. Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET34.

41. Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET39.

42. Rutledge, M. L. et al., "Clinical Comparison of Calcium Polycarbophil and Kaolin-Pectin Suspensions in the Treatment of Acute Childhood Diarrhea," *Current Therapeutic Research*, 23:443-447, 1978.

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44. Grossman, A. J., R. C. Batterman, and P. Leifer, "Polyacrylic Resin: Effective Hydrophilic Colloid for the Treatment of Constipation," *Journal of the American Geriatric Society*, 5:187-192, 1957.

45. Roth, J. L. A., "Effects of Polycarbophil as Enteral Hydrosorbent in Diarrhea," *American Journal of Digestive Diseases*, 5:965-971, 1960.

46. Pimparker, B. D. et al., "Effect of Polycarbophil on Diarrhea and Constipation," *Gastroenterology*, 40:397-404, 1961.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 335

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

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

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by adding paragraph (a)(3)(i) heading, paragraphs (a)(3)(ii) and (d)(17), and by revising paragraph (d)(1) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(3) *Antidiarrheal drug products*—(i) *Approved as of May 7, 1991.*

* * * * *

(ii) *Approved as of April 19, 2004; April 18, 2005, for products with annual sales less than \$25,000.*

Attapulgit, activated

Bismuth subnitrate

Calcium hydroxide

Calcium polycarbophil

Charcoal (activated)

Pectin

Polycarbophil

Potassium carbonate

Rhubarb fluidextract

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), and (a)(16) through (a)(18)(i)(A) of this section.

* * * * *

(17) April 19, 2004, for products subject to paragraph (a)(3)(ii) of this section. April 18, 2005, for products with annual sales less than \$25,000.

* * * * *

■ 3. Part 335 is added to read as follows:

PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE**Subpart A—General Provisions**

335.1 Scope.

335.3 Definitions.

Subpart B—Active Ingredients

335.10 Antidiarrheal active ingredients.

Subpart C—Labeling

335.50 Labeling of antidiarrheal drug products.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Subpart A—General Provisions**§ 335.1 Scope.**

(a) An over-the-counter antidiarrheal drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 335.3 Definitions.

As used in this part:

(a) *Antidiarrheal*. A drug that can be shown by objective measurement to treat or control (stop) the symptoms of diarrhea.

(b) *Diarrhea*. A condition characterized by increased frequency of loose, watery stools (three or more daily) during a limited period (24 to 48 hours), usually with no identifiable cause.

Subpart B—Active Ingredients**§ 335.10 Antidiarrheal active ingredients.**

The active ingredient of the product consists of any one of the following when used within the dosage limits established for each ingredient in § 335.50(d):

(a) Bismuth subsalicylate.

(b) Kaolin.

Subpart C—Labeling**§ 335.50 Labeling of antidiarrheal drug products.**

(a) *Statement of identity*. The labeling of the product contains the established name of the drug, if any, and identifies the product either as an “antidiarrheal” or “for diarrhea.”

(b) *Indications*. The labeling of the product states, under the heading “Use,” one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the

indications for use that have been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing bismuth subsalicylate identified in § 335.10(a)*. The labeling states [select one of the following: “controls” or “relieves”] “diarrhea”.

(2) *For products containing kaolin identified in § 335.10(b)*. The labeling states “helps firm stool within 24 to 48 hours”.

(3) *Additional indications*—(i) When any additional indications are used, the heading “Uses” shall be used and each listed use shall be preceded by a bullet in accord with § 201.66(b)(4) of this chapter.

(ii) In addition to the indication in paragraph (b)(1) of this section, one or both of the following may be used for products containing bismuth subsalicylate in § 335.10(a): “[bullet] reduces number of bowel movements” “[bullet] helps firm stool”.

(c) *Warnings*. The labeling of the product contains the following warnings under the heading “Warnings”:

(1) *For products containing any ingredient identified in § 335.10*. (i) “Do not use if you have [bullet] bloody or black stool”.

(ii) “Ask a doctor before use if you have [bullet] fever [bullet] mucus in the stool”.

(2) *For products containing bismuth subsalicylate identified in § 335.10(a)*.

(i) The following shall appear in accordance with § 201.66(c)(5)(ii) of this chapter.

(A) The Reye’s syndrome warning in § 201.314(h) of this chapter.

(B) “Allergy alert: Contains salicylate. Do not take if you are [bullet] allergic to salicylates (including aspirin), [bullet] taking other salicylate products”.

(ii) “Do not use if you have [bullet] an ulcer [bullet] a bleeding problem”.

(iii) “Ask a doctor or pharmacist before use if you are taking any drug for [bullet] anticoagulation (thinning the blood) [bullet] diabetes [bullet] gout [bullet] arthritis”.

(iv) “When using this product a temporary, but harmless, darkening of the stool and/or tongue may occur”.

(v) “Stop use and ask a doctor if [bullet] symptoms get worse [bullet] ringing in the ears or loss of hearing

occurs [bullet] diarrhea lasts more than 2 days”.

(3) *For products containing kaolin identified in § 335.10(b)*. (i) “Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs.”

(ii) “Stop use and ask a doctor if [bullet] symptoms get worse [bullet] diarrhea lasts more than 2 days”.

(d) *Directions*. The labeling of the product contains the following information under the heading “Directions”:

(1) *For products containing any ingredient identified in § 335.10*. The labeling states “[bullet] drink plenty of clear fluids to help prevent dehydration caused by diarrhea”.

(2) *For products containing bismuth subsalicylate identified in § 335.10(a)*. The labeling states “[bullet] adults and children 12 years and over:” 525 milligrams “every 1/2 to 1 hour, or” 1,050 milligrams “every hour as needed [bullet] do not exceed” 4,200 milligrams “in 24 hours [bullet] use until diarrhea stops but not more than 2 days [bullet] children under 12 years: ask a doctor”.

(3) *For products containing kaolin identified in § 335.10(b)*. The labeling states “[bullet] adults and children 12 years and over:” 26.2 grams “after each loose stool [bullet] continue to take every 6 hours until stool is firm but not more than 2 days [bullet] do not exceed” [262 grams] “in 24 hours [bullet] children under 12 years of age: ask a doctor”.

(e) *Products that meet the criteria established in § 201.66(d)(10) of this chapter*. The information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications.

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the information in § 201.66(c)(3) of this chapter may be omitted, and the information in § 201.66(c)(5) and (c)(6) of this chapter may be presented as follows:

(i) The words “Contains salicylate.” may be omitted from the warning in § 335.50(c)(2)(i)(B).

(ii) The subheading “When using this product” in § 335.50(c)(2)(iv) may be omitted.

(iii) The words “continue to” may be omitted from the directions in § 335.50(d)(3).

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(3) of this chapter and the bullet in the warning in § 335.50(c)(1)(i) may be omitted.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

■ 4. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.20 [Amended]

5. Section 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry for “DIARRHEA PREPARATIONS.”

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9380 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Deracoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for the veterinary prescription use of deracoxib tablets in dogs for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed a supplement to NADA 141-203 that provides for the veterinary prescription use of DERAMAXX (deracoxib) Chewable Tablets for the control of pain and inflammation associated with osteoarthritis. The supplemental NADA is approved as of February 11, 2003, and 21 CFR 520.538 is amended to reflect the approval. The

basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning February 11, 2003.

The agency has determined under 21 CFR 25.33(d)(1) 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.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Section 520.538 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.538 Deracoxib.

* * * * *

(d) * * * (1) *Amount*. Administer orally as needed, as a single daily dose based on body weight.

(i) 1 to 2 mg/kilograms (kg) (0.45 to 0.91 mg/pound (lb), for use as in paragraph (d)(2)(i) of this section.

(ii) 3 to 4 mg/kg (1.4 to 1.8 mg/lb) for up to 7 days, for use as in paragraph (d)(2)(ii) of this section.

(2) *Indications for use*. (i) For the control of pain and inflammation associated with osteoarthritis.

(ii) For the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing 4 or more pounds (1.8 kg).

* * * * *

Dated: March 8, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03-9532 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI114-01-7344a, FRL-7484-2]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is making a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone National Ambient Air Quality Standard (NAAQS), and we are approving the State of Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ground level ozone. In approving this redesignation request, we are also approving the State's plan for maintaining the one-hour ozone standard for the next 10 years as a revision to the Wisconsin State Implementation Plan (SIP). We are notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the maintenance plan for Manitowoc and Door Counties are adequate for conformity purposes and approvable as part of the maintenance plan. In this direct final rule, we are also approving a 1999 periodic inventory for the Milwaukee-Racine ozone nonattainment area. The Wisconsin Department of Natural Resources (WDNR) submitted the redesignation request and SIP revisions on January 28, 2003, and submitted additional information on February 5, 2003 and February 27, 2003.

DATES: This rule is effective on June 16, 2003, unless EPA receives adverse written comments by May 19, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

- I. What Has Wisconsin Submitted?
 - A. Redesignation of Manitowoc and Door Counties and SIP Revision for Maintaining the One-Hour Ozone Standard
 1. Why Has the State Made this Submission?
 2. What Criteria Are EPA Using in Reviewing the State's Submission?
 3. Is the State's Submission Consistent With the Clean Air Act?
 - B. 1999 Periodic Emissions Inventory for the Milwaukee-Racine Area
- II. What Action Is EPA Taking?
- III. Is This Action Final, or May I Submit Comments?
- IV. What Statutory and Executive Order Reviews Did EPA Conduct?

I. What Has Wisconsin Submitted?

On January 28, 2003, the WDNR submitted a revision to its SIP for ozone. Additional information pertaining to the SIP was submitted on February 5, 2003 and February 27, 2003. This SIP revision contained four components: (1) A request to redesignate Manitowoc and Door Counties to attainment for ozone and a plan to ensure maintenance of the ozone standard through 2013, (2) the 1999 periodic inventory for the Milwaukee-Racine area, (3) maintenance plan updates for Sheboygan and Kewaunee Counties, and (4) new transportation conformity budgets based on the MOBILE6 emissions model for the Milwaukee-Racine and Sheboygan areas. This direct final action will address the redesignation request and maintenance plan for Manitowoc and Door Counties and the 1999 periodic inventory for the Milwaukee-Racine area. The maintenance plan updates for

Kewaunee and Sheboygan Counties and the new transportation conformity budgets for the Milwaukee-Racine and Sheboygan areas will be addressed in a separate action.

A. Redesignation of Manitowoc and Door Counties and SIP Revision for Maintaining the One-Hour Ozone Standard

1. Why Has the State Made This Submission?

In accordance with requirements of the Clean Air Act as amended in 1990 (Act), Manitowoc and Door Counties were designated as ozone nonattainment areas on November 6, 1991 (56 FR 56850). At that time Manitowoc was classified as a moderate ozone nonattainment area and Door County was classified as a rural transport marginal ozone nonattainment area. The nonattainment designations were based on monitored violations of the NAAQS for ozone.

Recent air quality data shows that both counties are attaining the ozone NAAQS. Therefore, on January 28, 2003, the WDNR submitted a request to redesignate the areas to attainment for ozone and a maintenance plan to ensure attainment through 2013.

2. What Criteria Are EPA Using in Reviewing the State's Submission?

The Act establishes the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that:

(1) The Administrator determines that the area has attained the NAAQS;

(2) The State containing such area has met all requirements applicable to the area under section 110 and Part D;

(3) The Administrator has fully approved the applicable implementation plan for the area under section 110(k);

(4) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; and

(5) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The

EPA has provided further guidance on processing redesignation requests in the following documents:

(1) "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

(2) "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

(3) "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

(4) "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

(5) "Procedures for Processing Requests to Redesignate Areas to

Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

(6) "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

(7) State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

3. Is the State's Submission Consistent With the Clean Air Act?

The following paragraphs discuss each of these criteria with respect to Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ozone:

- a. The area has attained the applicable NAAQS;
- b. The area has met all relevant requirements under section 110 and part D of the Act;
- c. The area has a fully approved SIP under section 110(k) of the Act;
- d. The air quality improvement is permanent and enforceable;
- e. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

a. Attainment of the Ozone NAAQS

According to the September Calcagni memorandum, for ozone, an area is considered attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three consecutive calendar years of complete, quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) so that it is available to the public for review.

The Wisconsin request is based on an analysis of ozone air quality data from 1999–2002 as reported in AIRS. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network. Table 1 below summarizes this air quality data.

TABLE 1.—AMBIENT AIR QUALITY MONITORING DATA FOR 1999–2002 EXTRACTED FROM AIRS (PPM)

Site ID	Site name	County	Year	1st Max	2nd Max	3rd Max	4th Max	No. exceed	3 yr avg
55-029-0004	Newport	Door	1999	.123	.112	.109	.109	0	.....
			2000	.108	.095	.095	.092	0	.....
			2001	.125	.113	.109	.107	1	0.3
			2002	.113	.110	.108	.100	0	0.3
55-071-0004	Collins	Manitowoc	1999	.122	.109	.101	.097	0	.....
			2000	.091	.090	.080	.078	0	.....
			2001	.112	.112	.109	.107	0	0
			2002	.105	.098	.093	.091	0	0
55-071-0007	Manitowoc	Manitowoc	1999	.130	.115	.107	.106	1	.....
			2000	.111	.092	.092	.091	0	.....
			2001	.120	.110	.109	.108	0	0.3
			2002	.101	.100	.099	.095	0	0

During the 1999–2002 time period, the Newport monitor in Door county recorded only one exceedance of the ozone NAAQS, resulting in a three year average of 0.3 exceedances per year for both 1999–2001 and 2000–2002. During the 1999–2002 time period, the Collins monitor in Manitowoc County recorded no exceedances of the ozone NAAQS, and the Manitowoc monitor in Manitowoc county recorded only one exceedance of the ozone NAAQS. For Manitowoc County, this resulted in a three year average of 0.3 exceedances per year for 1999–2001 and 0 exceedances per year for 2000–2002. The data demonstrates that the areas are

monitoring attainment of the 1-hour ozone NAAQS.

As a result, the areas meet the first statutory criterion for redesignation to attainment of the ozone NAAQS. The State has committed to continue monitoring in the areas in accordance with 40 CFR part 58. (If, however, complete quality assured data show violations of the ozone NAAQS before the final EPA action on this redesignation, the area(s) will no longer qualify for redesignation).

b. Meeting Applicable Requirements of Section 110 and Part D

In November 1991, Manitowoc and Door Counties were designated nonattainment for ozone and classified as moderate and rural transport (marginal) areas, respectively. As a result of this designation, the WDNR was required to submit State Implementation Plans (SIP) that meet the requirements of the Act and demonstrate attainment and maintenance of the ozone NAAQS.

The status of all required SIP elements follows:

Section 110 Requirements

Section 110(a)(2) of the Act lists general elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program as required in Parts C (prevention of significant deterioration (PSD)) and D (New Source Review (NSR)) of the Act; criteria for stationary source emission control measures, monitoring, and reporting; provisions for modeling; and provisions for public and local agency participation. For purposes of redesignation, EPA reviewed the Manitowoc and Door county SIPs and determined that the individual SIPs are consistent with the requirements of section 110 of the Act.

Part D Requirements

Before EPA may redesignate Manitowoc and Door Counties to attainment, the SIPs must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). On November 6, 1991 (56 FR 56694), Manitowoc and Door Counties were designated as nonattainment and classified as moderate and rural transport (marginal), respectively. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of Part D—specifically sections 172 and 176, as well as the applicable requirements of subpart 2 of Part D.

Subpart 1 of Part D

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation. As discussed below, Wisconsin has satisfied the section 172(c) requirements.

(1) Section 172(c)(1) requires nonattainment areas to provide for the

implementation of all reasonably available control measures (RACM) as expeditiously as practicable. EPA approved Wisconsin's RACM demonstration on November 13, 2001 (66 FR 56931).

(2) Section 172(c)(2) requires an area to submit a SIP providing for reasonable further progress (RFP). This requirement was superseded by the 15 percent RFP plan required under section 182(b)(1). EPA approved Wisconsin's RFP SIP on March 22, 1996 (61 FR 11735).

(3) Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement was superseded by the inventory requirement in section 182(a)(1). The WDNR submitted such an inventory on November 15, 1992. It was approved on June 15, 1994 (59 FR 30702).

(4) Section 172(c)(4) requires the quantification of emissions that will be allowed from the construction of major new or modified stationary sources. 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(a)(4) requires all major new sources or modifications in a marginal nonattainment area to achieve offsetting reductions of volatile organic compounds (VOC) at a ratio of at least 1.1 to 1.0. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The WDNR submitted nonattainment area NSR rules on November 15, 1992. EPA approved Wisconsin's rules on January 18, 1995, (60 FR 3538). The State PSD program will become effective in Manitowoc and Door Counties upon redesignation to attainment. EPA delegated the PSD program to WDNR on November 4, 1987.

(5) Section 172(c)(9) requires the state to provide for the implementation of contingency measures if the area fails to make reasonable further progress or attain the NAAQS. EPA approved the State's contingency measures on March 22, 1996 (61 FR 11735).

Section 176(c) of the Act requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other

Federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329) and August 27, 1996 (61 FR 43970), respectively. The on-highway motor vehicle budgets for Door County are 0.74 tons of VOC/day and 1.17 tons of NO_x/day, based on the area's 2013 level of emissions. The on-highway motor vehicle budgets for Manitowoc County are 1.89 tons of VOC/day and 3.59 tons of NO_x/day, based on the area's 2013 level of emissions. Door and Manitowoc Counties must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 of Part D

Door County is a rural transport (marginal) ozone nonattainment area and is subject to the section 182(a) requirements. Manitowoc County is a moderate ozone nonattainment area and is subject to the section 182(a), 182(b), and 182(f) requirements. The following discussion describes each of these requirements, as well as Door and Manitowoc Counties' approval status for each item.

(1) The emission inventory required by section 182(a)(1) was approved on June 15, 1994 (59 FR 30702).

(2) The RACT corrections required by section 182(a)(2)(A) were approved on August 15, 1994 (59 FR 41709) and April 27, 1995 (60 FR 20643).

(3) The section 182(a)(2)(B) motor vehicle inspection and maintenance (I/M) requirement is not applicable to Manitowoc or Door Counties since the areas were not required to implement I/M prior to the enactment of the 1990 Amendments.

(4) The NSR rules required by section 182(a)(C), the offset ratio of 1.1 to 1 required by section 182(a)(4) for Door County, and the offset ratio of 1.15 to 1 required by section 182(b)(5) for Manitowoc County were approved on January 18, 1995 (60 FR 3538).

(5) The emission statement SIP required by section 182(a)(3)(B) was approved on December 6, 1993 (58 FR 64155).

(6) The 15 percent RFP plan required under section 182(b)(1) was approved on March 22, 1996 (61 FR 11735).

(7) The attainment demonstration required by section 182(b)(1) was

approved on November 13, 2001 (66 FR 56931).

(8) The VOC RACT requirements of section 182(b)(2) were approved as follows: primary submittal on August 15, 1994 (59 FR 41709) and April 27, 1995 (60 FR 20643); yeast manufacturing, molded wood parts or products coating, and wood door finishing on June 30, 1995 (60 FR 34170); screen printing and negative declarations on July 28, 1995 (60 FR 38722); iron and steel foundries on February 13, 1996 (61 FR 5514); wood furniture coating on April 4, 1996 (61 FR 14972); lithographic printing on April 9, 1996 (61 FR 105706); industrial adhesives on April 25, 1996 (61 FR 18257); and industrial solvent cleaning, plastic parts coating, and ink manufacturing on November 13, 2001 (66 FR 56931).

(9) The Stage II gasoline vapor recovery rules required by section 182(b)(3) were approved on August 13, 1993 (58 FR 43080).

(10) The motor vehicle inspection and maintenance (I/M) requirement to satisfy section 182(b)(4) is not applicable for Manitowoc County because there are no urbanized areas in Manitowoc County exceeding the population threshold specified in EPA's I/M rule (51 CFR Part 350).

(11) On July 13, 1994, Wisconsin submitted a section 182(f) NO_x petition to be relieved of the section 182(f) NO_x requirements based on urban airshed modeling (UAM). The modeling showed that NO_x emission reductions would not contribute to attainment of the ozone standard. EPA approved the section 182(f) petition on January 26, 1996 (61 FR 2428). On November 13, 2001 (66 FR 56931), EPA approved a revision to the 182(f) exemption which states that NO_x emission reductions other than those contained in the attainment demonstration are not necessary for attainment. A NO_x waiver remains in effect for the areas.

c. Fully Approved SIP Under Section 110(k) of the Act

Wisconsin has presented an adequate demonstration that the State has met all the requirements applicable to the areas under section 110 and part D. EPA has approved all relevant portions of the Wisconsin SIP for Manitowoc and Door Counties.

d. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State has

calculated the change in emissions between 1990 and 1999 and has documented specific permanent and enforceable programs responsible for emission reductions over this time period.

Wisconsin is using 1990 for the nonattainment inventory because it is one of the years used to determine the design value of the areas for designation and classification. The 1990 inventory is based on the 1990 Base Year Emissions Inventory required by section 182(a)(1) and approved by EPA on June 15, 1994 (59 FR 30702). For comparison, the state developed a baseline inventory for 1999, one of the years the areas monitored attainment.

For the 1990 through 1999 time period, the state has quantified emission reductions from the following permanent and enforceable measures: Federal "Tier 0" vehicle standards; 1992 gasoline Reid vapor pressure change; Federal "Tier 1" vehicle standards; Federal architectural, industrial and maintenance coatings rule; Federal consumer and commercial products rule; autobody refinishing rule; Stage II vapor recovery; traffic markings rule; gasoline station tank breathing rule; Federal non-road engine standards; wood furniture coating rule; miscellaneous wood products coating rule; industrial adhesives rule; lithographic printing rule; and plastic parts coating rule.

Based on the inventories described above, Wisconsin's submittal documents changes in VOC and NO_x emissions from 1990 to 1999 for each county. Those changes in emissions are shown in tables 2 through 5 below.¹

TABLE 2.—DOOR COUNTY 1990–1999 VOC EMISSION REDUCTIONS [tons per day]

Sector	1990	1999	Net change 1990–1999
Point	0.00	0.14	0.14
Area	5.92	2.61	-3.31
Non-Road			
Mobile	4.15	4.41	0.26
Mobile	3.34	1.73	-1.61
Total	13.41	8.89	-4.52

¹ Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 3.—DOOR COUNTY 1990–1999 NO_x EMISSION REDUCTIONS [tons per day]

Sector	1990	1999	Net change 1990–1999
Point	0.00	0.02	0.02
Area	0.54	0.35	-0.19
Non-Road			
Mobile	0.84	1.02	0.18
Mobile	3.23	2.69	-0.54
Total	4.61	4.07	-0.54

TABLE 4.—MANITOWOC COUNTY 1990–1999 VOC EMISSION REDUCTIONS [tons per day]

Sector	1990	1999	Net change 1990–1999
Point	1.16	1.92	0.76
Area	9.40	6.28	-3.12
Non-Road			
Mobile	2.26	2.34	0.08
Mobile	9.16	4.36	-4.80
Total	21.98	14.90	-7.08

TABLE 5.—MANITOWOC COUNTY 1990–1999 NO_x EMISSION REDUCTIONS [tons per day]

Sector	1990	1999	Net change 1990–1999
Point	3.20	3.39	0.19
Area	1.57	1.06	-0.51
Non-Road			
Mobile	1.91	2.47	0.56
Mobile	8.81	7.93	-0.88
Total	15.49	14.86	-0.63

Tables 2 and 3 show that Door County reduced VOC emissions by 4.52 tons per day and NO_x emissions by 0.54 tons per day between 1990 and 1999. Tables 4 and 5 show that Manitowoc County reduced VOC emissions by 7.08 tons per day and NO_x emissions by 0.63 tons per day between 1990 and 1999.

Based on this information, the State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

e. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a

redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

An ozone maintenance plan should address the following five elements: attainment inventory, demonstration of maintenance, monitoring network, verification of continued attainment, and a contingency plan.

Attainment Inventory

On November 13, 2001 (66 FR 56931), EPA approved Wisconsin's one-hour ozone attainment demonstration for the Milwaukee area, Manitowoc County and Door County. The approved demonstration shows modeled attainment in 2007. Consequently, Wisconsin must use 2007 as the attainment year for Manitowoc and Door Counties. The State has developed an attainment inventory by projecting the 1999 baseline emission inventory described above to 2007 using growth factors and control factors.

The attainment level of emissions are summarized in the tables below:²

TABLE 6.—DOOR COUNTY 2007 ATTAINMENT INVENTORY—VOC AND NO_x

[tons per day]		
Sector	VOC	NO _x
Point	0.17	0.02
Area	2.62	0.36
Non-Road Mobile	3.96	1.05
Mobile	1.20	2.03
Total	7.94	3.46

² Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 7.—MANITOWOC COUNTY 2007 ATTAINMENT INVENTORY—VOC AND NO_x

[tons per day]		
Sector	VOC	NO _x
Point	2.23	3.08
Area	6.53	1.11
Non-Road Mobile	1.70	2.46
Mobile	3.12	6.33
Total	13.58	12.98

Demonstration of Maintenance

In order to demonstrate continued attainment for ten years after EPA approves the redesignation, the State was required to develop inventories for 2007 and 2013. The 2007 attainment inventory was projected from the 1999 baseline inventory using growth and control factors. To demonstrate maintenance, the state initially projected the 1999 inventory to 2012, using the same methodology. Subsequently, due to a delay in submitting the redesignation request, an inventory was needed for 2013 to demonstrate maintenance for a full ten years after redesignation. For all sectors except highway mobile, the state assumed annual growth between 2012 and 2013 to be equivalent to the average annual growth between 2007 and 2012 by type sector. For highway mobile emissions, the state used the MOBILE6 model and assumed growth in vehicle miles traveled (VMT) between 2012 and 2013 to be equivalent to the average VMT growth between 2007 and 2012.

These emission estimates are presented in the tables below and demonstrate that VOC and NO_x emissions will decrease in future years.³ The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future.

TABLE 8.—DOOR COUNTY VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]		
Sector	2007	2013
Point	0.17	0.18
Area	2.62	2.83
Non-Road Mobile	3.96	3.68
Mobile	1.20	0.74
Total	7.94	7.44

³ Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 9.—DOOR COUNTY NO_x MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]		
Sector	2007	2013
Point	0.02	0.02
Area	0.36	0.36
Non-Road Mobile	1.05	1.09
Mobile	2.03	1.17
Total	3.46	2.64

TABLE 10.—MANITOWOC COUNTY VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]		
Sector	2007	2013
Point	2.23	2.45
Area	6.53	6.69
Non-Road Mobile	1.75	1.47
Mobile	3.12	1.89
Total	13.62	12.50

TABLE 11.—MANITOWOC COUNTY NO_x MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]		
Sector	2007	2013
Point	3.08	3.30
Area	1.11	1.12
Non-Road Mobile	2.41	2.45
Mobile	6.33	3.59
Total	12.93	10.47

The emission projections show that the emissions are not expected to exceed the level of the 2007 attainment year inventory during the 10-year maintenance period. In Door County, VOC and NO_x emissions are projected to decrease by 0.5 tons per day and 0.82 tons per day, respectively. In Manitowoc County, VOC and NO_x emissions are projected to decrease by 1.12 tons per day and 2.46 tons per day, respectively.

Monitoring Network

Wisconsin currently operates one ozone monitor in Door County and two ozone monitors in Manitowoc County. The WDNR has committed to continue operating and maintaining an approved ozone monitor network in both counties through the maintenance period and beyond.

Verification of Continued Attainment

Tracking—Continued attainment of the ozone NAAQS in Manitowoc and Door Counties depends, in part, on the

State's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for Manitowoc and Door Counties primarily consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR maintains a comprehensive ambient air quality monitoring network and air quality reporting program, including ozone monitoring sites throughout the state and a fully enhanced network in the area around Lake Michigan. These are structured in state statute to continue through and past the maintenance period. The state will also evaluate future VOC and NO_x emissions inventories for increases over 1999 levels.

Triggers include a violation of the one-hour ozone NAAQS; monitored ambient levels of ozone exceeding .124 ppm more than once per year at any one monitoring station; and levels exceeding .124 more than twice over a three year period at any one monitoring station.

Contingency Plan

Despite the best efforts to demonstrate continued compliance with the NAAQS, the ambient ozone concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Wisconsin has provided contingency measures to promptly correct a future ozone air quality problem. For the years 2003 through 2007, Wisconsin has identified the following contingency measures: the NO_x SIP Call (upwind reductions in Illinois and Indiana); Federal non-road engine standards; BP Amoco Agreed Order (Indiana); Wisconsin rule NR 428 NO_x reductions; Tier 2 vehicle standards and low sulfur fuel; heavy duty diesel standards and low sulfur diesel fuel; and volatile organic liquid storage (Indiana). These measures are adopted and will be implemented over this time period. From 2008 through 2013, a violation of the standard will trigger the following: within 6 months Wisconsin will complete an analysis to determine appropriate VOC and/or NO_x control levels and locations to address the cause of the violation, including recommended control measures; Wisconsin will adopt selected contingent maintenance measures within 18 months; and the state commits to as short an implementation time-frame as would be appropriate based on the type of control adopted. Implementation schedules specific to each control measure are set forth in the State's submission. Potential contingency measures contained in the plan for this time period include the following: Reinstatement of

requirements for offsets and/or LAER; application of RACT to smaller existing sources; tightening of RACT for existing sources; expanded geographic coverage of current point source measures; additional NO_x controls; transportation control measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements; high-enhanced I/M (OBDII); California Engine Standards; California Architectural Industrial Maintenance rule; California Commercial and Consumer Products; broader geographic applicability of existing area source measures; and California Off-road Engine Standards.

Commitment To Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has committed to submit a revised maintenance SIP eight years after the areas are redesignated to attainment (see page 4–2 of Wisconsin's submittal). Such revised SIP will provide for maintenance for an additional 10 years.

B. 1999 Periodic Emissions Inventory for the Milwaukee-Racine Area

In accordance with requirements of the Act, the Milwaukee-Racine area was designated as an ozone nonattainment area on November 6, 1991 (56 FR 56850). At that time, the area, which includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha, was classified as a severe ozone nonattainment area. Section 182(a)(3)(A) of the Act requires the State to submit an updated emissions inventory for the area every three years following the base year emissions inventory required by section 182(a)(1). The base year for the emissions inventory was 1990. The 1999 inventory submitted with the redesignation request for Manitowoc and Door Counties includes the Milwaukee-Racine area and addresses the need for the state to submit a 1999 inventory under section 182(a)(3)(A).

Wisconsin developed the inventory using the following methodology. For the point source sector, the State used reported point source emissions, EPA's Acid Rain Program point source emissions, and approved EPA techniques for emission calculation. Area source emission estimates were calculated using county-level estimates of population, gasoline consumption, employment or other related commercial/institutional, industrial and residential surrogates. For the appropriate categories, to avoid double counting, point source employment was

subtracted from the county level employment prior to multiplication with emission factors. Emission factors were derived from local or national surveys or EPA procedural guidance for the development of emission inventories. Whenever feasible, Federal, state and local controls were factored into the emission calculations. For the non-road sector, most of the emissions inventory from EPA's Non-Road Engines and Vehicles Study was grown and controlled from 1990 using growth factors derived from projected equipment populations and control factors based on the Federal non-road engine standards. Aircraft emissions were estimated using the Federal Aviation Administration's Emissions and Dispersion Modeling System. Commercial marine emissions were estimated using the same methods detailed in Wisconsin's approved 1990 Base Year Inventory Document Report. Locomotive emissions were estimated using railroad length, frequency of travel and fuel consumed. Highway mobile sector emissions were calculated using the MOBILE6 model and estimated summer weekday 1999 VMT. The inventory methodology is consistent with EPA guidance.

II. What Action Is EPA Taking?

The EPA is making a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone NAAQS, based on 1999–2002 air quality monitoring data. We are approving the ozone maintenance plan for Door and Manitowoc Counties and the corresponding transportation conformity budgets as a SIP revision meeting the requirements of section 175A. In addition, we are approving the redesignation request for Door and Manitowoc Counties because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) of the Act. We are also approving the 1999 inventory submitted as meeting the periodic emissions inventory requirement of section 182(a)(3)(A).

III. Is This Action Final, or May I Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by May 19, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective

without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on June 16, 2003.

IV. What Statutory and Executive Order Reviews Did EPA Conduct?

Under Executive Order 12866, "Regulatory Planning and Review" (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 nor does it 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because 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, "Federalism" (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 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 a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 3, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 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 YY—Wisconsin

■ 2. Section 52.2585 is amended by adding paragraphs (q) and (r) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(q) Approval—On January 28, 2003, the Wisconsin Department of Natural Resources submitted a request to redesignate Manitowoc and Door Counties to attainment. Additional information was submitted on February 5, 2003 and February 27, 2003. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act, as amended in 1990. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The 2013 motor vehicle emission budgets for Door County are 0.74 tons of volatile organic compounds (VOC) per day and 1.17 tons of oxides of nitrogen (NO_x) per day. The 2013 motor vehicle emission budgets for Manitowoc County are 1.89 tons of VOC per day and 3.59 tons of NO_x per day.

(r) Approval—On January 28, 2003, the Wisconsin Department of Natural Resources submitted a 1999 periodic emissions inventory for the Milwaukee-Racine area. Additional information was submitted on February 5, 2003 and February 27, 2003. The inventory meets the requirement of section 182(2)(3)(A)

of the Clean Air Act as amended in 1990.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.350 is amended by revising the attainment status designation table entries for the Door County and Manitowoc County areas for ozone to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Door County Area: Door County	6/16/03	Attainment.		
* * * * *				
Manitowoc County Area: Manitowoc County	6/16/03	Attainment.		
* * * * *				

¹ This date is October 18, 2000, unless otherwise noted.

[FR Doc. 03-9347 Filed 4-16-03; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRN-7484-7]

RIN 2050-AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is today extending, by eighteen months from the dates promulgated in the July 2002 Spill Prevention Control and Countermeasure (SPCC) amendments, the dates for a facility to amend its SPCC Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are finalizing this extension to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their plans in accordance with the amendments. The extension will also avoid a flood of individual extension requests it has become apparent we will otherwise receive.

DATES: This final rule is effective April 17, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B-102, Washington, DC 20460. The docket number for the final rule is OPA-2002-0001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323.

For more detailed information on specific aspects of this final rule, contact Hugo Paul Fleischman at 703-603-8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703-603-8715 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This final rule concerns an eighteen month extension of the deadlines in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

- I. General Information
- II. Entities Affected by This Rule
- III. Statutory Authority
- IV. Background
- V. Today's Action
- VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is finalizing a proposal to extend the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). Today's rule extends these deadlines by eighteen months from the dates promulgated in the July 2002 SPCC rule amendments.

How Can I Get Copies of The Background Materials Supporting Today's Final Rule or Other Related Information?

1. EPA has established an official public docket for this proposed rule under Docket ID No. OPA-2002-0001. The official public docket consists of the documents specifically referenced in this final rule and other information

related to this final rule. 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 EPA Docket Center located at 1301 Constitution Ave. NW., EPA West Building, Room B-102, Washington, DC 20004.

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>.

You may use EPA Dockets at <http://www.epa.gov/edocket/> to 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 docket identification 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 above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111-112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31-33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482-486/488112-48819/4883/48849/492-493/71393
Elementary and Secondary Schools, Colleges	6111-6113
Hospitals/Nursing and Residential Care Facilities	622-623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in 112.3(a) and (b) by which a facility would have time to amend its SPCC Plan to conform with newly promulgated requirements and to implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contained dates for the preparation and

implementation of a Plan in compliance with the amended rule).

On January 9, 2003, EPA published both an interim final rule and a proposed rule. The interim final rule immediately extended the dates in 40 CFR 112.3(a) and (b) by sixty days. The proposed rule proposed extending the dates in those sections by one year.

V. Today’s Action

EPA is extending by eighteen months the compliance dates in § 112.3(a) and (b). Thus, an onshore or offshore facility that: (1) Was in operation on or before August 16, 2002 must maintain its Plan, but must amend it, if necessary to ensure compliance, on or before August 17, 2004, and must implement the amended Plan as soon as possible, but not later than February 18, 2005; (2) becomes operational after August 16, 2002 through February 18, 2005, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare a Plan on or before February 18, 2005, and fully implement it as soon as possible, but not later than February 18, 2005; and (3) becomes operational after February 18, 2005, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare and implement a Plan before it begins

operations. Today’s rule is immediately effective; EPA is invoking the exception to the 30-day notice requirement in the Administrative Procedure Act because the purpose of the rulemaking is to relieve a restriction (5 U.S.C. 553(d)(1)).

*A. Comments*¹

Extension of Time. The vast majority of commenters² supported an extension of time for compliance with the SPCC Plan amendments to allow the regulated community to undertake the various activities required to update (or prepare) their Plans, although one commenter believed that no additional time, other than the 60 days that EPA already provided, was needed. However, there was a broad range of times suggested by the commenters. Commenters supported the extension of compliance deadlines in a range from one to five years or “until all deficiencies are corrected.”

¹ This section, and section B below, contain a summary of the comments received on the proposal, and the Agency’s responses to such comments. For more detailed and additional information, see the response-to-comment document available in the docket for today’s rule.

² Commenters represented oil industry and electrical utility interests, as well as a number of other industrial commenters. In addition, a substantial number of Professional Engineers (PEs) submitted comments.

Commenters who recommended extending the compliance deadlines echoed the Agency's view at the time of proposal that an extension is appropriate to address concerns that there is a shortage of PEs in some areas, to allow PEs (or their agents) to make visits to sometimes remote facilities, and for PEs to obtain the training necessary to certify Plans under the new amendments. In addition, many of these commenters agreed with EPA that an extension of the compliance deadlines in the rule would prevent a flood of individual extension requests going to the Regions pursuant to 40 CFR 112.3(f). However, commenters also identified a number of other reasons, such as the need to plan their budgets for capital expenditures and delays they would encounter at facilities affected by winter weather.

However, as noted above, a great number of these commenters argued for longer time extensions than the one year proposed to address the issues cited above. In addition, others argued for longer time frames, often citing reasons that are more specific to their individual facilities or industries. For example, many commenters, mostly electric utilities and cooperatives, suggested time extensions of between two and four years. These commenters stated that such additional time is needed because, among other things, much of their electrical equipment is located on property owned by others and that "delineating of responsibilities for Plan purposes will have the effect of slowing down the overall compliance deadlines."

Rule requirements during any extension period. Several commenters noted that although EPA extended the compliance deadlines in the rule, it did not delay the effective date of the rule itself. These commenters stated that they understood "this to mean that to the extent the July 2002 rule imposes new more stringent compliance obligations than did the old SPCC rule, the deadline for fulfillment of those obligations is extended under the interim final and proposed rule, to the same extent as the deadline for implementing amended Plans." These commenters asked EPA to confirm this understanding in the preamble to the final rule.

B. Response to Comments

Extension of Time in General: Nothing received in comments on the proposed rule has persuaded the Agency that its view at the time of proposal, that additional time for compliance is appropriate, was incorrect. As noted above, the vast

majority of commenters on the rule supported a one-year or longer extension, and their comments contain information that lends additional support for such an extension.

However, as noted above, one commenter, a PE, did express the view that additional time for compliance with the amendments is unnecessary. Specifically, this commenter wrote that the 60-day interim extension that the Agency promulgated on January 9, 2003 was "more than an adequate time extension for the affected facilities to prepare amendments to their SPCC Plans." The commenter based this position on the following: (1) That the SPCC amendments were published in the **Federal Register** seven months before the compliance date, (2) that the final amendments reduced the number of facilities required to have Plans, (3) the commenter's personal experience that the facilities with which it deals are either finished with amending their Plans or in the final stages of doing so, (4) that the SPCC amendments were specifically written not to require a "local PE" and thus a shortage was unlikely, and (5) the view that with the slowdown in the economy, personnel resources should be available to carry out the activities within the additional 60-day period.

The Agency was not persuaded by this comment. Specifically, the fact that seven months were already provided by the rule, that the rule as a whole reduced the number of facilities subject to the rule, and that there is a slowdown in the economy, do not, without additional information or analysis, overcome the evidence provided in the comments (and the Agency's experience at the time of the proposal) that additional time is necessary. In addition, although this PE's individual experience does not suggest a difficulty meeting the existing deadlines, the experience of a good number of other PEs (and those who need to hire PEs) who commented on the rule does indicate the need for extending the deadlines. With respect to the fact that the rule does not itself require the use of a local PE, at least one commenter did report complications, stating that "individual state engineering registration and licensing boards do not always allow out-of-state PEs to practice in such a manner, thus limiting even further the number of available PEs for plan certification." In any event, even if a facility is permitted to use a non-local PE in areas with local shortages, the Agency expects that doing so would

likely extend the PE certification process.³

Extension of Time for 18 months. Although the comments made it very clear to the Agency that an extension was warranted, no commenter made a compelling case for any particular time frame. In other words, no commenter provided a technical basis in support of the time frame it was advancing. As discussed above, commenters provided a great number of reasons for additional time, but very similar problems identified were often accompanied by widely varying suggestions as to the length of extension needed to address such problems.

The Agency has settled on an 18-month extension, which is six months greater than the one-year extension originally proposed. EPA believes this time frame better addresses concerns identified at proposal than the proposed one-year extension, and should address many of the other concerns raised in comments suggesting one year or longer time frames. For example, in addition to reducing the immediate demands on PEs, it provides an additional warm season to address sites affected by winter weather, and will provide additional time for facilities to budget for necessary capital expenditures. (In seeking an extension greater than a year, several commenters noted that many companies budget a year or more into the future for capital expenditures and thus need additional planning time to accommodate expenditures associated with complying with the amendments.) In situations where the extension does not provide enough relief for an individual facility, that facility may seek an extension pursuant to § 112.3(f), where applicable.⁴ It is EPA's belief, however, that the 18-month extension will provide enough relief to prevent the Agency from again being faced with the prospect of an overwhelming number of requests for individual extensions under 40 CFR 112.3(f).

Rule requirements during any extension period. The commenter requesting clarification of rule requirements during the extension period discussed above was correct that EPA did not extend the effective date of the July 2002 rule itself. Instead, the

³ The same commenter suggested that "a possible alternate action may be to have both the 'SPCC Plan amendment due date' and the 'fully implemented no later than date' as August 18, 2003." The Agency rejected this approach for the reasons described here and later in today's preamble.

⁴ For example, depending on site-specific circumstances, the commenters who may have trouble complying because their equipment subject to the amended rule is located on property owned by others may be able to obtain an individual extension.

Agency only extended the deadlines in 40 CFR 112.3(a) and (b) for amending and implementing (and in some cases, preparing) Plans to come into compliance with new requirements. Thus, the commenter is correct that to the extent that the July 2002 imposes new or more stringent compliance obligations than did the old SPCC rule, that the deadlines in 40 CFR 112.3(a) and (b) for fulfillment of those obligations is extended under this final rule.

On the other hand, a provision that provides regulatory relief in the revised rule is not affected by the compliance deadline extensions because such provisions are not addressed by 40 CFR 112.3(a) or (b); these are not provisions for which it would be "necessary" to amend existing Plans "to ensure compliance with" the July 2002 amendments.

VI. 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 a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Under the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because it would extend for eighteen the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

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.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will temporarily reduce regulatory burden on all facilities by extending for eighteen months the compliance dates in § 112.3(a) and (b). Further, the rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's rule on small entities,

I certify that this action would not have a significant economic impact on a substantial number of small entities, because it provides temporary relief from otherwise applicable compliance deadlines.

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 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 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-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 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. Today's rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce

burden and costs for regulated facilities, including small governments that are subject to the rule.

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.

F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today’s rule would not significantly or uniquely affect communities of Indian tribal governments because they are in the same position as all other users or storers of oil. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has

the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTA is inapplicable.

I. 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 submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as

defined by 5 U.S.C. 804(2). This rule will be effective April 17, 2003.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable and combustible materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Piping, Reporting and recordkeeping requirements, Tanks, Transfer operations, Water pollution control, Water resources.

Dated: April 10, 2003.

Christine Todd Whitman,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

■ 2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill, Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before August 17, 2004, and must implement the amended Plan as soon as possible, but not later than February 18, 2005. If your onshore or offshore facility becomes operational after August 16, 2002, through February 18, 2005, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before February 18, 2005, and fully implement it as soon as possible, but not later than February 18, 2005.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after February 18, 2005, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–9480 Filed 4–16–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****45 CFR Part 160****[CMS-0010-IFC]****RIN 0938-AM63****Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings****AGENCY:** Office of the Secretary, HHS.**ACTION:** Interim final rule; request for comments.

SUMMARY: This interim final rule establishes rules of procedure for the imposition, by the Secretary of Health and Human Services, of civil money penalties on entities that violate standards adopted by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). We intend that this be the first installment of a rule that we term the "Enforcement Rule." The Enforcement Rule, when issued in complete form, will set forth procedural and substantive requirements for imposition of civil money penalties. In the interim, we are issuing these rules of procedure to inform regulated entities of our approach to enforcement and to advise regulated entities of certain procedures that will be followed as we enforce the Administrative Simplification provisions of HIPAA.

DATES: *Effective Date:* This interim final rule is effective May 19, 2003.

Comment Date: Comments on the interim final rule must be received by June 16, 2003.

Expiration Date: This interim final rule will cease to be in effect on September 16, 2003.

ADDRESSES: In commenting, please refer to file code CMS-0010-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile ("FAX") transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-0010-IFC, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey ("HHH") Building,

200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 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 commenters wishing to retain a proof of filing by stamping in and retaining an extra copy 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.

Comments may also be submitted electronically to the following e-mail address: CMS0010.Comments@hhs.gov. For e-mail procedures, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For further information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Karen Shaw, (202) 690-7711.

SUPPLEMENTARY INFORMATION:**Inspection of Public Comments**

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, 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, call Sharon Jones at (410) 786-9994.

Electronic Comments

We will consider all electronic comments that include the full name, postal address, and affiliation (if applicable) of the sender and are submitted to the electronic address identified in the **ADDRESSES** section of this preamble. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Copies of electronically submitted comments will be available for public inspection as soon as practicable at the address provided, and subject to the same process described, in the preceding paragraph.

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Electronic Access

This document is available electronically at the following web sites of the Department of Health and Human Services ("HHS" or the "Department"): <http://www.hhs.gov/ocr/hipaa/> and <http://www.cms.gov/hipaa/hipaa2>. It is also available at the web site of the Government Printing Office at <http://www.access.gpo.gov/nara/index.html>.

I. Background

This interim final rule establishes rules of procedure for the imposition, by the Secretary of Health and Human Services, of civil money penalties on entities that violate the Administrative Simplification regulations ("HIPAA rules") adopted by the Secretary under subtitle F of Title II of HIPAA ("HIPAA provisions"). We intend this interim final rule to be the first installment of a rule termed the "Enforcement Rule." The Enforcement Rule, when issued in complete form, will set forth procedural and substantive requirements for imposition of civil money penalties. In the interim, we are issuing these rules of procedure to inform regulated entities of our approach to enforcement and to advise regulated entities of certain procedures that will be followed with regard to enforcement. We intend to revise the procedural rule by the expiration date provided above.

We set out below the statutory and regulatory background of the rule, describe our approach to enforcement of the HIPAA provisions and rules in general and this rule in particular, and then discuss each section of the interim final rule. We also set out our analyses of impact and other issues under applicable law.

Statutory Background

HIPAA became law in 1996 (Public Law 104-191). Subtitle F of Title II of HIPAA, entitled "Administrative Simplification," requires the Secretary of HHS to adopt national standards for certain information-related activities of the health care industry. The purpose of subtitle F is to improve the Medicare program under title XVIII of the Social Security Act ("Act"), the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by mandating the development of standards and requirements to enable the electronic exchange of certain health information. Section 262 of subtitle F added a new Part C to Title XI of the Act. Part C (42 U.S.C. 1320d-1320d-8) requires the Secretary to adopt national standards for certain financial and administrative transactions and various data elements to be used in those transactions, such as code sets and certain unique health identifiers. Recognizing that the industry trend toward computerizing health information, which HIPAA encourages, may increase the access to that information, the statute also requires national standards to protect the security and privacy of the information.

The HIPAA provisions, by statute, apply only to the following persons:

- (1) A health plan.
- (2) A health care clearinghouse.
- (3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d-2(a)(1) of this title.

42 U.S.C. 1320d-1(a)

Collectively, these entities are known as "covered entities." The statute requires certain consultations with industry as a predicate to the issuance of standards and gives most covered entities 2 years (small health plans have 3 years) to come into compliance with the standards, once adopted. 42 U.S.C. 1320d-1(c), 42 U.S.C. 1320d-4(b). The statute establishes civil money penalties and criminal penalties for violations. 42 U.S.C. 1320d-5, 42 U.S.C. 1320d-6. HHS will enforce the civil money penalties, while the U.S. Department of Justice will enforce the criminal penalties.

HIPAA's civil money penalty ("CMP") provision authorizes the Secretary to impose CMPs, as follows:

- (1) *In general.* Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part [42 U.S.C. 1320d *et seq.*] a penalty of not more than \$100 for each such violation,

except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

(2) *Procedures.* The provisions of section 1128A [42 U.S.C. 1320a-7a] (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1128A.

42 U.S.C. 1320d-5(a)

Subsection (b) of section 1320d-5 sets out a number of substantive limitations on the Secretary's authority to impose CMPs. First, a CMP may not be imposed with respect to an act that "constitutes an offense punishable" under the criminal penalty provision. 42 U.S.C. 1320d-5(b)(1). Second, a CMP may not be imposed "if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision." 42 U.S.C. 1320d-5(b)(2). Third, a CMP may not be imposed if the failure to comply was due "to reasonable cause and not to willful neglect" and is corrected within a certain time. 42 U.S.C. 1320d-5(b)(3). Finally, a CMP may be reduced, if not waived entirely, "to the extent that the payment of such penalty would be excessive relative to the compliance failure involved." 42 U.S.C. 1320d-5(b)(4).

As noted above, HIPAA incorporates by reference certain provisions of section 1128A of the Act (42 U.S.C. 1320a-7a). Those provisions, as relevant here, provide a number of procedural requirements with respect to the imposition of CMPs. The Secretary may not initiate a CMP action "later than six years after the date" of the occurrence that forms the basis for the CMP. The Secretary may initiate a CMP action by serving notice "in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure." 42 U.S.C. 1320a-7a(c)(1). A person upon whom the Secretary seeks to impose a CMP must be given written notice and an opportunity for a determination to be made "on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person." 42 U.S.C. 1320a-7a(c)(2). There are provisions authorizing the sanctions the hearing officer may impose for misconduct in connection with the CMP proceeding, judicial review of the Secretary's determination in the United States Court of Appeals for the circuit in which the person resides, and the

issuance of subpoenas by the Secretary and the enforcement of those subpoenas. 42 U.S.C. 1320a-7a(c)(4), (e), (j). These provisions are discussed more fully below.

Regulatory Background

As noted above, HIPAA requires the Secretary of HHS to adopt a number of national standards to facilitate the exchange of certain health information. The Secretary has already issued a number of these HIPAA standards by regulation. We summarize these HIPAA Administrative Simplification rules below.

- Regulations implementing the statutory requirement for the adoption of standards for transactions and code sets ("Transactions Rule") were published on August 17, 2000 (65 FR 50312), and were recently modified (68 FR 8381, February 20, 2003). The Transactions Rule became effective on October 16, 2000, with an initial compliance date of October 16, 2002 for covered entities other than small health plans. The passage of the Administrative Simplification Compliance Act, Pub. L. 107-105, in 2001 enabled covered entities to obtain an extension of the compliance date to October 16, 2003 by filing a compliance plan by October 15, 2002. If a covered entity (other than a small health plan) did not file such a plan, it was required to comply with the Transactions Rule by October 16, 2002. All covered entities must be in compliance with the Transactions Rule, as modified, by October 16, 2003.

- Regulations implementing the statutory requirement for the adoption of privacy standards were published on December 28, 2000 (65 FR 82462) ("Privacy Rule"). The Privacy Rule became effective on April 14, 2001, with an initial compliance date of April 14, 2003 for covered entities other than small health plans. Modifications to the Privacy Rule were published on August 14, 2002 (67 FR 53182), and compliance with the modified privacy standards is required by the initial compliance date, April 14, 2003, for those covered entities that must comply by that date.

- Regulations implementing the statutory requirement for the adoption of an employer identifier standard were published on May 31, 2002 (67 FR 38009) and became effective on July 30, 2002. The initial compliance date is July 30, 2004 for most covered entities; small health plans have until July 30, 2005 to come into compliance.

- Regulations implementing the statutory requirement for the adoption of security standards were published on February 20, 2003 (68 FR 8334). They

are effective on April 21, 2003, and the initial compliance date for covered entities other than small health plans is April 20, 2005; small health plans have until April 20, 2006 to comply.

The authority for administering and enforcing compliance with the Privacy Rule has been delegated to the Office for Civil Rights ("OCR") of HHS.¹ Responsibility for administering and enforcing the remaining HIPAA rules has been assigned to the Centers for Medicare & Medicaid Services ("CMS").²

II. General Approach

As the discussion above makes clear, the duty to comply with certain of the HIPAA rules is now a reality for many, if not most, covered entities. The immediacy of the compliance obligation brings with it the issue of how these rules will be enforced. Accordingly, we lay out below our general approach to enforcement. We then discuss how the rules below will fit in with the projected Enforcement Rule in its entirety and the basic approach of the interim final rule.

HHS's General Approach to Enforcement

The Department intends to seek and promote voluntary compliance with the rules promulgated to carry out the HIPAA provisions. With respect to the Privacy Rule, OCR has developed and is continuing to produce guidance and a wide array of other technical assistance materials to help covered entities effectively implement the Privacy Rule. These materials are available on the OCR Privacy web site at <http://www.hhs.gov/ocr/hipaa>. These efforts will continue after the April 14, 2003 compliance date, as OCR learns from its compliance activities and from those who are implementing the Privacy Rule where additional guidance and assistance are needed. Other components of the Department are also developing guidance and technical assistance on the Privacy Rule for their partners.

This approach reflects the requirements in 45 CFR part 160, subpart C, that, to the extent practicable, OCR will seek the cooperation of covered entities in obtaining compliance with the Privacy Rule, and may provide technical assistance to help covered entities voluntarily comply with the Rule. See 45 CFR 160.304. As further provided in 45 CFR 160.312(a)(2), OCR will seek to resolve

matters by informal means before issuing findings of non-compliance, under its authority to investigate and resolve complaints, and to engage in compliance reviews.

With respect to enforcement of the remainder of the HIPAA rules, the enforcement approach of CMS is similar. "Enforcement activities will focus on obtaining voluntary compliance through technical assistance. The process will be primarily complaint driven and will consist of progressive steps that will provide opportunities to demonstrate compliance or submit a corrective action plan." HHS press release of October 15, 2002, announcing assignment of enforcement responsibility to CMS. CMS provides a wide variety of technical assistance and informational materials on its Web site, at <http://www.cms.gov/hipaa/hipaa2>.

HHS's Approach to the Enforcement Rule

As noted above, HHS intends to issue an Enforcement Rule in furtherance of its implementation of 42 U.S.C. 1320d-5. The Enforcement Rule, in its entirety, will address a number of substantive issues relating to the imposition of CMPs under section 1320d-5, such as the Department's policies for determining violations and calculating CMPs. In addition, the Enforcement Rule will establish various procedures for the imposition of CMPs, including the procedures for providing notice and a hearing on the Secretary's determination to impose a CMP. This interim final rule implements this latter aspect of the Enforcement Rule.

Administrative Procedure Act

We recognize that under the Administrative Procedure Act ("APA") most of the above-described provisions of the Enforcement Rule must be promulgated through notice-and-comment rulemaking. We intend to do so. However, to allow covered entities and the public to be informed as soon as possible of procedural requirements that will apply as compliance proceeds, we are expediting the publication of these procedural rules in final form. These rules set out the procedures for provision by the agency of the statutorily required notice and hearing and procedures for issuing administrative subpoenas. Such provisions are exempted from the requirement for notice-and-comment rulemaking under the "rules of agency * * * procedure, or practice" exemption at 5 U.S.C. 553(b)(3)(A). Even though notice-and-comment rulemaking is, therefore, not required with respect

to the procedural rules adopted below, HHS is interested in input from the public, and thus is requesting public comment on them. We expect to augment these procedural rules with provisions that, while related to procedure, are substantive in nature. We anticipate including those provisions in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. In any event, we plan to revise the procedural rule by the expiration date.

Approach of the Interim Final Rule

As noted above, the provisions of 42 U.S.C. 1320a-7a apply to the imposition of a CMP under 42 U.S.C. 1320d-5 "in the same manner as" they apply to the imposition of CMPs under section 1320a-7a itself. Within HHS, section 1320a-7a is implemented by the Office of Inspector General ("OIG") and, as pertinent here, through the OIG regulations that are codified at 42 CFR parts 1003, 1005, and 1006. We have used the OIG regulations as the platform for the rules below for two reasons. First, we read the "in the same manner as" language of the statute as indicating that the procedures for the imposition of CMPs under 42 U.S.C. 1320d-5 should be, in general, similar to those used by the OIG under 42 U.S.C. 1320a-7a. Second, HHS and much of the health care industry have operated under the OIG regulations implementing section 1320a-7a for more than a decade. There is, thus, a significant body of experience with, and understanding of, the OIG procedural rules, both within HHS and in a large part of the regulated universe. Based on this experience, we believe that the rules below will be workable and promote the efficient resolution of cases where the Secretary's proposed imposition of a CMP is challenged.

Accordingly, the rules below are based upon, and are in many respects the same as, the OIG regulations at 42 CFR parts 1003, 1005, and 1006. We have adapted, re-ordered, or combined the OIG language in a number of places for clarity of presentation or to reflect concepts peculiar to the HIPAA provisions or rules. To avoid confusion, we have also employed certain language usages in order to make the usage in the rules below consistent with that in the other HIPAA rules (for example, for mandatory duties, "must" instead of "will" or "shall"; for discretionary duties, "may" instead of "has the authority to"). We do not discuss those nonsubstantive changes below. Where we have materially changed the language of the OIG regulations, however, we discuss our reasons for doing so.

¹ On December 28, 2000, the Secretary delegated to the Director of OCR authority to enforce, administer, interpret, and implement the Privacy Rule. 65 FR 82381.

² HHS press release of October 15, 2002.

We also note that the rules below, as well as the Enforcement Rule as a whole, are not HIPAA standards, and thus the requirement for industry consultations in 42 U.S.C. 1320d-1(c) does not apply. Therefore, we have not engaged in such consultations with respect to the interim final rule below. For the same reason, HIPAA's timeframes for compliance (42 U.S.C. 1320d-4) do not apply to the interim final rule below.

III. Provisions of the Interim Final Rule

We discuss the interim final rule on a provision-by-provision basis below. As a general matter, we note that the provisions adopted are in many cases the same as or similar to analogous provisions of the OIG regulations. Where we have closely followed the OIG regulations, we have done so because we believe that these procedures work and satisfactorily address issues of concern addressed in prior rulemakings by the OIG. We do not reiterate those concerns, or their resolutions, here, but they have informed our decisionmaking on these rules.

Applicability

Section 160.500 states that the procedures established by this subpart are applicable to investigations, imposition of penalties, and hearings conducted as a result of a proposed imposition of civil money penalties. We use "applicability" instead of the basis and purpose statement of the OIG regulations, because we have followed a different format in the remainder of the HIPAA rules and wish to be consistent with that approach. Furthermore, this preamble constitutes the requisite basis and purpose statement.

Definitions

Definitions for the terms used in this new subpart that are not set forth elsewhere in part 160 are included in § 160.502.

- *ALJ* means an administrative law judge, the natural person who presides at and conducts a hearing requested by a respondent pursuant to this subpart.

- *Entity* means a legal person that is not a natural person. The term is intended to include all manner of organizations, such as corporations, associations, partnerships, and other entities that have a legal existence, other than a natural person. The term "entity" is necessary for this subpart to distinguish such legal persons from natural persons, because certain procedures in this rule, such as those involving subpoenas, are different for

entities than they are for natural persons.

The term "entity" should not be confused with the regulatory term "covered entity." The latter term, which is defined at § 160.103, denotes those entities to which the HIPAA rules apply. The term "entity," as used in this interim final rule, describes a broader class of persons. For example, subpoenas could be directed to entities that are not covered entities under § 160.504 below.

- *Penalty* is defined to mean the amount calculated under 42 U.S.C. 1320d-5. This section of HIPAA sets a penalty of not more than \$100 for each violation, subject to a calendar-year cap of \$25,000 for all violations of an identical requirement or prohibition. The term includes the plural form of the word.

- *Person* is defined to mean a natural person or a legal person (such as an entity described above). The term includes, but is not limited to, covered entities. The term is broader than "covered entities," because some sections of the provisions below by their nature apply to persons other than covered entities in certain circumstances. For example, the provisions for subpoenas relate to natural persons who will be called to testify, and many, if not most, of these persons will not be covered entities. While the term "person" is used generically throughout the HIPAA rules, we have provided a definition of the term "person" for use in this subpart to provide a clear and efficient way of permitting these distinctions to be drawn. This definition is not intended to define "person" as that term is used in HIPAA.

- *Respondent* means a person (as defined herein) upon whom a penalty has been imposed, whether proposed or final, by the Secretary. Respondents will necessarily be covered entities. See the discussion below of § 160.506.

Investigational Subpoenas and Inquiries

Section 160.504 provides procedures for the issuance of subpoenas to both named persons and unnamed persons associated with subpoenaed entities. A subpoenaed entity is required to name a natural person or persons knowledgeable about the subjects on which information is sought. This procedure is similar to that provided for in Rule 30(b)(6) of the Federal Rules of Civil Procedure. Subpoenas issued under this section may require either testimony or the production of evidence.

The procedures adopted in this section are similar to those in 42 CFR

part 1006. Like § 1006.4, § 160.504 provides that investigational inquiries are non-public proceedings conducted by the Secretary. A witness is entitled to be represented by an attorney during an investigational inquiry. However, while this section provides for the taking of witness testimony, it does not include all of the provisions of § 1006.4 regarding claims of privilege or objections, clarification of answers by the witness, corrections to the transcript, or the use by the Secretary of testimony or evidence obtained in an investigational inquiry. We anticipate addressing these issues in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Basis for Penalty

Under § 160.506, CMPs are imposed for violations of 42 U.S.C. 1320d-1320d-8, section 264 of Pub. L. 104-191, or the implementing regulations at parts 160, 162 or 164 of this subchapter. CMPs may be imposed only on covered entities. As we have stated in prior rulemakings, it is the view of HHS that only covered entities are subject to the HIPAA provisions and rules. Thus, only covered entities can be liable for a CMP under 42 U.S.C. 1320d-5. See, for example, 67 FR 53252. Regulatory definition of what constitutes a violation requiring imposition of a CMP will be addressed in the subsequent notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section, thus, functions to clarify and establish the linkage of the procedural rules to the criteria and processes for the substantive determinations that are to be developed through notice-and-comment rulemaking.

Amount of Penalty

Under § 160.508, the amount of the penalty is determined in accordance with 42 U.S.C. 1320d-5 and the provisions of this part. We anticipate addressing how penalties will be determined in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section thus functions to clarify and establish the linkage of the procedural rules to the criteria and processes for the substantive determinations that are still to be developed.

Authority To Settle

Section 160.510 enunciates the authority of the Secretary to settle any issue or case or to compromise any penalty during the process addressed in this subpart. This authority is the same

as that set forth in § 1003.106(f)(3) of the OIG regulations and implements statutory authority provided by the first sentence of 42 U.S.C. 1320a–7a(f). It provides for flexible resolution of cases and issues between the Secretary and a respondent. We anticipate that factors to be taken into account in determinations regarding the amount of penalties, like those set forth in § 1003.106(a) through § 1003.106(e) of the OIG regulations, will be addressed in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section, like the preceding sections, thus serves to link substantive provisions yet to be developed into the procedural process put in place by the rules below.

Notice of Proposed Determination

Section 160.514 sets forth the requirements for the notice to a respondent sent when the Secretary proposes a penalty under this part. These requirements are substantially the same as those in § 1003.109 of the OIG regulations. Statistical sampling provisions, however, are not included in this section at this time. We anticipate addressing statistical sampling in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Failure To Request a Hearing

Under § 160.516, when a respondent does not timely request a hearing on a proposed penalty, the Secretary will impose the proposed penalty or any less severe penalty permitted by 42 U.S.C. 1320d–5. The penalty is then final, and the respondent has no right to appeal a penalty imposed under these circumstances. This section is similar to § 1003.110 of the OIG regulations. This section simply states the necessary consequence of a respondent's failure to exercise the right to a hearing.

Collection of Penalty

Section 160.518 provides that once a determination to impose a penalty has become final, the penalty must be collected by the Secretary. The penalty may be recovered in a civil action in United States District Court, or by deduction from any sum owed to the respondent by the United States or a State agency. If the Secretary seeks to recover the penalty in a civil action, the respondent is prohibited from raising in that proceeding any matter that was raised or could have been raised in a hearing or appeal under this subpart. These provisions restate statutory provisions at 42 U.S.C. 1320a–7a(f) and (g).

Limitations

Section 160.522 sets forth the 6-year limitations period provided for by 42 U.S.C. 1320a–7a(c)(1). The section includes only the part of the statutory language that is relevant to the imposition of penalties in the context of the HIPAA rules. The statutory language concerning the “claim was presented” and “request for payment” are not included, because these phrases pertain to violations described in the parts of 42 U.S.C. 1320a–7a that are not incorporated by reference into 42 U.S.C. 1320d–5. Section 160.522 accordingly differs in this respect from § 1003.132 of the OIG regulations.

Hearing Before an ALJ

The requirements for a hearing request are contained in § 160.526. The parties to a hearing are the party against whom the Secretary has proposed a penalty (the respondent) and the Secretary. We recognize that the HHS party will be OCR and/or CMS. We have not described the party more specifically here, however, for several reasons. First, it is not feasible to parse out which component will actually appear for the Secretary, because the appropriate component (if both are not) will depend on the facts of the case. Second, the designation of the proper party component can be handled through the normal delegation process. Third, similar issues arise in other sections of this interim final rule (*see*, for example, § 160.514), and they are handled this way in those sections as well. A consistent approach is less confusing and more manageable.

The respondent may request a hearing following receipt of a notice of a proposed determination. The request for a hearing must be in writing. If the respondent fails to timely request a hearing, or thereafter withdraws or abandons the request for a hearing, or if the hearing request fails to raise any issue that may properly be addressed in a hearing, the administrative law judge (ALJ) is required to dismiss the hearing request. In such a case, the penalty becomes final, with no further appeal permitted.

Paragraph (c) of § 160.526 differs slightly from the corresponding paragraph in § 1005.2. Our provision requires specific admissions, denials or explanations in a respondent's hearing request. The degree of specificity required generally parallels the requirements applicable to the notice of proposed determination at § 160.514. Based on experience in prior administrative hearings, we believe that such additional specificity will assist

the parties and the ALJ in ascertaining the findings of fact and conclusions of law that are actually in dispute in a case. This certainty will promote procedural regularity and permit more timely and efficient resolution of the case between the parties or adjudication of the case by the ALJ.

Rights of Parties; Authority of the ALJ

The provisions in § 160.528 and § 160.530 list the rights of the parties and the authorities of the ALJ not specifically provided elsewhere in this part. These sections are based upon § 1005.3 and § 1005.4 of the OIG regulations, but do not address attorneys' fees under 42 U.S.C. 406 or any limitation on the ALJ's authority to review the Secretary's exercise of discretion to impose a penalty. We anticipate addressing such issues in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. We have clarified in § 160.530 that a summary judgment decision constitutes a hearing on the record.

Ex-parte Contacts

The provisions of § 160.532 are designed to ensure the fairness of the hearing by prohibiting ex-parte contacts with the ALJ on matters in issue. Routine questions about administrative procedures or the status of the case are permitted. These requirements are generally applicable to administrative hearings under 5 U.S.C. 554(d)(1) and are the same as those in § 1005.5 of the OIG regulations.

Prehearing Conferences

The provisions of § 160.534 closely track the provisions of the analogous OIG regulation at § 1005.6. The ALJ is required to schedule at least one prehearing conference, in order to narrow the issues to be addressed at the hearing and thus expedite the formal hearing process. Matters that may be discussed at a prehearing conference are identified and include the protection of the privacy of individually identifiable health information submitted into evidence, if appropriate.

Settlement

The Secretary has exclusive authority to settle any issue or case at any time and need not obtain the consent of the ALJ. This provision in § 160.536 tracks § 1003.126 of the OIG regulations.

Discovery

Consistent with the approach of § 1005.7 of the OIG regulations, § 160.538 provides for limited discovery in the form of the production for

inspection and copying of documents that are relevant and material to the issues before the ALJ. Like the OIG, we are specifically not authorizing other forms of discovery, such as depositions and interrogatories. Prehearing discovery is not provided for under the APA and is rarely available in administrative hearings. Full-scale discovery is inappropriate in administrative hearings, as it would unduly delay the streamlined administrative process. These regulations do, however, provide for exchange of relevant and material documents, as well as the exchange of witness lists, prior witness statements, and exhibits before the hearing, as provided in § 160.540 of the rule.

Exchange of Witness Lists, Statements, and Exhibits

Section 160.540 provides for the prehearing exchange of certain documents, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits.

Paragraph (a) of this section differs slightly from the corresponding paragraph in § 1005.8 of the OIG regulations, in that it provides for the exchange of witness lists, witness statements and exhibits at least 15 days before the hearing, but also allows the ALJ to order an earlier exchange if he or she deems it necessary.

Paragraph (b) provides that the ALJ must exclude witnesses and documents offered by a party that did not provide those materials before the hearing, except where there is good cause for the failure, or where there is not substantial prejudice to the objecting party. As with the OIG regulations, this provision is mandatory and serves to prevent the parties from litigating by surprise and to promote the procedural regularity of the hearing. Paragraph (b)(3) provides that where the witnesses or exhibits are not excluded, the ALJ must recess the hearing for a reasonable time to allow the objecting party the opportunity to prepare and respond to them, unless the objecting party agrees to proceed. This paragraph differs from § 1005.8(b)(3) of the OIG regulations, under which the decision to postpone the hearing is within the ALJ's discretion. This modification is equally beneficial to both parties to a hearing and will reduce the potential for unfair surprise during a hearing. It is preferable to the OIG provision that grants the ALJ discretion, because it provides clear notice to the parties and clear direction to the ALJ in the event witnesses or exhibits are not excluded.

Finally, any documents exchanged before the hearing would be deemed

authentic for purposes of admissibility at the hearing unless a party objected to a particular document before the hearing.

Subpoenas for Attendance at the Hearing

Section 160.542 outlines procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing. Subpoenas are authorized by 42 U.S.C. 1320a-7a(j) and may be issued by an ALJ pursuant to 5 U.S.C. 556(c). Either party may request that the ALJ issue a subpoena, if the appearance of a witness and the testimony are reasonably necessary for the party's case. The subpoena procedures here are the same as those at § 1005.9 of the OIG regulations.

Fees

Section 160.544 provides for the payment of witness fees by the party requesting a subpoena. This section tracks § 1005.10 of the OIG regulations.

Form, Filing, and Service of Papers; Computation of Time

Section 160.546 sets forth requirements for documents filed with the ALJ. Section 160.548 outlines the method for computing time periods under this part. These provisions track, respectively, § 1005.11 and § 1005.12 of the OIG regulations.

Motions

The provisions of § 160.550 set forth requirements for the content of motions and the time allowed for responses. This section tracks § 1005.13 of the OIG regulations.

Sanctions

Section 160.552 outlines the sanctions an ALJ may impose on parties and their representatives for failing to comply with an order or procedure, failing to defend an action, or other misconduct. These sanctions are specifically provided for by the statutory provision at 42 U.S.C. 1320a-7a(c)(4). This section tracks § 1005.14 of the OIG regulations.

The Hearing

Section 160.554 provides for a public hearing on the record. It allows for the admission of rebuttal evidence not exchanged before the hearing.

This section is based upon § 1005.15 of the OIG regulations, which also addresses the burden of proof at the hearing, and provides that the hearing is not limited to the items and information set forth in the notice of proposed determination. We anticipate addressing those issues in the notice-and-comment

rulemaking that we plan for the remainder of the Enforcement Rule.

Witnesses

Under § 160.556, the ALJ may allow testimony to be admitted in the form of a written statement or deposition so long as the opposing party has a sufficient opportunity to subpoena the person whose statement is being offered. This section also allows an HHS investigator or other expert to be a witness, in addition to assisting counsel for the Secretary at counsel table during the hearing. These provisions closely track § 1005.16 of the OIG regulations.

Evidence

With certain limited exceptions, the Federal Rules of Evidence are not binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence. Section 160.558 is substantially similar to § 1005.17 of the OIG regulations, but does not contain a paragraph corresponding to § 1005.17(j) regarding evidence as to the respondent's willingness and/or ability to enter into a corrective action plan. We anticipate addressing this issue in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

The Record

Section 160.560 provides for recording and transcription of the hearing, and for the record to be available for inspection and copying by any person. For good cause, the ALJ may order appropriate redactions made to the record. These provisions track § 1005.18 of the OIG regulations.

Post-Hearing Briefs

Section 160.562 provides that the ALJ has discretion to order post-hearing briefs, although the parties may file post-hearing briefs in any event if they desire. This section tracks § 1005.19 of the OIG regulations.

ALJ Decision

Section 160.564 provides that not later than 60 days after the filing of post-hearing briefs, the ALJ shall serve on the parties a decision making specific findings of fact and conclusions of law. The ALJ's decision is the final decision of the Secretary.

Section 1005.20 of the OIG regulations, upon which this section is based, provides for the ALJ to issue an "initial decision," which is then reviewable by the Departmental Appeals Board if properly appealed. We have not provided for a second level of administrative review in this rule, and

thus this section refers to the "ALJ decision" rather than to an "initial decision." Neither section 1320a-7a nor the APA requires a second level of administrative review, although this is generally available in Department hearings. We anticipate addressing the issue of further administrative review in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Judicial Review; Stay of ALJ Decision

Section 160.568 provides for judicial review of penalties imposed under this part, as authorized by 42 U.S.C. 1320a-7a(e). Section 160.570 provides that a respondent may request a stay of the effective date of a penalty pending judicial review. This section tracks § 1005.22(b) of the OIG regulations.

IV. Impact Statement and Other Required Analyses

Paperwork Reduction Act

We reviewed this interim final rule to determine whether it invokes issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by those agencies, 5 CFR 1320.4(a) exempts collections of information that occur "during the conduct of . . . an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry." The rules adopted below come squarely within this exemption, as they deal entirely with administrative investigations and actions against specific individuals or entities. Therefore, we have determined that the PRA does not apply to this rule.

Executive Order 12866; Unfunded Mandates Reform Act of 1995; Regulatory Flexibility Act; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

We have examined the impacts of this rule as required by E.O. 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 E.O. 13132.

E.O. 12866 (as amended by E.O. 13258, which merely reassigns responsibility of duties) 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 in any 1 year). HHS has concluded that this rule should be treated as a "significant regulatory action" within the meaning of section 3(f)(4) of E.O. 12866 because the HIPAA provisions to be enforced have extremely broad implications for the nation's health care system, and because of the novel issues presented by, and the uncertainties surrounding, compliance among covered entities. However, E.O. 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in section 3(f)(1) of the order as rules that may "have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because this rule is procedural in nature, it has no intrinsic significant economic impact; therefore, no economic impact analysis has been prepared.

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 \$6 million in any 1 year. This interim final rule is purely procedural in nature and, as such, HHS has determined that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of HIPAA, in order to allow the Secretary to enforce subtitle F of Title II of HIPAA.

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 603 (proposed documents)/604 (final documents) 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. This rule will not have a

significant impact on small rural hospitals. The rule implements procedures necessary for the Secretary to enforce subtitle F of Title II of HIPAA.

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 \$100 million. Because this rule is procedural in nature, it will not impose a burden large enough to require a section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*).

E.O. 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 and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule does not have "Federalism implications." The rule 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" and therefore is not subject to E.O. 13132 (Federalism).

The Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) requires that rules that will have an impact on the economy of \$100 million or more per annum be submitted for Congressional review. Because this rule is procedural in nature, it will not impose a burden large enough to require Congressional review under the statute.

List of Subjects in 45 CFR Part 160

Administrative practice and procedure, Computer technology, Healthcare, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter C, part 160 as set forth below.

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 160 is revised to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d-1320d-8, and sec. 264 of Pub. L. 104-191, 110 Stat. 2033-2034 (42 U.S.C. 1320d-2(*note*)).

■ 2. Add a new subpart E to part 160 to read as follows:

Subpart E—Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

Sec.	
160.500	Applicability.
160.502	Definitions.
160.504	Investigational subpoenas and inquiries.
160.506	Basis for penalty.
160.508	Amount of penalty.
160.510	Authority to settle.
160.512	[Reserved]
160.514	Notice of proposed determination.
160.516	Failure to request a hearing.
160.518	Collection of penalty.
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Subpart E—Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

§ 160.500 Applicability.

This subpart applies to investigations conducted, penalties imposed, hearings conducted, and subpoenas issued, under the authority of 42 U.S.C. 1320d-5, relating to the imposition of civil money penalties.

§ 160.502 Definitions.

For the purposes of this subpart:

ALJ means Administrative Law Judge.

Entity means a legal person.

Penalty means the amount calculated under 42 U.S.C. 1320d-5, as determined in accordance with this part, and includes the plural of that term.

Person means a natural or legal person.

Respondent means the person upon whom the Secretary has imposed, or proposes to impose, a penalty.

§ 160.504 Investigational subpoenas and inquiries.

(a) The provisions of this paragraph govern subpoenas issued by the Secretary in accordance with 42 U.S.C. 405(d) and (e), 1320a-7a(j), and 1320d-5 to require the attendance and testimony of witnesses and the production of any other evidence during an investigation pursuant to this part.

(1) A subpoena issued under this paragraph must—

(i) State the name of the person to whom the subpoena is addressed;

(ii) State the statutory authority for the subpoena;

(iii) Indicate the date, time, and place that the testimony will take place;

(iv) Include a reasonably specific description of any documents or items required to be produced; and

(v) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In that event, the named entity must designate one or more natural persons who will testify on its behalf, and must state as to each person so designated that person's name and address and the matters on which he or she will testify. The person so designated must testify as to matters known or reasonably available to the entity.

(2) A subpoena under this section must be served by—

(i) Delivering a copy to the natural person named in the subpoena or to the entity named in the subpoena at its last principal place of business; or

(ii) Registered or certified mail addressed to the natural person at his or her last known dwelling place or to the entity at its last known principal place of business.

(3) A verified return by the natural person serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signed return post office receipt, constitutes proof of service.

(4) Witnesses are entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Fees need not be paid at the time the subpoena is served.

(5) A subpoena under this section is enforceable through the District Court of the United States for the district where the subpoenaed natural person resides or is found or where the entity transacts business.

(b) Investigational inquiries are non-public investigational proceedings conducted by the Secretary.

(1) Testimony at investigational inquiries will be taken under oath or affirmation.

(2) Attendance of non-witnesses is discretionary with the Secretary, except

that a witness is entitled to be accompanied, represented, and advised by an attorney.

(3) The proceedings will be recorded and transcribed. The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

§ 160.506 Basis for penalty.

The Secretary shall impose a penalty on a person who is a covered entity and who the Secretary determines in accordance with this subpart has violated a provision of—

(a) 42 U.S.C. 1320d-1320d-8, as amended;

(b) Section 264 of Pub. L. 104-191 (42 U.S.C. 1320d-2(note)); or (c) Parts 160, 162 or 164 of this subchapter.

§ 160.508 Amount of penalty.

The penalty imposed under § 160.506 must be in accordance with 42 U.S.C. 1320d-5 and the applicable provisions of this part.

§ 160.510 Authority to settle.

Nothing in this subpart limits the authority of the Secretary to settle any issue or case or to compromise any penalty.

§ 160.512 [Reserved]

§ 160.514 Notice of proposed determination.

(a) If a penalty is proposed in accordance with this part, the Secretary must deliver, or send by certified mail with return receipt requested, to the respondent written notice of the Secretary's intent to impose a penalty. This notice of proposed determination must include—

(1) Reference to the statutory basis for the penalty;

(2) A description of the findings of fact regarding the act(s) or omission(s) with respect to which the penalty is proposed;

(3) The reason(s) why the act(s) or omission(s) subject(s) the respondent to a penalty;

(4) The amount of the proposed penalty;

(5) Instructions for responding to the notice, including a statement of the respondent's right to a hearing, a statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without the right to a hearing under § 160.554 or a right of appeal under § 160.568, and the address to which the hearing request must be sent.

(b) The respondent may request a hearing before an ALJ on the proposed

penalty by filing a request therefor in accordance with § 160.526 of this subpart.

§ 160.516 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 160.526, the Secretary must impose the proposed penalty or any less severe penalty permitted by 42 U.S.C. 1320d-5. The Secretary must notify the respondent by certified mail, return receipt requested, of any penalty that has been imposed and of the means by which the respondent may satisfy the penalty. The respondent has no right to appeal under § 160.568 with respect to a penalty with respect to which the respondent has not timely requested a hearing.

§ 160.518 Collection of penalty.

(a) Once a determination of the Secretary to impose a penalty has become final, the penalty must be collected by the Secretary.

(b) The penalty may be recovered in a civil action brought in the United States district court for the district where the respondent resides, is found, or is located.

(c) The amount of a penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States, or by a State agency, to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under 42 U.S.C. 1320a-7a(e) may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

§ 160.520 [Reserved]

§ 160.522 Limitations.

No action under this subpart may be entertained unless commenced by the Secretary, in accordance with § 160.514 of this subpart, within 6 years from the date on which the latest act or omission that is the subject of the action occurred.

§ 160.524 [Reserved]

§ 160.526 Hearing before an ALJ.

(a) The respondent may request a hearing before an ALJ. The parties to the hearing proceeding consist of—

- (1) The respondent; and
- (2) The Secretary.

(b) The request for a hearing must be made in writing signed by the respondent or by the respondent's attorney and sent by certified mail, return receipt requested, to the address specified in the notice of proposed determination. The request for a hearing

must be mailed within 60 days after notice of the proposed determination is received by the respondent. For purposes of this section, the respondent's date of receipt of the notice of proposed determination is presumed to be 5 days after the date of the notice unless the respondent makes a reasonable showing to the contrary to the ALJ.

(c) The request for a hearing must clearly and directly admit, deny, or explain each of the findings of fact contained in the notice of proposed determination with regard to which the respondent has any knowledge. If the respondent has no knowledge of a particular finding of fact and so states, the finding shall be deemed denied. The request for a hearing must also state the circumstances or arguments that the respondent alleges constitute the grounds for any defense and the factual and legal basis for opposing the penalty.

(d) The ALJ must dismiss a hearing request where—

- (1) The respondent's hearing request is not filed as required by paragraphs (b) and (c) of this section;
- (2) The respondent withdraws the request for a hearing;
- (3) The respondent abandons the request for a hearing; or
- (4) The respondent's hearing request fails to raise any issue that may properly be addressed in a hearing.

§ 160.528 Rights of parties.

(a) Except as otherwise limited by this part, each party may—

- (1) Be accompanied, represented, and advised by an attorney;
- (2) Participate in any conference held by the ALJ;
- (3) Conduct discovery of documents as permitted by this subpart;
- (4) Agree to stipulations of fact or law that will be made part of the record;
- (5) Present evidence relevant to the issues at the hearing;
- (6) Present and cross-examine witnesses;
- (7) Present oral arguments at the hearing as permitted by the ALJ; and
- (8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) A party may appear in person or by a representative. Natural persons who appear as an attorney or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 160.530 Authority of the ALJ.

(a) The ALJ must conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made.

(b) The ALJ may—

- (1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

- (2) Continue or recess the hearing in whole or in part for a reasonable period of time;

- (3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

- (4) Administer oaths and affirmations;

- (5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

- (6) Rule on motions and other procedural matters;

- (7) Regulate the scope and timing of documentary discovery as permitted by this subpart;

- (8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

- (9) Examine witnesses;

- (10) Receive, rule on, exclude, or limit evidence;

- (11) Upon motion of a party, take official notice of facts;

- (12) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone; and

- (13) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact. A summary judgment decision constitutes a hearing on the record for the purposes of this subpart.

(c) The ALJ may not—

- (1) Find invalid or refuse to follow Federal statutes or regulations or delegations of authority by the Secretary;
- (2) Enter an order in the nature of a directed verdict;
- (3) Compel settlement negotiations; or
- (4) Enjoin any act of the Secretary.

§ 160.532 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 160.534 Prehearing conferences.

(a) The ALJ must schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

- (1) Simplification of the issues;
 - (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
 - (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
 - (4) Whether the parties can agree to submission of the case on a stipulated record;
 - (5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;
 - (6) Limitation of the number of witnesses;
 - (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
 - (8) Discovery of documents as permitted by this subpart;
 - (9) The time and place for the hearing;
 - (10) The potential for the settlement of the case by the parties; and
 - (11) Other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings, including the protection of privacy of individually identifiable health information that may be submitted into evidence, if appropriate.
- (c) The ALJ must issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 160.536 Settlement.

The Secretary has exclusive authority to settle any issue or case without the consent of the ALJ.

§ 160.538 Discovery.

- (a) A party may make a request to another party for production of documents for inspection and copying that are relevant and material to the issues before the ALJ.
- (b) For the purpose of this section, the term “documents” includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form accessible to the requesting party.
- (c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.
- (d) This section may not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of

persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request must either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part must be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. The party receiving a request for production may also file a motion for protective order any time before the date the production is due.

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

- (i) Is irrelevant;
 - (ii) Is unduly costly or burdensome;
 - (iii) Will unduly delay the proceeding; or
 - (iv) Seeks privileged information.
- (3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 160.540 Exchange of witness lists, witness statements, and exhibits.

(a) The parties must exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 160.556, at least 15 days before the hearing, unless the ALJ orders an earlier exchange.

(b) (1) If at any time a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the ALJ must determine whether the failure to comply with paragraph (a) of this section should result in the exclusion of that evidence.

(2) Unless the ALJ finds that extraordinary circumstances justified the failure timely to exchange the information listed under paragraph (a) of this section, the ALJ must exclude from the party’s case-in-chief—

- (i) The testimony of any witness whose name does not appear on the witness list; and

(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.

(3) If the ALJ finds that extraordinary circumstances existed, the ALJ must then determine whether the admission of that evidence would cause substantial prejudice to the objecting party. If the ALJ finds that there is no substantial prejudice, the evidence may be admitted. If the ALJ finds that there is substantial prejudice, the ALJ may exclude the evidence, or, if he or she does not exclude the evidence, must postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence, unless the objecting party waives postponement.

(c) Unless the other party objects within a reasonable period of time before the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 160.542 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any person at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party’s case.

(b) A subpoena requiring the attendance of a person in accordance with paragraph (a) of this section may also require the person (whether or not the person is a party) to produce relevant and material evidence at or before the hearing.

(c) When a subpoena is served by a respondent on a particular employee or official or particular office of HHS, the Secretary may comply by designating any HHS representative to appear and testify.

(d) A party seeking a subpoena must file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. That motion must—

- (1) Specify any evidence to be produced;
- (2) Designate the witnesses; and
- (3) Describe the address and location with sufficient particularity to permit those witnesses to be found.

(e) The subpoena must specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(g) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena must serve it by delivery to the person named, or by certified mail addressed to that person at the person's last dwelling place or principal place of business.

(h) The person to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(i) The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in 42 U.S.C. 405(e).

§ 160.544 Fees.

The party requesting a subpoena must pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage must accompany the subpoena when served, except that when a subpoena is issued on behalf of the Secretary, a check for witness fees and mileage need not accompany the subpoena.

§ 160.546 Form, filing, and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ must include an original and two copies.

(2) Every pleading and paper filed in the proceeding must contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.

(3) Every pleading and paper must be signed by and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed.

(b) *Service.* A party filing a document with the ALJ or the Secretary must, at the time of filing, serve a copy of the document on the other party. Service upon any party of any document must be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service must be made upon the attorney in lieu of the party.

(c) *Proof of service.* A certificate of the natural person serving the document by personal delivery or by mail, setting forth the manner of service, constitutes proof of service.

§ 160.548 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government must be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days must be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 160.526.

§ 160.550 Motions.

(a) An application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon and the facts alleged, and must be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to the motion.

(d) The ALJ may not grant a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ must make a reasonable effort to dispose of all outstanding motions before the beginning of the hearing.

§ 160.552 Sanctions.

The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. The sanctions must reasonably relate to the severity and nature of the failure or misconduct. The sanctions may include—

(a) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating the refusal as an admission by deeming the matter, or certain facts, to be established;

(b) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(c) Striking pleadings, in whole or in part;

(d) Staying the proceedings;

(e) Dismissal of the action;

(f) Entering a decision by default;

(g) Ordering the party or attorney to pay the attorney's fees and other costs caused by the failure or misconduct; and

(h) Refusing to consider any motion or other action that is not filed in a timely manner.

§ 160.554 The hearing.

(a) The ALJ must conduct a hearing on the record in order to determine whether the respondent should be found liable under this part.

(b) The hearing must be open to the public unless otherwise ordered by the ALJ for good cause shown.

(c) After both parties have presented their cases, evidence may be admitted in rebuttal even if not previously exchanged in accordance with § 160.540.

§ 160.556 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony of witnesses other than the testimony of expert witnesses may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for the other party to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing must be exchanged as provided in § 160.540. The ALJ may, at his or her discretion, admit prior sworn testimony of experts that has been subject to adverse examination, such as a deposition or trial testimony.

(c) The ALJ must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid repetition or needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ must permit the parties to conduct cross-examination of witnesses as may be required for a full and true disclosure of the facts.

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This provision does not authorize the exclusion of—

(1) A party who is a natural person;

(2) In the case of a party that is an entity, the officer or employee of the party appearing for the party pro se or designated as the party's representative; or

(3) A natural person whose presence is shown by a party to be essential to the presentation of its case, including a person engaged in assisting the attorney for the Secretary.

§ 160.558 Evidence.

(a) The ALJ must determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs, or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. This evidence is admissible regardless of whether the crimes, wrongs, or acts occurred during the statute of limitations period applicable to the acts or omissions that constitute the basis for liability in the case and regardless of whether they were referenced in the Secretary's notice of proposed determination sent in accordance with § 160.514.

(h) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.

§ 160.560 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of the testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 160.562 Post hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ must fix the time for filing the briefs. The time for filing may not exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 160.564 ALJ decision.

(a) The ALJ must issue a decision, based only on the record, which must contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase, or reduce the penalties imposed by the Secretary.

(c) The ALJ must issue the decision to both parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. If the ALJ fails to meet the deadline contained in this paragraph, he or she must notify the parties of the reason for the delay and set a new deadline.

(d) The ALJ's decision is the final decision of the Secretary.

§ 160.566 [Reserved]

§ 160.568 Judicial review.

Judicial review of a penalty that has become final is authorized by 42 U.S.C. 1320a-7a(e).

§ 160.570 Stay of ALJ decision.

(a) Pending judicial review, the respondent may file a request for stay of the effective date of any penalty with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of the request automatically stays the effective date of the penalty until

such time as the ALJ rules upon the request.

(b) The ALJ may not grant a respondent's request for stay of any penalty unless the respondent posts a bond or provides other adequate security.

(c) The ALJ must rule upon a respondent's request for stay within 10 days of receipt.

§ 160.572 [Reserved]

Dated: April 11, 2003.

Tommy G. Thompson,
Secretary.

[FR Doc. 03-9497 Filed 4-14-03; 3:54 pm]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96-45, 97-21; FCC 03-59]

Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to extend the filing deadline by which the independent auditor hired by the Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney or Sharon Webber, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96-45 and 97-21; FCC 03-59, released on March 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. In this Order, we amend § 54.717(f) of the Commission's rules to extend the filing deadline by which the independent auditor hired by the

Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

2. Under § 54.717 of the Commission's rules, USAC is required to designate an independent auditor to examine its operations and books of account to determine, among other things, whether USAC is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse. The independent auditor is required to submit a draft audit report to the Wireline Competition Bureau audit staff within 60 days after the end of the audit period. Because USAC's fiscal year is the calendar year, the draft audit report is due by March 1.

3. USAC seeks a permanent waiver of this requirement or, in the alternative, a rule change that would allow the independent auditor to file the draft audit report on or before April 15 instead of March 1. USAC explains that because it closes its books in early February and its parent, the National Exchange Carrier Association (NECA), does not close its books until mid-February, the 60-day deadline leaves the independent auditor only two weeks to complete its draft audit report. Specifically, USAC asserts that meeting the March 1 deadline is extremely difficult because it provides the independent auditor with just two weeks to complete six financial audits

and five program reviews. As a result of this short timeframe, it has been difficult for the independent auditor to meet the deadline during the last five years.

4. We amend § 54.717(f) of the Commission's rules to require submission of the independent auditor's draft audit report within 105 days after the end of the audit period. We are persuaded that the time frame specified in the existing rule does not provide adequate time for the independent auditor to complete its draft audit report. Since this rule's inception, the independent auditor has had difficulty meeting the deadline every year. In fact, USAC has received extensions on behalf of the independent auditor for the 1998, 2000, 2001, and 2002 annual audits. A permanent change of this deadline therefore is warranted. We are persuaded that no harm will result by providing the independent auditor an additional 45 days to submit the draft audit report. We find that the change in the audit deadline still gives sufficient time for the Wireline Competition Bureau audit staff and the independent auditor to review the draft audit report and comply with the other provisions of § 54.717 of the Commission's rules.

5. It is ordered that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, the rule set forth herein is adopted to allow submission of the draft audit report within 105 calendar days after the end of the audit period.

6. It is further ordered that section 54.717(f) of the Commission's rules is

amended as set forth, effective May 19, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission:
William F. Caton,
Deputy Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.717 by revising paragraph (f) to read as follows:

§ 54.717 Audits of the Administrator.

* * * * *

(f) Within 105 calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Wireline Competition Bureau Audit Staff.

* * * * *

[FR Doc. 03-9406 Filed 4-16-03; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 68, No. 74

Thursday, April 17, 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

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV03-929-2]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the production area.

DATES: The referendum will be conducted from May 19 through May 30, 2003. To vote in this referendum, growers must have been engaged in producing cranberries within the production area during the period September 1, 2001, through August 31, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Washington DC Marketing Field Office, 4700 River Road, Unit 155, Room 2A38, Riverdale, Maryland, 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0237, Washington, DC, 20250-0237.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Regional Manager, Washington, DC Marketing Field Office,

Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 4700 River Road Unit 155, Room 2A38, Riverdale, MD 20737; telephone (301) 734-5243; fax (301) 734-5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 1035, Moab, UT 84532; telephone (435) 259-7988; fax (435) 259-4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 929 (7 CFR part 929), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period May 19 through May 30, 2003, among eligible cranberry growers in the production area. Only growers that were engaged in the production of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York during the period of September 1, 2001, through August 31, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would not consider termination of the order if more than 50 percent of the growers who vote in the referendum and growers of more than 50 percent of the volume of cranberries represented in the referendum favor continuance of their program.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0103. It has been estimated that it will take an average of 30 minutes for each of the approximately 1,100 producers of cranberries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after May 30, 2003, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, James B. Wendland, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601-674.

Dated: April 10, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-9409 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-324-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections for discrepancies of certain areas of the forward and aft sides of the body station 2598 bulkhead, and repair if necessary. This action is necessary to find and fix such discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-324-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-324-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6434; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-324-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-324-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received several reports of fatigue cracking in the bulkhead inner chords, outer chords, and diagonal brace attachment fittings on certain Boeing Model 747 series airplanes. The cracks ranged from 0.4 inch to 2.0 inches long and have been found on both the left and right sides of the bulkhead structure. These airplanes had accumulated between 5,982 and 18,487 total flight cycles. In addition, elongated fastener holes have been found in the diagonal brace rods on several airplanes. Such discrepancies of the bulkhead structure, if not found and fixed, could result in failure of the structure to carry flight loads of the horizontal stabilizer,

and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-53A2467, including Evaluation Form, dated July 26, 2001, which describes procedures for repetitive detailed inspections of the body station 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the lower aft inner chords; upper aft outer chords; and diagonal brace attachment fittings, flanges, and rods and repair of any cracking or elongated fastener holes, if necessary. The service bulletin also specifies contacting Boeing for repair procedures for cracking of the outer chord. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Information

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with 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.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 1,147 airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours

per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$67,200, or \$240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–324–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1307 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 (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 find and fix discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 10,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do a detailed inspection of the body station 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the lower aft inner chords; upper aft outer chords; and diagonal brace attachment fittings, flanges, and rods; per Boeing Alert Service Bulletin 747–53A2467, excluding Evaluation Form, dated July 26, 2001. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles.

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."

Repair

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD: Before further flight, repair per Boeing Alert Service Bulletin 747–53A2467, excluding Evaluation Form, dated July 26,

2001. If any discrepancy is found and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permit

(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.

Issued in Renton, Washington, on April 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 03–9432 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14402; Airspace Docket No. 01–AWA–4]

RIN 2120–AA66

Proposed Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the current Houston, TX, Class B airspace area to contain large turbine-powered aircraft during operations to the new Runway 8L/26R at George Bush Intercontinental Airport (IAH), and to the new primary runway (Runway 4) at William P. Hobby Airport (HOU). The FAA is proposing this action to enhance safety, and improve the management of

aircraft operations in the Houston terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before June 2, 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 both docket numbers, FAA-2003-14402/ Airspace Docket No. 01-AWA-4, 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 Dockets Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA-2003-14402/Airspace

Docket No. 01-AWA-4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Documents Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may also obtain a copy of this notice by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783.

Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On April 13, 2000, the FAA published a final rule modifying the Houston, TX, Class B airspace area (65 FR 19826). The modified Class B airspace area, implemented on June 15, 2000, eliminated references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin and made the new point of origin the current geographical location of the Hobby VOR.

The Houston terminal area has experienced a significant growth in aircraft operations in the last 10 years. To accommodate this growth, the City of Houston is scheduled to complete construction of the new Runway 8L/26R for IAH in October 2003. Additionally, the flow of aircraft operations at HOU will be adjusted to use Runway 4 as the primary runway. To provide protection for operations to the new runway at IAH and the planned traffic flow adjustments at HOU, the FAA has developed the

proposed modifications to the Houston Class B airspace area.

Public Input

In June 2002, an *ad hoc* committee was formed to provide comments and recommendations regarding the planned modifications to the Houston Class B airspace area. Details were provided to the *ad hoc* committee regarding planned airspace changes required to conduct triple simultaneous approaches to IAH using the new Runway 8L/26R and the need to adjust the flow of aircraft operations at HOU. The Aircraft Owners and Pilots Association (AOPA) participated in the *ad hoc* committee and suggested developing visual flight rule (VFR) flyways to help pilots transition the Houston terminal area while remaining clear of the Houston Class B airspace area. Additionally, AOPA suggested the FAA solicit input from representatives from the military, Weiser Airpark, and West Houston Airport. These groups and numerous other user groups were contacted for their input and the suggestion to include VFR flyways was incorporated into a presentation for public meetings. Additionally, AOPA's flyway comment will be addressed later in this document.

As announced in the FAA Southwest Region Airspace Branch letter to Airmen 02-02, three pre-NPRM informal airspace meetings were held on October 15 at Fletcher Aviation on HOU; October 16 at North Harris College; and October 22 at West Houston Airport. These meetings allowed interested airspace users an opportunity to present their views and offer suggestions regarding the planned modifications to the Houston Class B airspace area. All comments received during the informal airspace meetings and the subsequent comment period were considered in developing this proposal.

Analysis of Comments Received

Twelve commenters expressed a concern that the planned expansion of Area B and Area C of the Class B airspace area would compress general aviation traffic into lower altitudes, or would cause general aviation aircraft to fly further east or west of IAH to remain clear of the Class B airspace. The FAA partially agrees with these comments. To remain clear of the Houston Class B airspace area, aircraft would have to fly at lower altitudes or fly further east or west of IAH; however, this is necessary to separate them from large turbine-powered aircraft conducting instrument approaches within the Houston Class B airspace area. Aircraft conducting simultaneous, parallel approaches may

not be assigned the same altitude during turn-on to the final approach course. Therefore, each aircraft being turned on to the triple, simultaneous final approach courses will be assigned altitudes that differ by a minimum of 1,000 feet. In order to accommodate increased aircraft operations, the Houston Class B airspace area must be modified to provide additional altitudes in the lower stratum to the east and west of IAH.

Six commenters stated that aircraft from satellite airports west of Houston would have to travel significantly further than they presently do to get to practice areas. The FAA does not agree with these commenters. The FAA estimates that these aircraft would only have to fly approximately five additional nautical miles (NM) to remain clear of the Houston Class B airspace area. The planned modifications should not significantly increase the cost to pilots who wish to conduct practice maneuvers clear of the planned areas of the Houston Class B airspace area.

Four commenters stated that the FAA should use additional prominent landmarks instead of radials to describe the boundaries of the Class B airspace area. Specifically, it was suggested that the west boundary of Area C (southwest of HOU) could be described by using Highway 59 instead of radials and DME's from the Point Of Origin at HOU. This suggestion would increase the size of the Houston Class B airspace area approximately three NM and overlies the Sugar Land Airport Class D airspace area to the southeast. After consideration by FAA and users in the Sugar Land area, it was determined that additional restrictions to users would be created with minimal benefit. Additionally, the availability of prominent landmarks in the Houston Class B airspace area is minimal. Therefore, this suggestion is not being incorporated into the proposal. The current and planned boundary descriptions consist of a combination of prominent landmarks, latitude/longitude coordinates, and radials/arcs from the Humble VORTAC and the Point of Origin. The FAA believes that this mix of descriptors effectively assists pilots in identifying the lateral boundaries of the Houston Class B airspace area.

One commenter recommended that the FAA establish a VFR corridor directly above IAH to aid VFR aircraft transiting the Houston area. The FAA does not agree with the recommendation to establish a VFR corridor. The establishment of a corridor would reduce the efficiency of

managing aircraft operations in the Houston Class B airspace area. The airspace over and between IAH and HOU is the busiest area due to aircraft departing and arriving IAH and HOU. Adding additional complexity to this area would not be in the best interest of safety or management of aircraft operations.

One commenter suggested developing north-south VFR flyways to the east and west of IAH to help pilots transition the Houston terminal area while remaining clear of the Houston Class B airspace area. Since the inception of the Houston Class B airspace area, several low altitude VFR transition routes have been published on the reverse side of the Houston VFR terminal area chart to assist pilots.

Four commenters expressed concern with the planned VFR flyway west of the airport because the area is already heavily traveled by VFR aircraft arriving and departing the busy west satellite airports. These commenters felt that the flyway would encourage pilots to fly in an already congested area and would not enhance safety or expedite travel. The FAA has withdrawn its plan for a north-south VFR flyway to the west of IAH. If the proposed modifications are implemented, most of the existing flyways remain the same except for adjustments to the suggested altitudes in Area C and Area D, to the east and west of IAH.

Notwithstanding the proposed modifications in this notice, we will continue to work with affected users to develop new and/or modify current flyways to assist in navigating in this busy terminal area.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Houston Class B airspace area. Specifically, this action (depicted in the attached chart) proposes to expand the lateral limits of Area A to the east of IAH; expand the lateral limits of Area B to the east and west of IAH; expand the lateral limits of Area C to the east and west of IAH and to the southwest of HOU; and expand the lateral limits of Area D to the southwest of HOU to improve the containment of turbo-jet aircraft operating within the Houston Class B airspace area.

Area A. The FAA proposes to modify Area A by expanding the boundary of Area A to the northeast of IAH. This modification would incorporate into Area A, one segment of the Class B airspace that is currently contained within Area B. Specifically, to the northeast of IAH, the FAA proposes to

extend Area A to the north incorporating that part of Area B airspace that lies to the east on the extended instrument landing system (ILS) localizer course for Runway 26R, between the IAH 8 and 10 NM arcs. The effect of extending Area A as described would be to lower the floor of the Class B airspace in the affected segment from the current 2,000 feet mean sea level (MSL) to the surface. The reason for this change is to provide additional airspace needed to ensure that aircraft on the ILS approach to Runway 26R are contained within the Houston Class B airspace area.

Area B. The FAA proposes to modify Area B to the east and west of IAH. This modification would incorporate into Area B, two segments of the Class B airspace that are currently contained within Area C. Specifically, to the east of IAH, the FAA proposes to extend Area B to the east incorporating that part of Area C airspace that lies to the east on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 15 and 20 NM arcs. To the west of IAH, the FAA proposes to extend Area B to the west incorporating that part of Area C airspace that lies west on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 15 and 20 NM arcs. The effect of extending Area B as described would be to lower the floor of the Class B airspace in the affected segments from the current 3,000 feet MSL to 2,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for triple, simultaneous ILS approaches (with the required 1,000 feet vertical separation between aircraft) remain within the Houston Class B airspace area.

Area C. The FAA proposes to modify Area C to the east and west of IAH. This modification would incorporate into Area C, two segments of the Class B airspace that are currently contained within Area D. Specifically, to the east of IAH, the FAA proposes to extend Area C to the east incorporating that part of Area D airspace that lies to the east on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 20 and 30 NM arcs. To the west of IAH, the FAA proposes to extend Area C to the west incorporating that part of Area D airspace that lies to the west on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 20 and 30 NM arcs of the airport. The effect of extending Area C as described would be to lower the floor of the Class B airspace in the affected segments from the current 4,000

feet MSL to 3,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for triple, simultaneous ILS approaches (with the required 1,000 feet vertical separation between aircraft) remain within the Houston Class B airspace area. The FAA also proposes to modify Area C to the southwest of HOU by incorporating into Area C, one segment of the Class B airspace that is currently contained within Area D. Specifically, to the southwest of HOU, the FAA proposes to extend Area C to the southwest incorporating that part of Area D airspace that lies to the southwest on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 15 and 20 NM arcs. The effect of extending Area C as described would be to lower the floor of the Class B airspace in the affected segment from the current 4,000 feet MSL to 3,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS Runway 4 approach remain within the Houston Class B airspace area.

Area D. The FAA proposes to modify Area D by expanding the boundaries of Area D to the southwest of HOU. This modification would add a segment to the Class B airspace. Specifically, the FAA proposes to extend Area D to the southwest of HOU incorporating airspace that lies to the southwest on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 20 and 25 NM arcs. The effect of extending Area D as described would be to add a segment to the Class B airspace from 4,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS Runway 4 approach remain within the Houston Class B airspace area.

Area E. The FAA is not proposing any changes to the lateral dimensions of Area E.

These modifications would improve the management of aircraft operations in the Houston terminal area, and enhance safety by extending and lowering the floor of Class B airspace to protect a high volume of instrument approaches to IAH and HOU airports. Additionally, this proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System including the National Airspace Redesign project and the FAA's Operational Evolution Plan.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9K, Airspace Designations

and reporting Points, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its circumnavigation costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This NPRM would modify the Houston, TX, Class B airspace. The proposed rule would reconfigure the subarea boundaries, raise the altitude ceiling in certain segments of the airspace and lower the altitude floor in certain segments.

The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the Houston terminal area. These modifications would impose some costs (an additional 5 NM circumnavigation around the expanded controlled airspace) on operators of non-compliant aircraft. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this proposed rule would be cost-beneficial.

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 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 principal, 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 (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.

This proposed rule may impose some circumnavigation costs on individuals operating in the Houston terminal area; but the proposed rule would not impose any costs on small business entities. Operators of GA aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Houston terminal area. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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 proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of \$100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this proposed rule.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency

that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 3000—Subpart B—Class B Airspace
* * * * *

ASW TX B Houston, TX (Revised)

George Bush Intercontinental Airport (IAH)
(Primary Airport)
(Lat. 29°58'50" N., long. 95°20'23" W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38'44" N., long. 95°16'44" W.)
Ellington Field (EFD)
(Lat. 29°36'27" N., long. 95°09'32" W.)
Humble VORTAC (IAH)
(Lat. 29°57'25" N., long. 95°20'45" W.)
Point of Origin
(Lat. 29°39'01" N., long. 95°16'45" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 048° radial; thence east along the Humble VORTAC 048° radial to the 10-mile DME arc of Humble VORTAC; thence clockwise along the Humble VORTAC 10-mile DME arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45'37" N., long. 95°21'58" W.; to lat. 29°45'46" N., long. 95°11'47" W.; thence clockwise along the 8-mile arc from the Point of Origin to intercept the 056° bearing from the point of origin; thence southwest along the 056° bearing to the 5.1-NM fix from the point of origin, thence direct to the point of origin

131° bearing/5.8-mile fix from the point of origin; thence southeast along the 131° bearing from the point of origin to intercept the 7-mile arc from the point of origin; thence clockwise on the 7-mile arc to the 156° bearing from the point of origin; thence north along the 156° bearing to the 6-mile fix from the point of origin; thence clockwise along the 6-mile arc to the 211° bearing from the point of origin; thence south along the 211° bearing from the point of origin to the 8-mile arc from the point of origin; thence clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the point of origin; thence northeast along the 211° bearing to the 10-mile arc from the point of origin; thence counterclockwise along the 10-mile arc to the 156° bearing from the point of origin; thence southeast along the 156° bearing to the 15-mile arc from the point of origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and Interstate 10 (I-10); thence east on I-10 to the intersection of I-10 and the Humble VORTAC 20-mile DME arc; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and Humble VORTAC 048° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 242° radial and the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43'40" N., long. 95°27'40" W.; thence southwest along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence east to the

intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence clockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 058° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 048° radial; thence counterclockwise on the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 242° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43'40" N., long. 95°27'40" W.; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 211° bearing from the point of origin; thence clockwise along the 15-mile arc to the intersection of the 15-mile arc and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc and the 248° bearing from the point of origin; thence counterclockwise along the 20-mile arc from the point of origin to the intersection of the 20-mile arc and the 211° bearing from the point of origin; thence northeast along the 211° bearing from the point of origin to the intersection of the 10-mile arc and the 211° bearing from the point of origin; thence counterclockwise along the 10-mile arc to the intersection of the 10-mile arc and the 156° bearing from the point of origin; thence southeast along the 156° bearing to the 15-mile arc and 156° bearing from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and SH 59; thence southwest to and along SH 59 to

the intersection of the 15-mile arc from the point of origin and SH 59; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and SH 59; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 211° bearing and the 20-mile arc from the point of origin; thence northeast to the intersection of the 15-mile arc from the point of origin and the 211° bearing from the point of origin; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and I-10; thence east along I-10 to the intersection of the Humble VORTAC 20-mile DME arc and I-10; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence clockwise on the Humble VORTAC 30-mile DME arc until the intersection of the Humble VORTAC 30-mile DME arc and the 20-mile arc from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence southwest to the intersection of the 25-mile arc from the point of origin and the 245° bearing from the point of origin; thence counterclockwise on the 25-mile arc from the point of origin to the intersection of the 25-mile arc from the point of origin and the 211° bearing from the point of origin; thence northeast on the 211° bearing from the point of origin to the point of beginning; and that airspace beginning at the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence counterclockwise along the Humble VORTAC 20-mile DME arc to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the point of origin and SR 6; thence southeast along SR 6 to the intersection of SR 6 and FR 521; thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of beginning.

* * * * *

Issued in Washington, DC, on April 10, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03-9504 Filed 4-16-03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 335

[Docket No. 78N-036T]

RIN 0910-AA01

Antidiarrheal Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule that would amend the final monograph for over-the-counter (OTC) antidiarrheal drug products to include relief of travelers' diarrhea as an indication for products containing bismuth subsalicylate. Travelers' diarrhea occurs in travelers and is most commonly caused by an infectious agent. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by July 16, 2003; written or electronic comments on the agency's economic impact determination by July 16, 2003. Please see section VIII of this document for the effective date of any final rule that may publish based on this proposal.

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

FOR FURTHER INFORMATION CONTACT: Mary S. Robinson, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under 21 CFR 330.10(a)(6) an advance notice of proposed rulemaking to establish a monograph for OTC antidiarrheal drug products, together with the recommendations of the

Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which evaluated these drug classes. The proposed rule was published in the **Federal Register** of April 30, 1986 (51 FR 16138), as a tentative final monograph.

In response to the proposed rule, one manufacturer requested a travelers' diarrhea claim for bismuth subsalicylate (Ref. 1). Travelers' diarrhea is an acute diarrheal illness occurring among travelers, particularly those visiting developing countries where sanitation is suboptimal. Virtually all cases of travelers' diarrhea are caused by infectious agents, acquired through the ingestion of fecally contaminated food and/or water. Bacterial pathogens account for the great majority of episodes. Overall, one of the most common etiologic agents in travelers' diarrhea are enterotoxigenic *Escherichia coli*, which are responsible for 50 to 75 percent of episodes in certain areas of the world. Other recognized enteropathogens can be isolated from most of the remainder of cases, but with great regional differences in prevalence. Viruses (rotavirus, Norwalk-like virus) and protozoa (amebas, Giardia) are collectively responsible for fewer than 10 percent of cases of travelers' diarrhea (Ref. 2).

The clinical data for this claim are discussed in section II, comment 3 of the final rule for OTC antidiarrheal drug products, published elsewhere in this issue of the **Federal Register**. The agency has tentatively determined that the data support the use of bismuth subsalicylate in treating the symptoms of travelers' diarrhea. Accordingly, the agency is proposing to amend the final monograph to include "relieves travelers' diarrhea" as a monograph indication for OTC antidiarrheal drug products containing bismuth subsalicylate identified in § 335.10(a).

II. Summary of the Agency's Proposal for Travelers' Diarrhea

The agency proposes to add the following definition in § 335.3(c): "*Travelers' diarrhea*. A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent." The agency is also proposing to add the following labeling indication in § 335.50(b)(1) for products containing bismuth subsalicylate: "[* * * "controls" or "relieves"] [* * * "travelers' diarrhea"] * * *." Products may not be labeled with this claim until the monograph amendment process is completed and the agency publishes a final rule in a future issue of the **Federal Register**.

III. Analysis of Impacts

FDA has examined the impacts of the proposed 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). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation).

The agency tentatively concludes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this proposed rule is to provide an additional (optional) claim for OTC antidiarrheal drug products containing bismuth subsalicylate. Manufacturers can add this claim to their labeling when ordering new product labeling to be in compliance with the OTC antidiarrheal drug products final monograph. Adding this claim might result in additional product sales but, in any case, is completely optional. Thus, this proposed rule will not impose a significant economic burden on affected entities. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the

Regulatory Flexibility Act (5 U.S.C. 605(b)).

The agency invites public comment regarding any substantial or significant economic impact that this proposed rule would have on OTC antidiarrheal drug products. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging. Comments regarding the impact of this proposed rule should be accompanied by appropriate documentation. A period of 90 days from the date of publication of this proposed rule in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this proposed rule in the preamble to the final rule.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(a)).

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

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

VII. Request For Comments

Interested persons may submit written or electronic comments regarding this proposal and on the agency's economic impact determination to the Dockets Management Branch (*see ADDRESSES*) by (*see DATES*). Three copies of all written comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. References

The following references are on display in the Dockets Management Branch (*see ADDRESSES*) under Docket No. 78N-036D and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comments No. SUP 8, SUP 13, SUP 14, LET 21, LET 23, PR 3, and MT 2.

2. Wilson, J. D. et al., editors, *Harrison's Principles of Internal Medicine*, 12th ed., McGraw-Hill, Inc., New York, NY, pp. 523-524, 1991.

List of Subjects in 21 CFR Part 335

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 335 be amended as follows:

PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 335 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 335.3 is amended by adding paragraph (c) to read as follows:

§ 335.3 Definitions.

* * * * *

(c) *Travelers' diarrhea*. A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent.

■ 3. Section 335.50 is amended by revising paragraph (b)(1) to read as follows:

§ 335.50 Labeling of antidiarrheal drug products.

* * * * *

(b) * * *

(1) *For products containing bismuth subsalicylate identified in § 335.10(a)*. The labeling states [select one of the following: "controls" or "relieves"] [select one or both of the following: "diarrhea" or "travelers' diarrhea"]. If both "diarrhea" and "traveler's diarrhea" are selected, each shall be preceded by a bullet in accordance with § 201.66(b)(4) of this chapter and the heading "Uses" shall be used.

* * * * *

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9381 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA43

Financial Crimes Enforcement Network; Imposition of Special Measures Against the Country of Nauru

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and FinCEN are issuing this proposed rule, pursuant to the provisions of section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), to impose "special measures" against Nauru. Nauru was previously designated as a country of primary money laundering concern pursuant to section 311 on December 20, 2002, a pre-requisite for the imposition of special measures.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC, area may be delayed. Comments submitted by electronic mail may be sent to regcomments@fincen.treas.gov with the caption in the body of the text, "Attention: Section 311 Special Measures Regulations." Comments may also be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 311 Special Measures Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the

comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Office of the General Counsel, Department of the Treasury, (202) 622-1925; Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622-0480; or the Office of Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA) that are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act added section 5318A to the BSA. Section 5318A gives the Secretary of the Treasury (Secretary) the authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) as a "primary money laundering concern" and to impose certain "special measures" with respect to such jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s). On December 20, 2002, the Secretary designated Nauru as a jurisdiction of primary money laundering concern pursuant to section 5318A.¹

Section 5318A identifies the factors that the Secretary must consider and the agencies with which he must consult before designating a primary money laundering concern. Upon designation, section 5318A sets forth five potential special measures, the factors to be considered in selecting these measures, and the agencies with which the Secretary must consult before imposing special measures on the designee.

Section 5318A gives the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering concerns to encourage them to eliminate the bases for these concerns. Through the imposition of various special measures, the Secretary can gain more information about the concerned

¹ 67 FR 78859 (December 26, 2002).

jurisdictions, institutions, transactions, and accounts, can more effectively monitor the respective institutions, transactions, and accounts, and can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

A. Required Consultations, and Statutory Factors To Consider, Prior to Designating a Primary Money Laundering Concern

Prior to making a finding that a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) is a primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary is required by the statute to consider "such information as the Secretary determines to be relevant," including the following "potentially relevant [jurisdictional] factors":

- Evidence that organized criminal groups, international terrorists, or both, have transacted business in the jurisdiction;
- The extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to non-residents or non-domiciliaries of the jurisdiction;
- The substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction;
- The relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction;
- The extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;
- Whether the United States has a mutual legal assistance treaty with the jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and
- The extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

Once the Secretary, after having consulted with the Secretary of State and the Attorney General and having considered the factors set forth immediately above, has made a finding that reasonable grounds exist for concluding that a jurisdiction, etc., is a primary money laundering concern, one or more of the five statutorily permitted

"special measures" may be imposed following the appropriate consultations as described below.²

B. Special Measures

There are five specific "special measures" that can be imposed, either individually, jointly, or in any combination:

1. Recordkeeping and Reporting of Certain Financial Transactions

The Secretary may require domestic financial institutions and domestic financial agencies to maintain and/or to file reports concerning the aggregate amount of transactions or the specifics of each transaction with the primary money laundering concern. The records and reports shall include whatever information the Secretary deems to be relevant, including, but not limited to:

- The identity and address of the participants in a transaction or relationship;
- The legal capacity in which the participant is acting;
- The identity of the beneficial owner of the funds involved; and
- A description of the transaction.

2. Information Relating to Beneficial Ownership

The Secretary may require domestic financial institutions and domestic financial agencies "to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market)" involving the primary money laundering concern.

3. Information Relating to Certain Payable-Through Accounts

The Secretary may require domestic financial institutions and domestic financial agencies that open or maintain a payable-through account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

² For the purposes of this action, the required consultation was performed at the staff level.

4. Information Relating to Certain Correspondent Accounts

The Secretary can require domestic financial institutions and domestic financial agencies that open or maintain a correspondent account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

5. Prohibitions or Conditions on Opening or Maintaining Certain Correspondent or Payable-Through Accounts

The Secretary, after the respective consultations, can prohibit, or can impose conditions on, domestic financial institutions and financial agencies opening or maintaining in the United States any correspondent account or payable-through account for or on behalf of a foreign financial institution if the account involves the primary money laundering concern.

C. Additional Required Consultations, and Statutory Factors To Be Considered, in Advance of Imposing Any of the Special Measures

Prior to determining which special measure(s) to impose, the Secretary must consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate."

In determining generally which special measures to select and to impose, the Secretary, in consultation with the agencies and "interested parties" set forth above, must consider the following factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions; and

- The effect of the action on United States national security and foreign policy.

In addition to (1) the consultations for the designation of a primary money laundering concern, and (2) the consultations with the larger group of agencies for determining which of the special measures to impose, the Secretary, in determining specifically whether to impose the fifth special measure, must consult with the Secretary of State, the Attorney General, and the Chairman of Board of Governors of the Federal Reserve.

Last, the Secretary, in determining whether to apply one or more special measures only to a foreign institution(s), transaction(s), class(es) of transactions, or type(s) of account(s) within a particular jurisdiction—as opposed to applying the special measure more generally to the foreign jurisdiction itself—must consult with the Secretary of State and the Attorney General, and shall take into consideration the following “institutional factors”:

- The extent to which such financial institution(s), transaction(s), class(es) of transactions, or type(s) of account(s) are used to facilitate or promote money laundering in or through the jurisdiction;

- The extent to which such institutions, transaction(s), class(es) of transaction(s), or type(s) of account(s) are used for legitimate business purposes in the jurisdiction; and

- The extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

D. Procedures for Imposing Special Measures

Pursuant to section 5318A, any of the first four “special measures” can be imposed by order, regulation, or as otherwise “permitted by law.” If an order is issued, it can remain in effect for 120 days, unless authorized by a regulation promulgated before the end of the 120-day period. The fifth “special measure” can only be imposed through the issuance of a regulation.

II. Nauru

A. Background

Nauru is a small island of approximately 10 square miles that has a population of only approximately 12,000 people. At one point in time, the island had one of the highest per capita incomes in the developing world due to the mining and export of phosphates, a funding source expected to be completely depleted within five to ten years. As a result of the phosphate mining, the central part of the island, once thriving with vegetation and wildlife, has become uninhabitable and only the perimeter of the island remains available for habitation. This perimeter itself is vulnerable to storms and the movement of the ocean.

Although Nauru at one point in time was relatively wealthy, most of the funds emanating from the phosphate mining and originally contained in the country’s trust funds have been depleted through waste, poor investments, and fraud. As a result, the country has been borrowing heavily to finance fiscal deficits. Currently, the basic infrastructure of the island is so poor that electric, water, and phone service is available only on a limited and sporadic basis.

B. Offshore Shell Banks in Nauru

In an effort to raise funds, the island has resorted to the selling of passports (or “economic citizenships”) to non-resident foreigners, and, of greater concern, the selling of offshore banking licenses. Nauru is notorious for permitting the establishment of offshore shell banks with no physical presence in Nauru or in any other country. The evidence indicates that the entities that obtain these offshore banking licenses are subject to cursory and wholly inadequate review by the country’s officials, lack any credible on-going supervision, and maintain no banking records that Nauru or any other jurisdiction can review. In addition, one of the common requirements imposed by Nauru on these offshore banks is that they not engage in economic transactions involving either the currency of Nauru (currently the Australian dollar) or its citizens or residents. Consequently, these offshore shell banks have no apparent legitimate connection with the economy or business activity of Nauru. Indeed, only one bank appears to be physically located in Nauru, the “Bank of Nauru.” It is a local community bank that also serves as the Central Bank.

In 2000, FinCEN reported that 400 offshore banks had been granted

licenses by Nauru.³ It has been verified by on-site reports that a 1,000 square foot wooden structure is “home” to these banks that have no physical or legal residence anywhere in the world. The United States Government has been able to verify the names of 161 of the institutions licensed by Nauru.⁴ These are institutions for which the limited information available indicates that there is a strong likelihood that they are shell banks that are not subject to effective banking supervision.

C. FATF Designation

As a consequence of the current practices of Nauru, the Financial Action Task Force on Money Laundering (FATF) placed Nauru on the “Non-Cooperative Countries and Territories” (NCCT) list in June 2000 for maintaining an inadequate anti-money laundering regime. According to FATF, Nauru’s anti-money laundering weaknesses included, but were not limited to, the following: money laundering was not a criminal offense; offshore banks licensed by Nauru were not required to maintain customer identification or transaction records; Nauruan financial institutions were under no obligation to report suspicious transactions; and Nauru maintained strong bank secrecy laws. In July 2000, FinCEN issued an advisory to U.S. financial institutions, warning them to give enhanced scrutiny to all financial transactions originating in or routed to or through Nauru, or involving entities organized or domiciled, or persons maintaining accounts, in Nauru. In addition, the Office of the Comptroller of the Currency has issued 15 Alerts concerning offshore shell banks located in Nauru that were potentially attempting to engage in the business of banking in the United States without authority.

In June of 2001, FATF determined that Nauru had made insufficient progress towards remedying deficiencies in its anti-money laundering regime and warned Nauru that FATF would impose countermeasures by September 30, 2001, if Nauru failed to address these deficiencies.

On August 28, 2001, Nauru passed the Anti-Money Laundering Act of 2001 (the AML Act). On September 7, 2001, however, FATF indicated that the AML Act was not consistent with international standards because it did not apply to the numerous offshore

³ FinCEN Advisory Issue 21 (July 2000).

⁴ A list of these institutions was presented as Appendix A to the December 20, 2002, designation of Nauru as a jurisdiction of primary money laundering concern.

banks licensed by Nauru. In response to FATF pressure, on December 6, 2001, Nauru passed amendments to its AML Act. Nonetheless, according to FATF, the revised anti-money laundering law that now exists provides for a wholly inadequate anti-money laundering (AML) legislative and regulatory regime. In addition, Nauru has not yet addressed the remaining and most important deficiency of its AML legislation, that is, the inadequate procedures for licensing, regulating, and supervising its offshore banks. Thus, despite repeated warnings by FATF of its concern with Nauru's practices, and the clear consequences of not amending its practices, Nauru has not shouldered its responsibility to establish a sufficient AML regime.

On July 22, 2002, FATF wrote Nauruan officials to express FATF's concern about the practice in Nauru of issuing licenses to offshore shell banks and asked Nauru to cease licensing such entities. Nauru, however, has not ceased this activity.

D. Designation of Nauru as a Primary Money Laundering Concern and Imposition of Counter-Measures

After reviewing Nauru in light of the statutory factors set forth above, on December 20, 2002, the Treasury designated Nauru as a country of primary money laundering concern under section 5318A of the BSA.⁵ As a result of this designation, and based upon an analysis of the entirety of circumstances in Nauru, Treasury has determined that grounds exist for the imposition of a special measure upon Nauru. Based upon its consideration of the following factors, Treasury intends to impose on Nauru the fifth special measure authorized by section 5318A.

E. Factors To Consider in Imposing Special Measures Under Section 5318A

1. Whether Similar Action Has Been or Is Being Taken by Other Nations or Multilateral Groups

As a result of FATF's call on December 5, 2001, for the imposition of counter-measures against Nauru, 27 FATF member countries, including all G-7 countries, have taken action against Nauru.⁶

2. Whether the Imposition of Any Particular Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

Imposing sanctions against Nauru under section 5318A should not result in any competitive disadvantage, including any undue compliance cost or burden, to financial institutions in the United States. First, FATF member countries and the G-7 countries have already responded to FATF's call for the imposition of counter-measures against Nauru. Second, BSA section 5318(j) already requires the termination of correspondent accounts maintained by U.S. depository institutions and securities broker-dealers for foreign shell banks.⁷ As a result, since we understand that most, if not all, Nauru-licensed banks are shells (other than the Central Bank of Nauru), most transactions between Nauru and U.S. financial institutions have or should already have ceased.

3. The Extent to Which the Action or the Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving the Particular Jurisdiction, Institution, or Class of Transactions

The action against Nauru should have no significant adverse systemic impact on the international payment system or on legitimate business activities because of the small size of the economy and the absence of any meaningful, legitimate international business.

4. The Effect of the Action on United States National Security and Foreign Policy

The action is expected to have virtually no effect on United States national security or foreign policy.

The Secretary intends to impose the fifth special measure against Nauru pursuant to section 5318A. That special measure will prohibit covered U.S. financial institutions from opening or maintaining in the United States any correspondent account, or payable-through account, for a foreign financial institution if that account is maintained

representative offices of banks from Nauru, the country take into account the fact that the applicant bank is from an NCCT. Last, the countries have issued warnings to non-financial sector businesses that transactions with entities within NCCTs might run the risk of money laundering. (Source: FATF Reports).

⁷ See Part III.A. *infra*.

for, or on behalf of, a Nauru financial institution.

III. Section-by-Section Analysis

A. Overview

This proposed rule is designed to deny Nauru financial institutions access to the U.S. financial system through correspondent accounts. The proposed rule would prohibit certain U.S. financial institutions from maintaining correspondent accounts for, or on behalf of, a Nauru financial institution. Furthermore, if a U.S. financial institution covered by this proposed rule learns that a correspondent account that it maintains for a foreign bank is being used to provide services indirectly to a Nauru financial institution, the U.S. financial institution must terminate the correspondent account of the foreign bank.

On September 26, 2002, Treasury published in the **Federal Register** a final rule implementing sections 313 and 319(b) of the Act (the Section 313/319 Rule).⁸ That rule, among other things, prohibits certain financial institutions from providing correspondent accounts to foreign shell banks, and requires such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. There will be significant overlap between the Section 313/319 Rule and this proposed rule for those financial institutions covered by the Section 313/319 Rule, although they are quite distinct, as described below.

B. Section 103.184 Definitions

Correspondent account. Section 103.184(a)(1) of the proposed rule's definition of correspondent account is the definition contained in 31 U.S.C. 5138A(e) (as added by section 311 of the Act). Section 5138A(e) defines the term to mean an account established to receive deposits from, make payments on behalf of, a foreign financial institution, or handle other financial transactions related to such institution. In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign financial institution, including payable-through accounts. In the case of securities broker-dealers, futures commission merchants, introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign financial institution to

⁸ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

⁵ *Supra* n1.

⁶ Specifically, the countries have imposed stringent requirements for identifying clients and beneficial owners before business relationships are established with individuals or companies from Nauru. In addition, the countries have required enhanced and systematic reporting of financial transactions involving Nauru. Also, the countries have required that, in considering requests for approving the establishment in FATF member countries of subsidiaries or branches or

engage in: trading in securities and futures, funds transfers, or other types of financial transactions. Treasury is using the same definition for purposes of the proposed rule as that established in the Section 313/319 Rule with two notable exceptions: (1) the term also applies to such accounts maintained by futures commission merchants and introducing brokers as well as mutual funds; and (2) the definition applies to such accounts maintained for any Nauru financial institution, as opposed to just Nauru banks.

Covered financial institution. Section 103.184(a)(2) of the proposed rule defines covered financial institution to include those financial institutions included in the definition under the Section 313/319 Rule, as well as futures commission merchants, introducing brokers, and mutual funds. The term is therefore defined to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to be registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5) that is registered, or required to register, with the SEC pursuant to that Act. Futures commission merchants, introducing brokers, and mutual funds are being added in recognition of their offering of correspondent accounts within the meaning of 31 U.S.C. 5318A(e).

Nauru financial institution. Section 103.184(a)(3) of the proposed rule defines Nauru financial institution to include all foreign banks licensed by Nauru (other than the Central Bank of Nauru) and any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers: trading in (1) money market instruments; (2) exchange, interest rate, and index instruments; (3) transferable securities; and (4) commodity futures. The definition of foreign bank is that contained in 31 CFR 103.11(o). The inclusion in this definition of financial institutions other than depository

institutions is done in recognition that these activities are alternate viable routes for money laundering activity.

C. Requirements for Covered Financial Institutions

Prohibition on correspondent accounts. Section 103.184(b)(1) of the proposed rule would prohibit all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a Nauru financial institution. Based on Treasury's understanding that the only banks in Nauru (other than the Central Bank) are shell banks, depository institutions and securities broker-dealers are already subject to essentially this same prohibition under the Section 313/319 Rule, subject to the inclusion in the proposed rule of certain additional Nauru financial institutions. The prohibition would require the additional covered financial institutions to review their account records to determine that they have no customers that are Nauru financial institutions.

Termination of known indirect accounts. In addition, section 103.184(b)(2) of the proposed rule would require a covered financial institution to terminate immediately any correspondent account which it currently establishes, maintains, administers, or manages for, or on behalf of, a foreign bank, if it obtains actual knowledge that the foreign bank is using this account to provide banking services indirectly to a Nauru financial institution. The proposed rule would not require covered financial institutions to review or investigate every account they maintain for foreign banks to ascertain whether such foreign banks are providing services to Nauru financial institutions. Instead, covered financial institutions must terminate such an account only if they become aware that a foreign bank is using its correspondent account to provide banking services indirectly to a Nauru financial institution. This distinction is significant and in contrast to the obligation under the Section 313/319 Rule, which imposed a new due diligence requirement on covered financial institutions to take reasonable steps to ensure that their foreign bank customers were not providing services to shell banks. This proposed rule would rely on existing due diligence procedures and not require covered financial institutions to make a separate inquiry of their foreign bank customers concerning Nauru financial institutions.

Reporting and recordkeeping not required. Section 103.184(b)(3) of the

proposed rule states that nothing in the proposed rule imposes any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. If a covered financial institution that is subject to the Section 313/319 Rule (depository institution or securities broker-dealer) has previously received a certification or other information from a Nauru bank pursuant to that Rule in which it purports not to be a shell bank, this proposed rule would still require the termination of the account. More specifically, the safe harbor provisions of the Section 313/319 Rule will have no application to the measures that would be imposed under this proposed rule.

Section 5318A authorizes Treasury to prohibit a broad range of financial dealings with a country of primary money laundering concern. Indeed, the statute affords Treasury the authority to require the termination of any correspondent account that involves the primary money laundering concern. In the proposed rule, Treasury has taken a relatively conservative approach to this countermeasure by requiring only the termination of direct correspondent accounts with a Nauru financial institution and the termination of accounts for other foreign banks only when the U.S. institution has actual knowledge that the account is being used to provide services to a Nauru financial institution indirectly. In view of all the facts and circumstances, this more limited application is appropriate. Treasury notes, however, that the circumstances surrounding future designations may warrant the imposition of countermeasures that reach much further into nested financial relationships with the primary money laundering concern.

IV. Public Comments Requested

The Department of the Treasury invites comments from all interested persons, on all aspects of this rulemaking, and specifically seeks comments from the financial sector, including domestic financial institutions and domestic financial agencies, concerning the appropriateness and effectiveness of this particular special measure, the ability to comply with special measure five on Nauru, and any competitive disadvantage, cost, or burden associated with compliance.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial

number of small entities. Financial institutions described in section 103.175(f)(2) are currently prohibited from establishing or maintaining correspondent accounts in the United States for, or on behalf of, a foreign shell bank. This rule would make it clear that all banks licensed by Nauru (other than the Central Bank of Nauru) are shell banks notwithstanding that such a bank may have provided a certification that it is not a shell bank.

With respect to futures commission merchants, introducing brokers, and open-end investment companies, Treasury and FinCEN believe that few, if any, such businesses are likely to maintain a correspondent relationship with a bank licensed by Nauru. Treasury and FinCEN specifically request comments on the extent to which the prohibition contained in the proposed rule would affect such businesses.

VI. Executive Order 12866

This final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is proposed to be amended by adding § 103.184 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.184 Special measures against Nauru.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii) and (2).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or

required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company that is an open-end company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Nauru financial institution* means the following:

(i) Any foreign bank, as that term is defined in § 103.11(o), licensed by Nauru, but does not include the Central Bank of Nauru; and

(ii) Any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers:

(A) Trading in money market instruments;

(B) Trading in exchange, interest rate, and index instruments;

(C) Trading in transferable securities; or

(D) Trading in commodity futures trading.

(b) *Requirements for covered financial institutions—(1) Prohibition on correspondent accounts.* A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a Nauru financial institution.

(2) *Termination of correspondent accounts.* A covered financial institution shall terminate any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank upon actual knowledge that the correspondent account is being used by the foreign bank to provide banking services indirectly to a Nauru financial institution.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by applicable law or regulation.

Dated: April 10, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–9410 Filed 4–16–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2001–10881]

RIN 1625–AA36

Drawbridge Operation Regulations; Amendment to Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing changes to its drawbridge regulations. These proposed changes include provisions for placing drawbridges on winter operations schedules in the Eighth and Ninth Coast Guard District and adding a new deviation procedure for drawbridge closures for local public events. We also propose to add several definitions, rewrite some sections and to make technical and conforming changes to this part. The last major update to the drawbridge regulations in Part 117 was in 1984. The Coast Guard proposes to amend 33 CFR part 117 to provide clearer language and more easily understood regulatory requirements.

DATES: Comments and related material must reach the Docket Management Facility on or before June 2, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 16, 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) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

(2) By mail to the Docket Management Facility (USCG–2001–10881), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) 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.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

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: Mr. Chris Jaufmann, Office of Bridge Administration, United States Coast Guard Headquarters, (202) 267-0368. 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-2001-10881, 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 that 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.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for

a meeting by writing to the Office of Bridge Administration at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would be helpful, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The last major update to the drawbridge regulations in part 117 was in 1984. The Coast Guard proposes to amend 33 CFR part 117 to provide clearer language and more easily understood regulatory requirements.

Discussion of Proposed Rule

The Coast Guard proposes to revise the winter operations provisions for drawbridges in the Ninth Coast Guard District and to expand those provisions to include drawbridges in the northern areas of the Eighth Coast Guard District, which are also affected by winter weather conditions. We propose adding a new deviation for drawbridge closures for local public events; to add six new definitions to the part; making a substantive revision to the regulation governing the removable span bridge across Lindsey Slough; and including in subpart A a specific requirement that all drawbridges be cycled a minimum of once every six months. We also propose to rewrite and reorganize sections in subpart A, and to make technical and conforming changes in subpart B.

Winter Operations in the Eighth and Ninth Coast Guard Districts

The Coast Guard proposes to revise § 117.45, *Operation during winter season in the Great Lakes area*. The revision would clarify the existing procedures for placing drawbridges in the Ninth Coast Guard District on advance notice operations during the winter season. This revision would allow the same procedures for placing drawbridges in the Eighth Coast Guard District on advance notice operation during the winter season. Historically, the winter season in both of these Districts runs from early December to early April, but winter conditions could start earlier or end later in the season.

Depending on the winter weather conditions, certain drawbridges in both

Coast Guard Districts are placed on winter operations schedules each year, although not all of the drawbridges are placed on winter operations at the same times during the winter season. Some of these drawbridges have specific operating requirements in subpart B, while others operate on signal as required by 33 CFR 117.5, so a single permanent deviation cannot cover all these bridges. Historically, 28 bridges for the Eighth District and between 10 and 20 bridges for the Ninth District are placed on winter operations each year.

This proposed revision to § 117.45 would provide that the District Commanders in the Eighth and Ninth Coast Guard Districts may issue deviations from existing regulations, authorizing 12-hour advance notice operations for these bridges and allowing them to be untended during the published dates for winter operations for the bridges. The deviation provision would allow the District Commanders the flexibility both to maximize the use of the waterways for navigation during mild winters and the ability to allow the drawbridges to go to winter operations schedules earlier based on the early onset of winter conditions. Each year, prior to the start of the winter operations schedules for these bridges, the District Commanders would publish a notice of deviation in the **Federal Register**.

Drawbridge Closures for Local Public Events

The Coast Guard proposes to add a deviation for local public events that need a drawbridge closure of six hours or less. The short duration and frequency of local public events, such as street parades, marathons, races, or sporting events, make a deviation for drawbridge closures of six hours or less an appropriate method for authorizing the change in operations and giving the public notice of these temporary closures.

The data in Figure 1 shows that the length of closure for most local public events during 1999 and 2000 was less than six hours.

FIGURE 1

Year	No. of drawbridges affected	< = 6 hours event	> 6 hours event
1999	44	42	2
2000	39	39	0

For this proposed deviation, a single event could last a maximum of two days; however, the combined drawbridge closure time for both days of a single event could not exceed a total of six hours. If the authorized closure period for an event is broken into separate time periods on the same day or on consecutive days, the drawbridge would provide normal openings for navigation between the authorized closures. This proposed deviation would be in a new § 117.37 *Temporary change in drawbridge operating schedule for local public events*.

If the temporary drawbridge closure totals more than six hours, the District Commander would issue a temporary rule for the event period.

The District Commander would also issue a temporary rule for events totaling less than six hours, for which a notice of the deviation cannot be published in the **Federal Register** before the start of the event.

Cycling of Drawbridges

To clarify the bridge owner's responsibility to operate drawbridges at "sufficient intervals", the Coast Guard proposes to rewrite § 117.7(b)(3) to require the cycling of the drawbridges at least once every six months. This required cycling may be in conjunction with routine operation or maintenance of the bridge and will ensure that a drawbridge that opens infrequently still operates properly.

Definitions

The Coast Guard proposes to add six definitions in subpart A to be used throughout part 117. These definitions would clarify the terms "Automated drawbridge", "Deviation", "Public vessel", "Remotely operated drawbridge", "Removable drawspan bridge", and "Untended" in this part. We also propose to reword the four definitions currently in § 117.4—"Appurtenance", "Lowerable", "Nonstructural" and "Not essential to navigation" for plain language.

Lindsey Slough

The Coast Guard proposes to remove the word "maintenance" from § 117.165 there by requiring any vessel wanting to pass through the removable span bridge, across Lindsey Slough, to give a 72-hour advance notice.

The bridge was constructed in the 1960's and the permit to build the bridge dictated the opening requirement. A final rule setting a time requirement of 72 hours advance notice for passage was published in 49 FR 17452, on April 24, 1984. At the time, the primary focus was on access for

maintenance barges and the term maintenance was included in the rule. However, the removable span has never been removed for any vessel and to do so would require a barge with a crane to be brought in to remove the span. Because the bridge has not had a request to open since 1984, the proposal to remove the term maintenance and require all vessels to provide 72-hours advance notice would seem to meet the reasonable needs of navigation and would not cause any undue burden on navigation.

Other Proposed Changes

Clarifications

The Coast Guard proposes to add three new sections to clarify existing requirements in part 117. We propose to add § 117.8 to explain how to request a permanent change to the operation of a drawbridge; § 117.36 to more clearly explain the closure requirements of a drawbridge for emergency repair and § 117.42 to clarify the requirements for remotely operated and automated drawbridges.

Section 117.35 would be rewritten to more clearly explain the closure requirements of a drawbridge for scheduled and unscheduled repairs.

This proposed rule would also rewrite the following sections to clarify their requirements: §§ 117.39, 117.41, 117.43, and 117.51.

Consolidations

The Coast Guard proposes to consolidate some sections in part 117 to provide clear guidance of their requirements and to remove redundant language. Sections § 117.3 and § 117.53 would be combined with § 117.1 to explain the purpose of part 117. The requirements in § 117.57 would be moved to subpart A and redesignated as § 117.40 since these requirements apply generally to drawbridges operated on advance notice.

Edits

The Coast Guard proposes to make minor corrections and edits, renumber some sections, and make technical and conforming changes through out the part. The sections that would be affected are: §§ 117.5, 117.31, 117.55, 117.145, 117.155, 117.193, 117.997(b)(2)(i) and (d)(2)(i).

Renumbering

The section headings for §§ 117.486, 117.487, and 117.488 are out of alphabetical order. These would be renumbered.

Similarly, this proposed rule would also redesignate §§ 117.731 and 117.731a as §§ 117.730 and 117.731.

Remove

Some sections and paragraphs are currently designated as "Reserved" or "Removed". This proposed rule would remove them and renumber the sections and redesignate paragraphs as necessary: (§§ 117.261

(e),(f),(h),(i),(m),(n),(q),(y),(ii),(pp), 117.271(b), 117.287(d)(3), 117.867, 117.881(b), 117.885, 117.891, 117.1039.)

Drawbridges that have been removed from the waterway or replaced by a fixed drawbridge no longer require regulations. These sections and paragraphs will be removed from subpart B. (§§ 117.261(c), (r), (hh), (nn), 117.277, 117.535, 117.620(a), 117.739(o) and (p)(3), 117.775, 117.783, 117.795(c), 117.821(a)(1), 117.907.) The Federal Street Bridge in § 117.713(a) has been replaced with a fixed bridge.

Some sections and paragraphs make unnecessary distinctions between tugs and tows and commercial and recreational vessels. This proposed rule would remove: §§ 117.325(b), 117.588(c), 117.618(b), 117.620(c), 117.869(a)(1), (a)(2).

Reference to clearance gauges in § 117.733(a) and § 117.949, are the same as the requirements in § 118.160. The Coast Guard proposes to remove the reference to clearance gauges from §§ 117.733(a) and 117.949.

The information in Appendix A is available not only on the Bridge Administration (G-OPT) Web site, <http://www.uscg.mil/hq/g-o/g-opt/g-opt.htm>, but is also published in the Coast Pilots. The Coast Guard proposes to remove Appendix A this part.

References to Federal, State, and local government vessels, emergency vessels or vessels in distress, which repeats requirements contained in § 117.31, would be removed from: §§ 117.181, 117.187(b), 117.195, 117.211(a)(3), 117.219(a), 117.221(a), 117.224(a), 117.225, 117.261(a), 117.269, 117.273(a) and (b), 117.287(a), 117.289, 117.291, § 117.305, 117.311, 117.313(a), 117.315(a) and (b), 117.317(a), 117.325(a) and (b), 117.353(a), 117.531(a)(1), 117.571(d), 117.573(c), 117.588(a), 117.597, 117.605(c), 117.620(a), 117.703(a), 117.731(c), 117.736, § 117.738(a)(2), 117.745(a)(1), 117.789(a), 117.791(a)(3), 117.797(a), 117.799(a), 117.823(a)(3), 117.843(a)(3), 117.892, 117.911(a), 117.968, 117.977, 117.993(a), 117.997(f)(2) and (g), § 117.1023(b).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and

does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There will be no cost to the general public. This proposal is to provide a more user-friendly part 117 that will remove redundancies and regulations that are no longer functional, make corrections and amendments, and provide clearer language for the user.

The addition of a new provision that changes approximately 30 drawbridges from open-on-demand to advance notice during the winter season, throughout the Eighth and Ninth Coast Guard Districts, will not have a significant effect on the economy. Commercial and recreational vessel traffic is at its least during this time of the year.

The development of a new deviation for short-term events will not have a significant impact on the economy. This deviation allows the district commander to provide notice to the public in a timely manner without a possible 120 day long rule making process for an event that could last as short as 15 minutes and as long as six hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rulemaking 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. 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 affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard would assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. 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 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, a description of those who must collect the information, and an estimate of the total annual burden 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: Supporting Statement For Request For OMB Approval Under The Paperwork Reduction Act and 5 CFR 1320 SF-83-I: Changes To Drawbridge Operations

Summary of the Collection of Information: Under the provisions of 33 U.S.C. 499, the Secretary of Homeland Security is mandated to prescribe rules and regulations for governing the closures of drawbridges to navigation. This authorization was delegated to the Commandant of the Coast Guard under Department of Homeland Security

Delegation number 0170 and the drawbridge operating regulations are set out in 33 CFR part 117. To change any regulation, 5 U.S.C. 553 requires rule making to be published in the **Federal Register** and that the notice shall include a statement of time, place, and nature of public rule making proceedings. The information collected for the rule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR 117.35(a), 117.37(b), and 117.39.

Need for Information: To change any regulation, 5 U.S.C. 553 requires rule making to be published in the **Federal Register**. The information collected for the rule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR 117.35(a), 117.37(b), and 117.39.

Proposed Use of Information:

- Determine if the request to close the drawbridge is necessary.
- Coordinate the bridge closure period(s) between the bridge owner and navigational traffic.
- Notify the public and navigational community of the date, time, length of closure periods, and reason for closure.

Description of the Respondents: State governments, Local municipalities, railroads.

Number of Respondents: 150.

Frequency of Response: 150.

Burden of Response: Nationwide, approximately 20,000 bridges are primarily owned by States, local municipalities and railroads. The Bridge Administration receives approximately 150 requests from approximately 150 bridge owners per year to authorize changes to general or specific drawbridge regulations. The estimated "annual hour burden", nationwide is therefore approximately 150 hours (1 hour per request). This burden estimate is based on the length of time it takes to generate a letter containing the required information for the requested change, to the District Bridge Administrator. The letter is prepared by someone at the clerical level, equivalent to a (GS-7). Therefore, we estimate that the average annual cost to prepare 150 letters with a change of request would be \$4,350, as described below:

Estimate of Total Annual Burden:

Personnel	Per request			Total (per year)		
	Hourly rate *	Hours	Total	No. of requests	Hours	Cost
Clerical Level equivalent to (GS-7)	\$29	1	\$29	150	150	\$4,350
Totals		1	29	150	150	4,350

*Based on hourly rates for government personnel in Enclosure (2) to COMDTINST 73101.1F.

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

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule would not have implications for Federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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 economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.JC, this proposed rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. Revise the authority citation for part 117 to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; and 33 CFR 1.05–1(g).

2. Revise § 117.1 to read as follows:

§ 117.1 Purpose.

(a) This part prescribes the general and special drawbridge operating regulations that apply to the drawbridges across the navigable waters of the United States and its territories. The authority to regulate drawbridges across the navigable waters of the United States is vested in the Secretary of Homeland Security.

(b) Subpart A of this part contains the general use, operation, and requirements that apply to all drawbridges.

(c) Subpart B of this part contains the requirements for operation of individual drawbridges. These requirements are in addition to or vary from the general requirements in subpart A of this part. Specific sections in subpart B of this part which vary from a general requirement in subpart A of this part supersede the general requirement. All other general requirements in subpart A of this part that are not at variance, apply to the bridges listed in subpart B of this part.

§ 117.3 [Removed]

3. Remove § 117.3.

4. Revise § 117.4 to read as follows:

§ 117.4 Definitions.

The following definitions apply to this part: *Appurtenance* means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel's piloting, propelling, controlling, or collision avoidance capabilities.

Automated drawbridge means a drawbridge that is operated by an automated mechanism, not a drawtender. An automated drawbridge is normally kept in the open to navigation position and closes when the mechanism is activated.

Deviation means a District Commander's action authorizing a drawbridge owner to temporarily not comply with the drawbridge opening requirements in this part.

Lowerable means the nonstructural vessel appurtenance can be mechanically or manually lowered and raised again. The term *lowerable* also applies to a nonstructural vessel appurtenance, which can be modified to

make the item flexible, hinged, collapsible, or telescopic so that it can be mechanically or manually lowered and raised again.

Nonstructural means that the item is not rigidly fixed to the vessel and could be relocated or altered.

Not essential to navigation means that nonstructural vessel appurtenance, when in the lowered position, would not adversely affect the vessel's piloting, propulsion, control, or collision avoidance capabilities.

Public vessel means a vessel that is owned and operated by the United States Government and is not engaged in commercial service, as defined in 46 U.S.C. 2101.

Remotely operated drawbridge means a drawbridge that is operated by remote control from a location away from the bridge.

Removable span bridge means a bridge that requires the complete removal of a span by means other than machinery installed at the bridge.

Untended means that there is no drawtender at the bridge.

5. Revise § 117.5 to read as follows:

§ 117.5 When the drawbridge shall open.

Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart.

6. Revise § 117.7 to read as follows:

§ 117.7 General requirements of drawbridge owners.

Drawbridge owners must:

(a) Provide the necessary drawtender(s) for the safe and prompt opening of the drawbridge.

(b) Maintain the working machinery of the drawbridge in good operating condition.

(c) Cycle the drawspan(s) a minimum of once every six months to assure their satisfactory operation.

(d) Ensure that the drawbridge operates in accordance with the requirements of this part.

7. Add § 117.8 to read as follows:

§ 117.8 Permanent changes to drawbridge operation.

(a) A drawbridge owner may request a permanent change to a drawbridge operation requirement in this part by submitting a written request, with appropriate information and supporting documentation, to the District Commander.

(b) If after evaluating the request, the District Commander determines that the requested change is not needed, he will inform the drawbridge owner in writing

and provide the reasons for denial of the requested change.

(c) If the District Commander decides that a change may be needed, he or she will begin a rulemaking.

8. In § 117.31 revise the section heading and paragraph (a) to read as follows:

§ 117.31 Drawbridge operations for emergency vehicles and emergency vessels.

(a) A drawtender, who receives notification that an emergency vehicle is responding to an emergency situation, must make all reasonable efforts to have the drawspan closed at the time the emergency vehicle arrives.

* * * * *

9. Revise § 117.35 to read as follows:

§ 117.35 Change in drawbridge operating schedule for maintenance.

(a) *Scheduled maintenance.* (1) To temporarily change the drawbridge-operating requirements to perform scheduled maintenance, the drawbridge owner must submit a written request to the District Commander for approval of the change.

(2) The request must describe the maintenance to be performed and the dates and times scheduled for the start and end of the maintenance period.

(3) Requests should be submitted as early as possible but not later than 90 days before start of the scheduled maintenance.

(b) *Unscheduled maintenance.* (1) If unforeseen mechanical or structural problems require a temporary change to the drawbridge-operating schedule to perform unscheduled maintenance, the drawbridge owner must obtain approval from the District Commander.

(2) The request must describe the unforeseen mechanical or structural problems, the maintenance to be performed, and the dates and times scheduled for the start and end of the maintenance period.

(3) Requests for schedule changes under this paragraph should be submitted at least 30 days before the start of the maintenance period.

(c) The District Commander's decision is normally forwarded to the bridge owner within five working days after receipt of the request. If the request is denied, the reasons for the denial will be set out in the District Commander's decision letter.

(d) *Publication.* (1) For maintenance lasting not more than 60 days, the District Commander may issue a deviation approval letter to the bridge owner and publish a "Notice of deviation from drawbridge regulation" in the **Federal Register** prior to the start of the maintenance period.

(2) For maintenance lasting more than 60 days, or for shorter periods when a "Notice of deviation from drawbridge regulations" cannot be published before the start of the maintenance period, the District Commander will issue a temporary rule prior to the start of the maintenance.

(3) The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

10. Add § 117.36 to read as follows:

§ 117.36 Closure of drawbridge for emergency repair.

(a) When a drawbridge becomes inoperable or should be immediately rendered inoperable because of mechanical failure or structural defect, the drawbridge owner must notify the District Commander without delay and give the reason for the emergency closure of the drawbridge.

(b) The District Commander will notify mariners about the bridge status through Broadcast Notices to Mariners, Local Notice to Mariners and any other appropriate local media.

(c) Repair work under this section shall be performed with all due speed in order to return the drawbridge to operation as soon as possible.

11. Revise § 117.37 to read as follows:

§ 117.37 Temporary change in drawbridge operating schedule for local public events.

(a) To temporarily close a drawbridge to navigation during local public events, such as a street parade, marathon, race, or sporting event, the drawbridge owner must submit a request to the District Commander for approval of the change.

(b) Requests for a change to the operating schedule of a drawbridge should be submitted as early as possible before the event.

(c) The request must include a description of the event and the dates and times of the period the drawbridge is to remain closed.

(d) The District Commander's decision is normally forwarded to the bridge owner within five working days after receipt of the request. If the request is denied, the reasons for the denial will be set out in the District Commander's decision letter.

(e) If the temporary drawbridge closure is for a single event totaling more than six hours, the District Commander will issue a temporary rule for the event period. The District Commander will also issue a temporary rule for an event totaling less than six hours, which does not meet the requirements in paragraph (f) of this section for issuing a deviation.

(f) The District Commander may issue a deviation from the regulations in this part—

(1) If the authorized closure for a single event covers no more than two days and the total bridge closure time for both days does not exceed a total of six hours;

(2) If temporary drawbridge closure is for six hours or less for a single event, and;

(3) If the District Commander can publish a notice of the deviation in the **Federal Register** before the start of the event.

(g) The drawbridge will return to its regular operating schedule immediately at the end of the designated time period.

(h) If the authorized closure period for an event is broken into separate time periods on the same day or on consecutive days, the drawbridge should provide normal openings for navigation between the authorized closures.

(i) The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

12. Revise § 117.39 to read as follows:

§ 117.39 Closure of drawbridge due to infrequent requests for openings.

(a) When there have been no requests for drawbridge openings for at least two years, the drawbridge owner may request that the District Commander authorize the drawbridge to remain closed to navigation and to be untended.

(b) Requests to remain closed to navigation must be submitted in writing to the District Commander for approval. The District Commander may authorize the closure and set out conditions, in addition to the requirements in paragraph (c) of this section.

(c) When drawbridges are authorized by the District Commander to remain closed to navigation and to be untended, the drawbridge owner must—

(1) Maintain the drawbridge working machinery in good operating condition;

(2) Cycle the drawspan(s) at least once every six months to assure their satisfactory operation and;

(3) Return the drawbridge to normal operations when required to do so by the District Commander.

(d) Drawbridges authorized under this section to remain closed to navigation and untended will be identified in subpart B of this part.

13. Add § 117.40 to read as follows:

§ 117.40 Advance notice for drawbridge opening.

When a drawbridge requires advance notice for opening, the drawbridge owner shall open the drawbridge at the

requested time and allow for reasonable delay in arrival experienced by the vessel giving the advance notice.

(a) 14. Revise § 117.41 to read as follows:

§ 117.41 Maintaining drawbridges in the fully open position.

(a) Drawbridges permanently maintained in the fully open to navigation position may discontinue drawtender service as long as the drawbridge remains fully open to navigation. The drawbridge must remain in the fully open position until drawtender service is restored.

(b) If a drawbridge is normally maintained in the fully open to navigation position, but closes to navigation for the passage of pedestrian, vehicular or rail traffic, the drawbridge must be tended.

15. Add § 117.42 to read as follows:

§ 117.42 Remotely operated and automated bridges.

Upon written request by the owner of a drawbridge the District Commander may authorize a drawbridge to operate under an automated system or from a remote location. After approval, a description of the full operation of the remotely operated or automated drawbridge will be added to subpart B of this part.

16. Revise § 117.43 to read as follows:

§ 117.43 Deviation for testing drawbridge operation changes.

(a) To evaluate the need for a permanent change in regulations for drawbridges, the District Commander may authorize a temporary deviation from the drawbridge operations. The deviation, which may not exceed 90 days, will test a suggested change and seek public comment.

(b) A deviation to test a requested change to the drawbridge operating requirements may be initiated by the District Commander or may be requested by the public or the drawbridge owner.

(c) The District Commander may issue a deviation approval letter to the bridge owner and publish a "Notice of deviation from drawbridge regulation" in the **Federal Register** at least 30 days prior to the start of the test period. The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

(d) When the test deviation period ends, the drawbridge will resume its normal operation.

17. Revise § 117.45 to read as follows:

§ 117.45 Winter operations.

(a) The Commanders, Eighth and Ninth Coast Guard Districts, may issue deviations from regulations that authorize drawbridges located in their respective Coast Guard District area, to require 12 hours advance notice for drawbridge openings and to be untended during the winter season.

(b) Each year, before drawbridges in the Eighth and Ninth Coast Guard Districts begin winter season operations, the District Commander will publish a notice or notices of deviation authorizing the winter operations schedule in the **Federal Register** giving:

(1) The name and location of the bridge(s) affected;

(2) The period of time covered; and

(3) The telephone number of the party to whom requests for openings are given.

(c) The District Commander may provide additional notice of these deviations in the Local Notices to Mariners and other appropriate media.

18. Revise § 117.51 to read as follows:

§ 117.51 General.

The drawbridges in this subpart are listed by the waterway they cross and by the state in which they are located. Waterways are arranged alphabetically by state. The drawbridges listed under a waterway are generally arranged in order from the mouth of the waterway moving upstream. The drawbridges on the Atlantic Intracoastal Waterway are listed from north to south and on the Gulf Intracoastal Waterway from east to west.

§ 117.53 [Removed]

19. Remove § 117.53.

20. In § 117.55 revise paragraph (a) to read as follows:

§ 117.55 Posting of requirements.

(a) The owner of each drawbridge under this subpart, other than removable span bridges, shall ensure that a sign summarizing the requirements in this subpart applicable to the bridge is posted both upstream and downstream of the bridge. The requirements to be posted need not include those in subpart A of this section or §§ 117.51 through 117.59.

* * * * *

§ 117.57 [Removed]

21. Remove § 117.57.

22. Revise § 117.145 to read as follows:

§ 117.145 Burns Cutoff.

The Daggett Road Drawbridge, mile 3.0 at Stockton, must open on signal if at least 48 hours notice is given to the Port of Stockton.

23. Revise § 117.155 to read as follows:

§ 117.155 Eureka Slough.

The Northwestern Pacific Railroad Company Drawbridge, mile 0.3 at Eureka, need not be opened for the passage of vessels. The owner or agency controlling the bridge must restore the drawbridge to full operation within six months of notification from the District Commander.

24. Revise § 117.165 to read as follows:

§ 117.165 Lindsey Slough.

The center span of the Hastings Farms highway bridge, mile 2.0 between Egbert and Lower Hastings Tracts, must be removed for the passage of vessels if at least 72 hours notice is given to the Hastings Island Land Company office at Rio Vista.

§ 117.181 [Amended]

25. In § 117.181 remove the last sentence.

§ 117.187 [Amended]

26. In § 117.187 remove the last sentence in paragraph (b).

27. Revise § 117.193 to read as follows:

§ 117.193 San Leandro Bay.

The California Department of Transportation Highway drawbridges, mile 0.0 and the City of Alameda bicycle bridge, mile 0.1 between Alameda and Bay Farm Island, must open on signal; except that, from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m., the drawbridges must open on signal if at least 12 hours notice is given. Notice must be given to the drawtender of the Bay Farm Island bridges from 8 a.m. to 5 p.m. and to the drawtender of the Park Street bridge at Alameda at all other times. The draws need not be opened for the passage of vessels from 9 p.m. to 5 a.m.

§ 117.195 [Amended]

28. In § 117.195 remove the last sentence.

29. In § 117.211 revise paragraph (a)(3) to read as follows:

§ 117.211 Mystic River.

(a) * * *

(3) Public vessels of the United States, commercial vessels must be passed immediately at any time; however, the opening may be delayed no longer than eight minutes to allow trains, which have entered the drawbridge block and are scheduled to cross the bridge without stopping, to clear the block.

* * * * *

30. In § 117.219 revise paragraph (a) to read as follows:

§ 117.219 Pequonnock River.

(a) Public vessels of the United States shall be passed through as soon as possible.

* * * * *

31. In § 117.221 revise paragraph (a) to read as follows:

§ 117.221 Saugatuck River.

(a) Public vessels of the United States shall be passed through as soon as possible.

* * * * *

32. In § 117.224 revise paragraph (a) to read as follows:

§ 117.224 Thames River.

* * * * *

(a) Immediately on signal for public vessels of the United States and commercial vessels; except, when a train scheduled to cross the bridge, without stopping, has passed the Midway, Groton, or New London stations and is in motion toward the bridge, the draw must not be opened for the passage of any vessel until the train has crossed the bridge; and

* * * * *

33. Revise § 117.225 to read as follows:

§ 117.225 Yellow Mill Channel.

The drawn of the Stratford Avenue bridge, mile 0.3 at Bridgeport, shall open on signal if at least 24-hours notice is given. Public vessels of the United States shall pass through as soon as possible.

34. In § 117.255 add paragraph (c) to read as follows:

§ 117.255 Potomac River.

* * * * *

(c) This section is also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

35. Revise § 117.261 to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

(a) *General.* Public Vessels of the United States shall be passed through the drawspan of each bridge listed in this section at any time.

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that during April, May, October and November from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need open only on the hour and half hour. During April, May, October and November from 12 noon to 6 p.m. Saturdays, Sundays and Federal

holidays, the draw need open only on the hour and half hour.

(c) *Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except Federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays the draw need only open on the hour and half-hour.

(d) *Memorial bridge, mile 830.6 at Daytona Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except Federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m.

(e) *NASA Railroad bridge, mile 876.6 at Kennedy Space Center.*

(1) The draw is not constantly tended.

(2) The draw is normally in the fully open position displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the train stops and the operator initiates a command to lower the bridge. The lights go to flashing red and the draw lowers and locks, providing scanning equipment reveals nothing under the draw. The draw remains down until a manual raise command is initiated, or will rise automatically 5 minutes after the intermediate track circuit is no longer occupied by a rail car.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(f) *State Road 402, Max Brewer bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6 a.m. to 7:15 a.m. and 3:15 p.m. to 4:30 p.m., Monday through Friday, except federal holidays, the draw need not open.

(g) *John F. Kennedy Space Center bridge, mile 885 at Addison Point.* The draw shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5 p.m. Monday through Friday, except Federal holidays, the draw need not open.

(h) *Jensen Beach (SR 707a) bridge, mile 981.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

(i) *Ernest Lyons (SR A1A) bridge, mile 984.9 at Stuart.* The draw shall open on signal; except that, from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

(j) *PGA Boulevard Bridge, mile 1012.6*. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30 from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(k) *Parker (US 1) bridge, mile 1013.7*. The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30 from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(l) *Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach*. The draw shall open on signal, except that from October 1 to May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m.; and from 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(m) *Royal Park (SR 704) bridge, mile 1022.6 at Palm Beach*. The draw shall open on signal, except that from October 1 through May 31, Monday through Friday except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m. and from (9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(n) *Southern Boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach*. The draw shall open on signal, except that, from October 1 through May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:15 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. and from 9:15 a.m. to 4:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(o) *Ocean Avenue bridge, mile 1031.0 at Lantana*. The draw shall open on signal; except that, from December 1 to April 30, from 7 a.m. to 6 p.m. Monday

through Friday, and from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays, the bridge need open only on the hour, quarter-hour, half-hour, and three-quarter-hour.

(p) *N.E. 8th Street bridge, mile 1038.7 at Delray Beach*. The draw shall open on signal; except that, from November 1 to May 31, from 11 a.m. to 6 p.m., on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter-hour.

(q) *Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach*. The draw shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need open only on the hour and half-hour.

(r) *Boca Club, Camino Real bridge, mile 1048.2 at Boca Raton*. The draw shall open on signal, except that from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half hour, and three quarter-hour.

(s) *Hillsboro Boulevard (SR 810) bridge, mile 1050.0 at Deerfield Beach*. The draw shall open on signal; except that, from October 1 through May 31, from 7 a.m. to 6 p.m., on Monday through Thursday, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour; and from 7 a.m. to 6 p.m., on Friday through Sunday and Federal holidays, the draw need open only on the hour and half-hour.

(t) *N.E. 14th Street bridge, mile 1055.0 at Pompano*. The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(u) *Atlantic Boulevard (SR814) bridge, mile 1056.0 at Pompano*. The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half-hour.

(v) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea*. The draws shall open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., Monday through Friday, the draw 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 draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(w) *Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale*. The draw shall open on signal; except that from November 15 through May 15 from 7 a.m. to 10 p.m., Monday through Friday, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 10 p.m. on Saturdays, Sundays, and

Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(x) *East Sunrise Boulevard Bridge, mile 1062.6 at Fort Lauderdale*. The draw of the East Sunrise Boulevard drawbridge (SR 838), mile 1062.6, at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

(y) *Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood*. The draw shall open on signal; except that from November 15 through May 15 from 10 a.m. to 6 p.m., the draw need open only on the hour and half-hour. From May 16 through November 14 on Saturdays, Sundays, and Federal holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half-hour.

(z) *Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale*. The draw shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(aa) *N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles*. The draw shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

(bb) *Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands*. The draw shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(cc) *MacArthur Causeway bridge, mile 1088.8 at Miami*. The draw shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and half-hour.

(dd) *Jewfish Creek, mile 1134, Key Largo*. The draw shall open on signal; except that from 10 a.m. to sunset, Thursday through Sunday and Federal holidays, the draw need open only on the hour and half hour.

36. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The draw of the East Span of the Venetian Causeway bridge, between Miami and Miami Beach, shall open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draws shall open

at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw shall open at any time for public vessels of the United States.

§ 117.271 [Amended]

37. In § 117.271 remove paragraph (b) and remove the paragraph designator (a) from paragraph (a).

38. In § 117.273 revise paragraphs (a) and (b) to read as follows:

§ 117.273 Canaveral Barge Canal.

(a) The Christa McAuliffe drawbridge, SR 3, mile 1.0, near Indianola shall open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. From 10 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given. The draw shall open as soon as possible for the passage of public vessels of the United States.

(b) The SR401 drawbridge, mile 5.5 at Port Canaveral, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the drawbridge shall open on signal if at least three hours notice is given. The drawbridge shall open as soon as possible for the passage of public vessels of the United States.

* * * * *

§ 117.277 [Removed]

39. Remove § 117.277.

40. Revise § 117.287 to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

(a) Public vessels of the United States shall be passed through the draw of each bridge listed in this section at any time.

(b) The draw of the Gasparilla Island Causeway drawbridge, mile 34.3, at Boca Grande shall open on signal; except that from January 1 to May 31, from 7 a.m. to 5 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

(c) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(d) The draw of the Hatchett Creek (US-41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:20 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open. On Saturdays, Sundays, and Federal holidays from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

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

(f) The draw of the Ringling Causeway (SR 780) bridge, mile 73.6, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

(g) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

(h) The draw of the Anna Maria (SR 64) bridge, mile 89.2, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

(i) The draw of the Pinellas Bayway, Structure "E" (SR 679) bridge, mile 113.0 at St. Petersburg Beach, shall open on signal; except that from 9 a.m. to 7 p.m. the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour.

(j) The draw of the Pinellas Bayway, Structure "C" bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, twenty minutes past the hour, and forty minutes past the hour.

(k) The draw of the Corey Causeway (SR693) bridge, mile 117.7 at South Pasadena, shall open on signal; except that, from 8 a.m. to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(l) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 7 a.m. to 7 p.m. the draw need open only on the

hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

(m) The draw of the Welch Causeway (SR699) bridge, mile 122.8 at Madiera Beach, shall open on signal; except that, from 9:30 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(n) The draw of the Belleair Causeway bridge, mile 131.8 at Clearwater, shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour.

(o) The draw of the Memorial Clearwater Causeway (SR60) bridge, mile 136.0 at Clearwater, shall open on signal; except that, from 9 a.m. to 6 p.m., the draw need be opened only on the hour, 20 minutes past the hour, and 40 minutes past the hour. From 2 p.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour.

41. Revise § 117.289 to read as follows:

§ 117.289 Hillsboro Inlet.

The SR A-1-A drawbridge, mile 0.3 at Hillsboro Beach, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need be opened only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States shall be passed at any time.

42. In § 117.291 revise paragraph (a) to read as follows:

§ 117.291 Hillsborough River.

(a) The drawbridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, must open on signal if at least two hours notice is given; except that, the drawbridge shall open on signal as soon as possible for public vessels of the United States.

* * * * *

43. Revise § 117.305 to read as follows:

§ 117.305 Miami River.

Each drawbridge from the mouth to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. Public vessels of the

United States shall be passed at any time.

44. Revise § 117.311 to read as follows:

§ 117.311 New Pass.

The State Road 789 drawbridge, mile 0.05, at Sarasota, need only open on the hour, twenty minutes past the hour, and forty minutes past the hour from 7 a.m. to 6 p.m. From 6 p.m. to 7 a.m., the draw shall open on signal if at least 3 hours notice is given to the bridge tender. Public vessels of the United States shall be passed at any time.

45. In § 117.313 revise paragraph (a) to read as follows:

§ 117.313 New River.

(a) The S.E. Third Avenue drawbridge, mile 1.4 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States shall be passed at any time.

* * * * *

46. Revise § 117.315 to read as follows:

§ 117.315 New River, South Fork.

(a) The Southwest 12th Street drawbridge, mile 0.9 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States shall be passed through the draw as soon as possible.

(b) The SR84 drawbridge, mile 4.4 at Fort Lauderdale, shall open on signal if at least 24 hours notice is given. Public vessels of the United States shall be passed through the draw as soon as possible.

§ 117.317 [Amended]

47. In § 117.317 remove paragraph (a); redesignate paragraphs (b) through (j) as (a) through (i) respectively and in newly redesignated paragraphs (a), and (c), remove the word "Exempt" and add in its place the word "Public".

48. In § 117.325 remove the last sentence in paragraph (a); and revise paragraph (b) to read as follows:

§ 117.325 St. Johns River.

* * * * *

(b) The Fuller Warren (I10-I95) Drawbridge, mile 25.4, at Jacksonville, must open on signal except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. From

9 a.m. to 4 p.m., Monday through Friday except Federal holidays, the drawbridge needs open only on the hour for the passage of vessels.

* * * * *

49. In § 117.353 revise paragraph (a) to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) General. Public vessels of the United States shall, upon proper signal, be passed through each drawbridge in this section at any time.

* * * * *

§§ 117.486 through 117.488 [Redesignated]

50. Redesignate §§ 117.486 through 117.488 as follows:

Old section	New section
117.486	117.487
117.487	117.488
117.488	117.486

51. In § 117.531 revise paragraph (a)(1) to read as follows:

§ 117.531 Piscataqua River.

(a) * * *

(1) Public Vessels of the United States, commercial vessels over 100 gross tons, inbound ferry service vessels and inbound commercial fishing vessels must be passed through each drawbridge as soon as possible. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

* * * * *

§ 117.535 [Removed]

52. Remove § 117.535.

53. In § 117.571 revise paragraph (d) to read as follow:

§ 117.571 Spa Creek.

* * * * *

(d) The drawbridge shall always open on signal for public vessels of the United States.

54. In § 117.573 revise paragraph (c) to read as follows:

§ 117.573 Stoney Creek.

* * * * *

(c) Public vessels of the United States shall be passed as soon as possible.

55. In § 117.588 revise paragraphs (a) and (c) to read as follows:

§ 117.588 Bass River.

* * * * *

(a) Public Vessels of the United States shall be passed as soon as possible.

* * * * *

(c) That the Hall Whitaker drawbridge must open on signal if at least 24 hours notice is given.

56. Revise § 117.597 to read as follows:

§ 117.597 Dorchester Bay.

The William T. Morrissey Boulevard drawbridge, mile 0.0 at Boston, shall open on signal from April 16 through October 14; except that the drawbridge need not open for the passage of vessels from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the drawbridge shall open on signal if at least 24 hours notice is given.

Public vessels of the United States shall be passed as soon as possible.

57. In § 117.605 revise paragraph (c) to read as follows:

§ 117.605 Merrimack River.

* * * * *

(c) The Massachusetts Department of Public Works drawbridges, mile 5.8 at Newburyport and mile 12.6 at Rock Village, and Groveland bridge, mile 16.5 at Groveland, shall open on signal if at least two hours notice is given. Public vessels of the United States shall be passed through the drawbridge as soon as possible.

58. In § 117.618 revise paragraph (b) to read as follows:

§ 117.618 Saugus River.

* * * * *

(b) The General Edwards SR1A drawbridge, mile 1.7, between Revere and Lynn, Massachusetts, must open on signal except that from December 1 through March 31 at least 8 hour advance notice must be given.

* * * * *

59. In § 117.620 revise paragraphs (a) and (c) to read as follows:

§ 117.620 Westport River—East Branch.

(a) Public vessels of the United States shall be passed as soon as possible.

* * * * *

(c) That the Westport Point drawbridge, mile 1.2 at Westport, must open on signal if at least 24 hours notice is given.

60. In § 117.703 revise paragraph (a) to read as follows:

§ 117.703 Bass River.

* * * * *

(a) The drawbridge must open on signal if at least six hours notice is given, except that public vessels of the United States shall be passed as soon as possible.

* * * * *

61. In § 117.713 revise paragraph (a) to read as follows:

§ 117.713 Cooper River.

(a) The State Street drawbridge, mile 0.3 and the Conrail bridge at North River Avenue, mile 0.9, shall open on signal if at least four hours notice is given.

* * * * *

§ 117.731 [Redesignated as § 117.730]

62. Redesignate § 117.731 as § 117.730.

§ 117.731a [Redesignated as § 117.731]

63. Redesignate § 117.731a as § 117.731 and in newly redesignated § 117.731, revise paragraph (c) to read as follows:

§ 117.731 Mullica River.

* * * * *

(c) The drawbridge shall open as soon as possible for public vessels of the United States during the periods when four hours notice is required.

§ 117.733 [Amended]

64. In § 117.733 remove paragraph (a) and redesignate paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j) as paragraphs (a) through (i) respectively.

65. Revise § 117.736 to read as follows:

§ 117.736 Oceanport Creek.

The New Jersey Transit Rail Operations drawbridge, mile 8.4 near Oceanport, shall open on signal from May 15 through September 15 between 5 a.m. and 9 p.m.; except that, the drawbridge need not open 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays except holidays. The drawbridge shall open on signal upon four hours notice from May 15 through September 15 between 9 p.m. and 5 a.m., and from September 16 through May 14; except that, the drawbridge need not be opened from 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays except holidays. Public vessels of the United States shall be passed as soon as possible at any time.

66. In § 117.738 revise paragraph (a)(2) to read as follows:

§ 117.738 Overpeck Creek.

(a) * * *

(2) Public vessels of the United States shall be passed through each drawbridge as soon as possible.

* * * * *

§ 117.739 [Amended]

67. In § 117.739 remove paragraphs (o) and (p)(2); redesignate paragraph (p)(3) as (p)(2) and redesignate (p) as (o).

68. In § 117.745 revise paragraphs (a)(1) and (b), introductory text, to read as follows:

§ 117.745 Rancocas River (Creek).

(a) * * *

(1) Public vessels of the United States shall be passed through each drawbridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

* * * * *

(b) The SR#543 drawbridge, mile 1.3 at Riverside and the SR#38 drawbridge, mile 7.8 at Centerton, shall operate as follows:

* * * * *

§ 117.775 [Removed]

69. Remove § 117.775.

§ 117.783 [Removed]

70. Remove § 117.783.

71. In § 117.789 revise paragraph (a) to read as follows:

§ 117.789 Harlem River.

(a) Each drawbridge across the Harlem River, except the Spuyten Duyvil railroad bridge, need not be opened from 5 p.m. to 10 a.m. However, at all times, public vessels of the United States shall be passed through each drawbridge listed in this section as soon as possible.

* * * * *

72. In § 117.791 remove paragraph (a)(3); redesignate paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4) and revise paragraph (f)(4) to read as follows:

§ 117.791 Hudson River.

* * * * *

(f) * * *

(4) During the period that the Federal Lock at Troy is inoperative, the drawbridges need not be opened for the passage of vessels.

§ 117.795 [Amended]

73. In § 117.795, remove paragraph (c).

74. In § 117.797 revise paragraph (a) to read as follows:

§ 117.797 Lake Champlain.

(a) The drawbridges listed in this section shall open as soon as possible for public vessels of the United States.

* * * * *

75. In § 117.799 revise paragraph (a) to read as follows:

§ 117.799 Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal.

(a) At all times, public vessels of the United States, state shall be passed through each drawbridge listed in this section as soon as possible.

* * * * *

§ 117.821 [Amended]

76. In § 117.821 remove paragraph (a)(1) and redesignate (a)(2) through (a)(6) as (a)(1) through (a)(5) respectively.

77. In § 117.823 revise paragraph (a)(3) to read as follows:

§ 117.823 Neuse River.

(a) * * *

(3) Shall always open on signal for public vessels of the United States.

* * * * *

78. In § 117.843 revise paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall always open on signal for public vessels of the United States.

* * * * *

§ 117.867 [Removed]

79. Remove § 117.867 [Reserved]

§ 117.869 [Amended]

80. In § 117.869 remove paragraphs (a)(1) and (a)(2).

§ 117.881 [Amended]

81. In § 117.881 remove paragraph (b) and remove the paragraph designator (a) from paragraph (a).

§ 117.885 [Removed]

82. Remove § 117.885 [Reserved]

§ 117.891 [Removed]

83. Remove § 117.891 [Reserved]

84. Revise § 117.892 to read as follows:

§ 117.892 South Slough.

The Oregon State Highway drawbridge across South Slough at Charleston must open on signal for the passage of vessels, except that between the hours of 7 a.m. and 7 p.m., from June 1 through September 30, the drawbridge need be opened only on the hour and half-hour. This exception must not apply to commercial tugs and/or tows or public vessels of the United States.

§ 117.907 [Removed]

85. Remove § 117.907.

86. In § 117.911 revise paragraph (a) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *General.* Public vessels of the United States, upon proper signal, will be passed through each drawbridge listed in this section at anytime.

* * * * *

§ 117.949 [Amended]

87. In § 117.949 remove the last sentence.

88. Revise § 117.968 to read as follows:

§ 117.968 Gulf Intracoastal Waterway.

The Port Isabel Drawbridge, mile 666.0, must open on signal; except that, from 5 a.m. to 8 p.m. on weekdays only, excluding holidays, the drawbridge need open only on the hour for pleasure craft. The drawbridge shall open on signal at any time for commercial vessels. When the drawbridge is open for a commercial vessel, waiting pleasure craft must be passed.

89. Revise § 117.977 to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The Pelican Island Causeway Drawbridge, mile 356.1 across Galveston Channel at Galveston, shall open on signal; except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawbridge need not open for the passage of vessels. Public vessels of the United States shall be passed at any time.

90. In § 117.993 revise paragraph (a) to read as follows:

§ 117.993 Lake Champlain.

(a) The drawbridges listed in this section shall open as soon as possible for the passage of public vessels of the United States.

* * * * *

91. In § 117.997 the last sentence in paragraph (g) and revise paragraphs (b)(2)(i), (d)(2)(i), and (f) to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albermarle and Chesapeake Canal.

* * * * *

- (b) * * *
(2) * * *

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

- (d) * * *
(2) * * *

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The Draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays, the drawbridge need not open for the passage of recreational vessels.

* * * * *

92. In § 117.1023 revise paragraph (b) to read as follows:

§ 117.1023 Pamunkey River.

* * * * *

(b) Public vessels of the United States shall pass at any time.

§ 117.1039 [Removed]

93. Remove § 117.1039 [Reserved]

Appendix A to Part 117 [Removed]

94. Remove Appendix A to Part 117.

Dated: April 3, 2003.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 03-9083 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[W114-01-7344b, FRL-7484-3]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to make a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone National Ambient Air Quality Standard (NAAQS), and we are proposing to approve the State of Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ground level ozone. In proposing to approve this redesignation request, we are also proposing to approve the State's plan for maintaining the one-hour ozone standard for the next 10 years as a revision to the Wisconsin State Implementation Plan (SIP). We are notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NOx) in the maintenance plan for Manitowoc and Door Counties are adequate for conformity purposes and are proposing to approve the budgets as part of the maintenance plan. We are also proposing to approve a 1999 periodic inventory for the Milwaukee-Racine ozone nonattainment area. The Wisconsin Department of Natural Resources (WDNR) submitted the redesignation request and SIP revisions on January 28, 2003, and submitted additional information on February 5, 2003 and February 27, 2003. In the Final Rules section of this Federal Register,

EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action on this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before May 19, 2003.

ADDRESSES: Send written comments to:

Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.

SUPPLEMENTARY INFORMATION:

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: April 3, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03-9348 Filed 4-16-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-2002-0043; FRL-7180-2]

Pesticide Tolerance Nomenclature Changes; Proposed Technical Amendment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: This document proposes to make minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is proposing this action to establish a uniform listing of commodity terms.

DATES: Comments, identified by docket ID number OPP-2002-0043, must be received on or before June 16, 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:

Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9368; fax number: (703) 308-9368; e-mail address: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply To Me?*

You may be 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 manufacturer (NAICS 311)
- Pesticide manufacturer (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. 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-2002-0043. 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/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access an electronic copy of the commodity data base entitled *Food and Feed Commodity Vocabulary* go to: <http://www.epa.gov/pesticides/foodfeed/>.

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-2002-0043. 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-2002-0043. 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-2002-0043.

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-2002-0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

II. Background

A. What Action is the Agency Taking?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled *Food and Feed Commodity Vocabulary*. The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the "preferred commodity term" as listed in the aforementioned data base. This is the third in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Final rules, revising pesticide tolerance nomenclature, were published in the **Federal Register** on June 19, 2002 (67 FR 41802) (FRL-6835-2) and June 21, 2002 (67 FR 42392) (FRL-7180-1). This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. In this rule, EPA is making the following format changes to terminology of the commodity terms in 40 CFR part 180 to the extent the terminology is not already in this format:

1. The first letter of the commodity term is capitalized. All other letters, including the first letter of proper names, are changed to lower case.

2. Commodity terms are listed in the singular although there are the following exceptions: "leaves", "roots", "tops", "greens", "hulls", "vines", "fractions", "shoots", and "byproducts".

3. Commodity terms are amended so that generic terms, such as "corn" and "pea", precede modifying terms, such as "field", "dry" and "summer".

4. Abbreviated terms are replaced with the appropriate commodity terms. Examples - "K=CWHR" is replaced with "kernel plus cob with husks removed" and "POST-H" is replaced with "postharvest".

5. Parenthesis are replaced with commas. Example - "Cherry (sweet),

postharvest" is replaced with "Cherry, sweet, postharvest".

6. Crop group terms are revised to standardize with the "Food and Feed Vocabulary". Examples -

i. "Legume vegetables (succulent or dried) group", "Legume vegetable group (dry and succulent), and "Legume vegetables" are replaced with "Vegetable, legume, group 6".

ii. "Fruit, stone (cherry, peach, plum, prune) group" is replaced with "Fruit, stone, group 12".

iii. "Grass forage, fodder and hay" and "Grass, forage, fodder, and hay" are replaced with "Grass, forage, fodder and hay group 17".

iv. "Herbs and spices" is replaced with "Herb and spice group 19".

In addition to format changes to the commodity terms, this document also includes many revisions to the commodity terms. These revisions replace certain commodity terms that are no longer used by EPA with the appropriate matching term in the "Food and Feed Vocabulary". For example, "Clover, green" is replaced with "Clover, forage", "Peanut vines" is replaced with "Peanut, hay", "Swine, meat" is replaced with "Hog, meat", and "Bushnuts" is replaced with "Nut, macadamia".

This document also proposes the deletion of certain terms that are not needed to identify the tolerance commodities. Examples -

i. The term "preharvest" ("pre-H" or "(PRE-H)") is not needed since tolerances and exemptions established under part 180 apply to residues from only preharvest application, unless otherwise specified, in accordance with 40 CFR 180.1(i).

ii. The term "preslaughter" ("(PRE-S)" or "(PRE-S appli)") is not needed since tolerances and exemptions established under part 180 apply to residues from preslaughter application to livestock, unless otherwise specified.

iii. The terms "nutmeat" and "nutmeats" when used in association with the tree nut crops or peanut are not needed. For tree nut crops, nutmeat and almond hulls are the only edible portions of the crop consumed. Therefore, OPP's Food and Feed Vocabulary uses the commodity terms "Almond", "Pecan", "Walnut", etc. for the tree nuts and the commodity term "Peanut" is used in place of "Peanut, nutmeat". Since almond hulls are fed to livestock, tolerances may be established for "Almond, hulls".

III. Statutory and Executive Order Reviews

This document proposes technical amendments to the Code of Federal

Regulations which have no substantive impact on the underlying regulations, and do not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations. This technical amendment

will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCFA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: April 9, 2003.

James Jones

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.301 [Amended]

2. In § 180.301, the table to paragraph (a) is amended by changing the term "Corn, fresh, including sweet corn (K=CWHR)" to read "Corn, sweet, kernel plus cob with husks removed" and by realphabetizing the entry into the table.

3. In 180.491, the table to paragraph (a)(3) is revised to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) * * *
(3) * * *

Commodity	Parts per million
Cocoa bean, bean	300
Gum, edible	300
Nutmeat, processed, except peanuts	300
Spices, processed	300

§ 180.495 [Amended]

4. In § 180.495, the table to paragraph (a) is amended by changing the entry "Poultry, eggs" to read "Egg" and by realphabetizing the entry into the table.

Subpart C— [Amended]

5. Subpart C is amended as follows:
i. By removing the following terms wherever they appear in subpart C:

- a. (Pre-H)
- b. pre-H
- c. (PRE-H)
- d. (negligible residue)
- e. , nutmeat
- f. , nutmeats
- g. nut meat
- h. nutmeat
- i. nutmeats
- j. (nutmeats)
- k. (nuts)
- l. (= N in whole milk)
- m. (PRE-S appli)
- n. (pre-s)

ii. In the following table, by changing the term exactly as it appears in the

Existing Term column to read exactly like the term in the New Term column wherever it appears in subpart C, and by realphabetizing the new term where necessary.

Existing Term	New Term
Almond, meat	Almond
Amaranth, grain	Amaranth, grain, grain
Animal feed, nongrass, group	Animal feed, nongrass, group 18
Animal feed, nongrass, group, except alfalfa	Animal feed, nongrass, group 18, except alfalfa
Aspirated grain fractions	Grain, aspirated fractions
Banana, pulp with peel removed	Banana, pulp
Banana, whole	Banana
Bean, dry	Bean, dry, seed
Bean, green, postharvest	Bean, succulent, postharvest
Bean, guar	Guar, seed
Bean, lima (green)	Bean, lima, succulent
Bean, mung, dry	Bean, mung, seed
Bean, snap	Bean, snap, succulent
Bean, snap, postharvest	Bean, snap, succulent, postharvest
Bean vine forage	Bean, forage
Beeswax	Honeycomb
Beet	Beet, garden
Beet, greens	Beet, garden, tops
Beet greens (alone)	Beet, garden, tops
Beet, roots	Beet, garden, roots
Beet, sugar, pulp	Beet, sugar, dried pulp
Beet, sugar, pulp (dried and/or dehydrated)	Beet, sugar, dried pulp
Beet, sugar, without tops	Beet, sugar, roots
Beet, tops	Beet, garden, tops

Existing Term	New Term	Existing Term	New Term
Black walnut meats	Walnut, black	Chickpea	Chickpea, seed
Berry group	Berry group 13	Chickpeas	Chickpea, seed
Brassica, head and stem, subgroup	Brassica, head and stem, subgroup 5A	Chick pea, seed (dry)	Chickpea, seed
Brassica, head stem subgroup (5-A)	Brassica, head and stem, subgroup 5A	Cilantro	Coriander
Brassica, head and stem, subgroup, excluding cabbage	Brassica, head and stem, subgroup 5A, except cabbage	Cilantro, leaves	Coriander, leaves
Brassica, leafy greens, subgroup	Brassica, leafy greens, subgroup 5B	Cipollini, bulb, postharvest	Onion, cipollini, bulb, postharvest
Brassica, leafy greens, subgroup (Crop Subgroup 5-B)	Leafy greens subgroup 4A	Citrus, pulp	Citrus, dried pulp
Brassica vegetables crop group	Vegetable, brassica, leafy, group 5	Citrus whole fruit	Citrus
Buckwheat, postharvest	Buckwheat, grain, postharvest	Clover, chaff, grown for seed	Clover, seed screenings
Buckwheat	Buckwheat, grain	Clover, fresh	Clover, forage
Bushberry subgroup	Bushberry subgroup 13B	Clover, green	Clover, forage
Bushnuts	Nut, macadamia	Cocoa	Cocoa bean, dried bean
Canarygrass, annual, seed	Grass, canary, annual, seed	Cocoa bean	Cocoa bean, dried bean
Canberries	Caneberry subgroup	Coffee	Coffee, bean
Caneberries subgroup	Caneberry subgroup 13A	Copra	Coconut, copra
Caneberry crop subgroup	Caneberry subgroup 13A	Copra, postharvest	Coconut, copra, postharvest
Caneberry subgroup	Caneberry subgroup 13A	Corn, field, fodder	Corn, field, stover
Canola	Canola, seed	Corn, field, forage (silage)	Corn, field, forage
Carambola	Starfruit	Corn, field, milling fractions	Corn, field, milled byproducts
Carrot	Carrot, roots	Corn, field, stover (fodder)	Corn, stover
Carrots	Carrot, roots	Corn, fodder	Corn, stover
Carrot, postharvest	Carrot, roots, postharvest	Corn, fodder (dry)	Corn, stover
Cattle, milk	Milk	Corn, fodder (field)	Corn, field, stover
Cherry, sour	Cherry, tart	Corn, fodder, field (dry)	Corn, field, stover
Cherry (sour)	Cherry, tart	Corn, fodder, field (green)	Corn, field, stover
Cherry (sweet), postharvest	Cherry, sweet, postharvest	Corn, fodder, pop	Corn, pop, stover
		Corn, fodder, sweet	Corn, sweet, stover
		Corn, fresh	Corn, sweet, kernal plus cob with husks removed
		Corn oil	Corn, field, refined oil
		Corn, pop, fodder	Corn, pop, stover

Existing Term	New Term	Existing Term	New Term	Existing Term	New Term
Corn, pop, stover (fodder)	Corn, pop, stover	Fruit, stone, group, except plum	Fruit, stone, group 12, except plum	Grains, Cereal, Group	Grain, cereal, group 15
Corn, silage	Corn, field, forage	Fruit, stone, group, except plum and prune	Fruit, stone, group 12, except plum and plum, prune, fresh	Grass, canary, annual straw	Canarygrass, annual, hay
Corn, sweet, fodder	Corn, sweet, stover			Grass fodder	Grass, hay
Cottonseed	Cotton, undelinted seed	Fruit, stone, group, except fresh prune plum	Fruit, stone, group 12, except plum, prune, fresh	Grass forage, fodder and hay	Grass, forage, fodder and hay, group 17
Crambe	Crambe, seed			Grass, forage, fodder, and hay	Grass, forage, fodder and hay, group 17
Crop Group 16 (forage, stover and hay of Grain cereal)	Grain, cereal, forage, fodder and straw, Group 16 cereal)	Forage, fodder, and straw of Grains, cereal crop group (forage)	Grain, cereal, forage, fodder and straw, group 16, forage	Grass, forage, fodder and hay, group	Grass, forage, fodder and hay, group 17
Crop Group 15 (Grain, cereal)	Grain, cereal, group 15	Forage, fodder, and straw of Grains, cereal crop group (hay)	Grain, cereal, forage, fodder and straw, group 16, hay	Grass, hay (pasture and rangeland)	Grass, hay
Crop Group 17 (grass, forage, and grass, hay)	Grass, forage, fodder and hay, group 17	Forage, fodder, and straw of Grains, cereal crop group (stover)	Grain, cereal, forage, fodder and straw, group 16, stover	Grass, seed cleanings (including hulls)	Grass, seed screenings
Dandelions	Dandelion, leaves	Forage, fodder, and straw of Grains, cereal crop group (straw)	Grain, cereal, forage, fodder and straw, group 16, straw	Grass, seed straw (including chaff)	Grass, straw, grown for seed
Egg, whole	Egg			Head and stem Brassica crop subgroup	Brassica, head and stem, subgroup 5A
Field corn, fodder	Corn, field, stover	Garbanzo bean	Chickpea, seed	Herb and spice group	Herb and spice group 19
Filberts (hazelnuts)	Hazelnut	Ginseng	Ginseng, root	Herbs and spices	Herbs and spices group 19
Filbert (Hazelnuts), postharvest	Hazelnut, postharvest	Ginseng, dried	Ginseng, dried root	Herb subgroup	Herb subgroup 19A
Flaxseed	Flax, seed	Ginseng root, fresh	Ginseng, root	Herbs subgroup	Herb subgroup 19A
Flaxseed meal	Flax, meal	Grain, aspirated grain fractions	Grain, aspirated fractions	Hop, fresh	Hop, vine
Foliage of legume vegetables	Vegetable, foliage of legume, group 7	Grain, cereal crop group (grain)	Grain, cereal, group 15	Hop, green	, kernel plus cob with husks removed
Foliage of legume vegetables crop group (foliage)	Vegetable, foliage of legume, group 7	Grain, cereal forage, fodder and straw, group	Grain, cereal, forage, fodder and straw, group 16	(inc. sweet K=CWHR)	, kernel plus cob with husks removed
Foliage of legume vegetables (except soybean)	Vegetable, foliage of legume, except soybean, subgroup 7A	Grain, cereal, group	Grain, cereal, group 15	(inc. sweet K=CWHR)	, kernel plus cob with husks removed
Fruit, citrus, group	Fruit, citrus, group 10	Grain, cereal, group, except wheat	Grain, cereal, group 15, except wheat	(including sweet K=CWHR)	, kernel plus cob with husks removed
Fruit, pome, crop group	Fruit, pome, group 11	Grain, cereal, group (except barley, field corn, grain sorghum, oats, and wheat)	Grain, cereal, group 15, except barley, field corn, grain sorghum, oat, and wheat	Leafy greens crop subgroup	Leafy greens subgroup 4A
Fruit, pome, group	Fruit, pome, group 11	Grains, Cereal, Forage, Fodder, and Straw, group	Grain, cereal, forage, fodder and straw, group 16	Leafy greens subgroup	Leafy greens subgroup 4A
Fruit, stone (cherry, peach, plum, prune), group	Fruit, stone, group 12			Leafy petioles subgroup	Leafy petioles subgroup 4B
Fruit, stone, group	Fruit, stone, group 12				
Fruit, stone, group 12, except cherries	Fruit, stone, group 12, except cherries				

Existing Term	New Term	Existing Term	New Term	Existing Term	New Term
Leafy vegetable (except Brassica) crop group	Vegetable, leafy, except brassica, group 4	Nut, tree, group (except Almond, hulls)	Nut, tree, group 14	Raisin waste	Grape, raisin, waste
Leafy vegetable (except Brassica) vegetables group	Vegetable, leafy, except brassica, group 4	Oat, fodder	Oat, straw	Rape forage	Rapeseed, forage
Leafy vegetables (except brassica) group (except spinach)	Vegetable, leafy, except brassica, group 4, except spinach	Oat, forage, green	Oat, forage	Rapeseed	Rapeseed, seed
Leaves of root and tuber vegetables (human food or animal feed) group	Vegetable, leaves of root and tuber, group 2	Oat, green forage	Oat, forage	Rape seed	Rapeseed, seed
Legume vegetable group foliage (except soybean, forage and soybean, hay)	Vegetable, foliage of legume, except soybean, subgroup 7A	Orange	Orange, sweet	Rice	Rice, grain
Legume vegetable group (dry or succulent)	Vegetable, legume, group 6	Oranges	Orange, sweet	Rice, fodder	Rice, straw
Legume vegetable group (dry and succulent)	Vegetable, legume, group 6	Parsley	Parsley, leaves	(roots PRE-H)	, roots
Legume vegetable (succulent or dried) group	Vegetable, legume, group 6	Parsley, root	Parsley, turnip rooted, roots	Rye, fodder	Rye, straw
Legume vegetables	Vegetable, legume, group 6	Pea and bean, dried shelled, except soybean, subgroup	Pea and bean, dried shelled, except soybean, subgroup 6C	Rye, forage, green	Rye, forage
Legume vegetables crop group, seed	Vegetable, legume, group 6	Pea and bean, succulent shelled, subgroup	Pea and bean, succulent shelled, subgroup 6B	Rye, green forage	Rye, forage
Legume vegetables (succulent or dried) group	Vegetable, legume, group 6	Peach (including nectarines)	Peach	Rye, hay	Rye, forage
Legume vegetable (succulent or dried group, excluding soybeans)	Vegetable, legume, group 6, except soybean	Pea, dried	Pea, dry, seed	Safflower	Safflower, seed
Lentils	Lentil, seed	Pea, dry	Pea, dry, seed	Sorghum, aspirated grain fractions	Grain, aspirated fractions
Mandarins	Tangerines	Pea, forage	Pea, field vines	Sorghum forage	Sorghum, forage
Melon subgroup	Melon subgroup 9A	Pea, hay	Pea, field, hay	Sorghum, forage	Sorghum, grain, forage
Mustard, Chinese	Mustard greens	Peanut forage	Peanut, hay	Sorghum grain	Sorghum, grain
Nongrass animal feed (forage, fodder, straw, and hay)	Animal feed, nongrass, group 18 group	Peanut, oil	Peanut, refined oil	Sorghum, green forage	Sorghum, forage, hay
Nut, tree crop group	Nut tree, group 14	Peanut, shells	Peanut, hulls	Sorghum, milling fraction	Sorghum, grain, flour
Nut, tree, group	Nut, tree, group 14	Pea, southern, blackeyed	Pea, blackeyed	Sorghum, milling fractions (except flour)	Sorghum, grain, bran
		Peanut, vines	Peanut, hay	Sorghum (milo)	Sorghum, grain
		Peanut forage and hay	Peanut, hay	Sorghum, stover	Sorghum, grain, stover
		Pigeon peas	Pea, pigeon, seed	Sorghum, hay	Sorghum, forage, hay
		Pineapple bran (wet and dry)	Pineapple, bran	Sorghum, fodder	Sorghum, grain, stover
		Pistachio nut	Pistachio	Soybean grain	Soybean, seed
		Pistachio nuts	Pistachio	Soybean, oil	Soybean, refined oil
		Plum, dried	Plum, prune, dried	Spearmint	Spearmint, tops
		Potato, waste, dried	Potato, processed potato waste	Spearmint hay	Spearmint, hay
		(PRE- and POST-H)	, postharvest	Spice subgroup	Spice subgroup 19B
		Raisin	Grape, raisin	Spices subgroup	Spice subgroup 19B
		Raisins	Grape, raisin		

Existing Term	New Term	Existing Term	New Term	Existing Term	New Term
Squash/Cucumber subgroup	Squash/Cucumber subgroup 9B	Vegetable, brassica, leafy, group (except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens)	Vegetable, brassica, leafy, group 5, except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens	Vegetable, leaf petiole, subgroup	Leafy petioles subgroup 4B
Sugarbeet, pulp	Beet, sugar, dried pulp			Vegetable, leafy, except brassica, group	Vegetable, leafy, except brassica, group 4
Sugarcane	Sugarcane, cane			Vegetable, leafy, except brassica, group (Crop Group 4)	Vegetable, leafy, except brassica, group 4
Sunflower	Sunflower, seed	Vegetable, bulb, group	Vegetable, bulb, group 3		
Sunflowers	Sunflower, seed			Vegetable, leafy, except Brassica, group	Vegetable, leafy, except brassica, group 4
Sweet potato	Sweet potato, roots	Vegetable, cucurbit, crop group	Vegetable, cucurbit, group 9		
Swine, fat	Hog, fat	Vegetable, cucurbit, group	Vegetable, cucurbit, group 9		
Swine, kidney	Hog, kidney			Vegetable, leafy group, except brassica	Vegetable, leafy, except brassica, group 4
Swine, liver	Hog, liver	Vegetable, cucurbit, group (Crop Group 9)	Vegetable, cucurbit, group 9		
Swine, meat	Hog, meat			Vegetable, leaves of root and tuber, group	Vegetable, leaves of root and tuber, group 2
Swine, meat by-products	Hog, meat byproducts	Vegetable, cucurbit, melon, crop subgroup 9-A	Melon subgroup 9A		
Tomato, fresh	Tomato			Vegetable, leaves of root and tuber, group (except sugar beet tops)	Vegetable, leaves of root and tuber, group 2, except sugar beet
Tomato, fruit (tops PRE-H)	Tomato tops	Vegetable, foliage of legume, except soybean, subgroup	Vegetable, foliage of legume, except soybean, subgroup 7A		
Tree nut (crop group 14), nutmeat	Nut, tree, group 14	Vegetable, foliage of legume, group (except soybean, forage and hay)	Vegetable, foliage of legume, except soybean, subgroup 7A	Vegetable, legume, edible podded, subgroup	Vegetable, legume, edible podded, subgroup 6A
Tree nuts (crop group 14)	Nut, tree, group 14			Vegetables, legume, edible podded, subgroup	Vegetable, legume, edible podded, subgroup 6A
Tuberous and Corm, Vegetable Crop Subgroup	Vegetable, tuberous and corm, subgroup 1C	Vegetable, foliage of legume, group	Vegetable, foliage of legume, group 7	Vegetable, legume, group	Vegetable, legume, group 6
Turnip, greens, tops	Turnip, greens	Vegetable, fruiting Crop Group	Vegetable, fruiting, group 8	Vegetable, legume, group (except soybean)	Vegetable, legume, group 6, except soybean
Turnip, tops	Turnip, greens	Vegetable, fruiting, group (Crop Group 8)	Vegetable, fruiting, group 8		
Wheat, fodder	Wheat, straw			Vegetable, root and tuber, group	Vegetable, root and tuber, group 1
Wheat, fodder, green	Wheat, hay	Vegetable, fruiting (except cucurbits) group	Vegetable, fruiting, group 8	Vegetable, root, except sugar beet, subgroup	Vegetable, root, except sugar beet, subgroup 1B
Wheat, forage (green)	Wheat, forage	Vegetables, fruiting (except cucurbits), group	Vegetable, fruiting, group 8		
Wheat, forage, green	Wheat, forage	Vegetable, fruiting, group	Vegetable, fruiting, group 8	Vegetable, root (except sugar beet) subgroup	Vegetable, root, except sugar beet, subgroup 1B
Wheat, green fodder	Wheat, hay	Vegetable, fruiting, group	Vegetable, fruiting, group 8		
Wheat, green forage	Wheat, forage	Vegetable, fruiting group	Vegetable, fruiting, group 8	Vegetable, root and tuber, group (except sugar beet)	Vegetable, root and tuber, group 1, except sugar beet
Wheat, stover	Wheat, straw	Vegetable, fruiting, group (except cucurbits)	Vegetable, fruiting, group 8		
Vegetable, brassica, leafy, group	Vegetable, brassica, leafy, group 5	Vegetable, fruiting, except cucurbit	Vegetable, fruiting, group 8	Vegetable, root, subgroup	Vegetable, root, subgroup 1A
Vegetable, brassica, leafy group	Vegetable, brassica, leafy, group 5	Vegetable, fruiting, crop group	Vegetable, fruiting, group 8	Vegetable, tuberous and corm, except potato, subgroup	Vegetable, tuberous and corm, except potato, subgroup 1D

Existing Term	New Term
Vegetable, tuberous and corm, subgroup	Vegetable, tuberous and corm, subgroup 1C
Vegetable, tuberous and corm, subgroup (Crop Subgroup 1-C)	Vegetable, tuberous and corm, subgroup 1C
Yams	Yam, true, tuber

[FR Doc. 03-9483 Filed 4-16-03; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 040703A]

RIN 0648-AN87

Fisheries of the South Atlantic; Pelagic Sargassum Habitat in the South Atlantic; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a revised fishery management plan for the pelagic Sargassum habitat of the South Atlantic Region (FMP); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) has submitted the subject FMP for review, approval, and implementation by NMFS. The FMP would: establish the management unit for Sargassum and stock status criteria for that management unit, designate essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPC) for Sargassum, and establish harvesting restrictions for *Sargassum* taken in or from the exclusive economic zone (EEZ) off the southern Atlantic states.

DATES: Written comments must be received on or before June 16, 2003.

ADDRESSES: Comments on the FMP, which includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-522-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the FMP should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@safmc.net.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish a notice in the **Federal Register** stating that the plan or amendment is available for public review and comment.

Sargassum is an abundant brown algae that occurs near the surface in warm waters of the western North Atlantic. Most *Sargassum* drifts between 2° N. and 40° N. lat. and 30° W. long. and the western edge of the Gulf Stream. The static standing crop of *Sargassum* is estimated to be 4 to 11 million metric tons (mt) or roughly 9 to 24 billion lb. *Sargassum* supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, five species of sea turtles, and numerous marine birds. *Sargassum* creates an unusual situation in regards to fishery management. As plants that may increase their biomass as much as 10 percent per day, floating mats or rafts of *Sargassum* represent a highly renewable natural resource that can be harvested or fished. *Sargassum* vegetation is considered a "fish" under the Magnuson-Stevens Act, and the harvest or take of this natural resource could be managed under a fishery management plan. Additionally, these mats or rafts of *Sargassum* vegetation provide habitat and protection for numerous species of vertebrates and invertebrates, including threatened or endangered sea turtles. Recognizing the importance of *Sargassum* as habitat, the SAFMC previously designated *Sargassum* as EFH and as EFH-HAPC for snapper-grouper species and coastal migratory pelagic (mackerel) species.

The SAFMC is concerned about the impacts of commercial harvest of this important resource. Over a 22-year period (1976-1997), 203.2 mt (448,000 lb) of *Sargassum* were harvested off the southern Atlantic states. The SAFMC has developed this FMP to protect and

manage *Sargassum* as a fishery resource and to conserve this resource as EFH off the U.S. Atlantic coast from the North Carolina/Virginia boundary through the east coast of Florida, including the Atlantic side of the Florida Keys. In analyzing the proposed actions and alternatives in the FMP, *Sargassum* is discussed as both a fishery resource and as habitat for other managed species. The reader is reminded that discussions of importance of *Sargassum* as EFH for other species, as designated in other FMPs, should not be confused with the SAFMC's designations of EFH for *Sargassum* as a fishery resource in this FMP.

The FMP would establish the management unit for *Sargassum* as the population of *Sargassum* occurring within the SAFMC's area of jurisdiction and within state waters of North Carolina, South Carolina, Georgia, and the east coast of Florida. Based on that management unit, the FMP would establish stock status criteria as the following: Maximum Sustainable Yield (MSY) would be designated as 100,000 mt (220,448,550 lb). This is the estimated static standing stock (carrying capacity) off North Carolina, the current area of commercial harvest. Optimum Yield (OY) would be designated as 2.268 mt (5,000 lb). This value represents the average harvest during the period 1990 through 1999. Overfishing would be defined as the rate of harvest which compromises the stock's ability to produce MSY. Overfishing would be determined by establishing a maximum fishing mortality threshold using a measure of the stock's intrinsic rate of increase (r) as a proxy for a fishing mortality rate at MSY, where " r " is estimated to be 9-18 units per year. This overfishing definition would be associated with an MSY of 456,250 to 912,500 mt (100,584,210 to 201,168,430 lb) per year, which is larger than the SAFMC's preferred alternative of 100,000 mt for MSY. The stock would be considered overfished if the stock was reduced below the minimum stock size threshold (MSST). MSST would be established as 25,000 mt (55,114,638 lb), which would be $B_{MSY}/2$, where B_{MSY} is defined as one-half the carrying capacity (MSY) of the harvest area.

In a broad interpretation of the EFH final rule (67 FR 2343, January 17, 2002), the SAFMC would designate EFH and EFH-HAPC as places/locations where *Sargassum* occurs in the SAFMC's area of jurisdiction, including state waters off North Carolina, South Carolina, Georgia, and the east coast of Florida, including the Gulf Stream where it occurs in the EEZ, and the

water column from the surface to the sea floor.

To limit the impacts of fishing on *Sargassum*, which already is designated as EFH for snapper and grouper species and coastal migratory pelagic species in other FMPs, the FMP would establish the following harvesting restrictions: (1) prohibit all harvest and possession of *Sargassum* from the South Atlantic EEZ south of the latitude line representing the North Carolina/South Carolina border (34° N. latitude); (2) prohibit all harvest of *Sargassum* from the South Atlantic EEZ within 100 nautical miles of shore between the 34° N. latitude line and the latitude line representing the North Carolina/Virginia border; (3) allow the harvest of *Sargassum* from that portion of the South Atlantic EEZ that is greater than 100 nautical miles from shore between the 34° N. latitude line and the latitude line representing

the North Carolina/Virginia border during the months of November through June; (4) establish an annual Total Allowable Catch (TAC) of 2,268 mt (5,000 lb) landed wet weight of *Sargassum*; (5) require that a NMFS-approved observer be present on each *Sargassum* harvesting trip; and (6) require that nets used to harvest *Sargassum* be constructed of 4-inch (10-cm) stretch mesh or larger fitted to a frame no larger than 4 ft (1.22 meters) by 6 ft (1.83 meters).

A proposed rule that would implement measures outlined in the FMP has been received from the SAFMC. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will

publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 16, 2003, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 11, 2003.

Richard W. Surdi,

Acting Office Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03-9490 Filed 4-16-03; 8:45 am]

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Notices

Federal Register

Vol. 68, No. 74

Thursday, April 17, 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

Agricultural Marketing Service

[Docket No. FV03-996-1-notice]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations of individuals to be considered for selection as Board members for terms of office ending June 30, 2006. Nominees sought by this action would replace those producer and industry representatives who are serving for the initial one-year term of office that ends June 30, 2003. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before May 19, 2003.

ADDRESSES: Nominations should be sent to Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734-5243; Fax: (301) 734-5275; e-mail: Kenneth.Johnson@usda.gov.

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic

and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives and other like entities. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would replace one producer and one industry member from each peanut producing region who served for the initial one-year term of office that ends June 30, 2003. New members would serve for a 3-year term of office ending June 30, 2006.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mr. Johnson. Copies of this form may be obtained at the internet site: <http://www.ams.usda.gov/fv/peanut-farmbill.htm>, or from Mr. Johnson. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the

Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: Section 1308 of Public Law 107-171.

Dated: April 10, 2003.

A.J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 03-9408 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03-039-1]

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 regulation issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before June 16, 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. 03-039-1, 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. 03-039-1. 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. 03-039-1" 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 facilities, exhibitors, carriers, and intermediate handlers, contact Dr. Barbara Kohn, 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: 0579-0093.

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 Act and regulations are enforced by USDA's Animal and Plant Health Inspection Service (APHIS).

The regulations in 9 CFR part 3, subparts A, D, and E cover dogs and cats, nonhuman primates, and marine mammals, respectively. Subpart F of 9 CFR part 3 covers warmblooded animals other than dogs, cats, nonhuman primates, marine mammals, rabbits, guinea pigs, and hamsters. Regulated facilities are required to keep certain records and provide specific information regarding APHIS' space, transportation, exercise plan, and

perimeter fence requirements. We review this information to evaluate program compliance.

The reporting and recordkeeping requirements of 9 CFR part 3, subparts A, D, E, and F do not mandate the use of any official government form.

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 collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of response.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.48266615 hours per response.

Respondents: Dealers, exhibitors, research facilities, carriers, and intermediate handlers.

Estimated annual number of respondents: 8,190.

Estimated annual number of responses per respondent: 8.833211233.

Estimated annual number of responses: 72,344.

Estimated total annual burden on respondents: 34918 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 11th day of April 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-9407 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Fremont County, ID, Big Bend Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice.

Revision of the Notice of Intent to prepare an Environmental Impact Statement for the Big Bend Ridge Vegetation Management Project, as published in the **Federal Register** page 40876 to 40877 on July 31, 1998 (Vol. 63, No. 147). This revision includes a change of project schedule and treatment acres.

SUMMARY: The USDA, Forest Service is preparing an Environmental Impact Statement of document the analysis and disclose the environmental impacts of the proposed Big Bend Vegetation Management Project, a timber sale and vegetation treatment. This revised Notice of Intent is to document some minor changes in the process.

In the original NOI, the tentative date for filing the Draft EIS was December of 1998 and the Final EIS was scheduled for March, 1999. Due to scheduling changes, the Draft EIS is now expected to be available for review in April, 2003. The final EIS is scheduled to be completed about July 2003.

The original NOI proposed approximately 1800 acres of prescribed burning to rejuvenate maple and aspen, reduce fuels in the wildland urban interface, improve big game winter range and test methods of Douglas-fir regeneration. The proposed action now proposes a total of 123 acres of prescribed burning. The objective of the 123 acres of burning is to promote aspen and shrubs in a high use big game wintering area. The rejuvenation of maple and the majority of big game winter range improvement were determined to be unnecessary. Timber harvest is now being proposed to accomplish aspen regeneration, big game browse improvement and fuels reduction. A nearby 2001 wildfire is being used to evaluate Douglas-fir regeneration from fire.

The original NOI proposed approximately 2500 acres of commercial thinning with 70 percent of it helicopter or cable harvest and 30 percent done with crawler tractor. The proposed action now includes 3023 acres of commercial thinning, improvement cutting and sanitation salvage with 40 percent helicopter harvest and 60 percent ground based harvest.

Dated: April 10, 2003.

Jerry B. Reese,

Caribou-Targhee National Forest Supervisor.

[FR Doc. 03-9420 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106-393).

DATES: The meeting will be held May 19-23, 2003, beginning at 1 p.m. on Monday, May 19 and ending at approximately 4 p.m. on Friday, May 23.

ADDRESSES: The meeting will be held at the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM 87106, telephone (505) 244-8554. Written comments should be sent to Walter Dunn, at Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102. Comments may also be sent via e-mail to wdunn@fs.fed.us, or via facsimile to Walter Dunn at (505) 842-3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, or during the Panel meeting at the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM. Visitors are encouraged to call ahead to the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM 87106, telephone (505) 244-8554 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842-3425, or Angela Sandoval, at (505) 842-3289, Cooperative and International Forestry

Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to the Forest Service staff and Council members. However, persons who wish to bring Collaborative Forest Restoration Program Grant Review matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 19, 2003 will have the opportunity to address the Council at those sessions.

Dated: April 10, 2003.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 03-9419 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the New York Advisory Committee to the Commission will convene a planning meeting via conference call on Wednesday, May 5, 2003 from 9 a.m. until 10:30 a.m. The purpose of the meeting is to plan a community forum on civil rights issues and post-9/11 law enforcement-community relations in New York.

This conference call is available to the public through the following call-in number: 1-800-473-8796, access code: 15778611. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to

register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116), by 4 p.m. on Friday, May 2, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC April 11, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03-9450 Filed 4-16-03; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the four new shipper reviews initiated on November 1, 2002 (67 FR 67822) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than August 28, 2003. The period of review is September 1, 2001, through August 31, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-3782 or (202) 482-1391, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(1) of the regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines that the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of

the Act and section 351.214(i)(2) of the regulations allow the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

The Department received timely requests for new shipper reviews of the antidumping order on freshwater crawfish tail meat from the People's Republic of China from the following: exporter Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd., and its producer, Hefei Zhongbao Aquatic Co. Ltd.; producer and exporter, Hubei Qianjiang Houhu Frozen & Processing Factory; exporter Siyang Foreign Trading Corporation and its producer, Anhui Golden Bird Agricultural Products Development Co., Ltd.; and from producer and exporter, Zhoushan Huading Seafood Co., Ltd. These requests were filed in accordance with section 751(a)(2)(B) of the Act and section 351.214 of the Department's regulations. On November 1, 2002 the Department initiated these new shipper reviews covering the period September 1, 2001, through August 31, 2002. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping New Shipper Reviews*, 67 FR 67822 (November 7, 2002). The preliminary results of these reviews were scheduled for April 30, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that these cases are extraordinarily complicated, and the preliminary results of these new shipper reviews cannot be completed within the statutory time limit of 180 days. The Department finds that these new shipper reviews are extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department has issued supplemental questionnaires requesting additional information concerning the bona fides of the sales under review, as well as supplemental questions regarding labor factors and other factors. Given the issues in this case, the Department may find it necessary to issue additional supplemental questionnaires in these new shipper reviews. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations,

the Department is extending the time limit for the completion of the preliminary results to three hundred (300) days from the date of initiation. The preliminary results will now be due no later than August 28, 2003.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: April 11, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03-9514 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-841]

Structural Steel Beams From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the antidumping duty administrative review of structural steel beams ("SSB") from Korea.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Aishe Allen AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1102 or (202) 482-0172 respectively.

Background: On August 6, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSB from Korea. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). On August 30, 2002, Dongkuk Steel Mill Co., Ltd. ("DSM") and INI Steel Company ("INI"), Korean producers of subject merchandise, requested that the Department conduct an administrative review of their sales of subject merchandise during the period of

review ("POR"). Also, on August 30, 2002, petitioners¹ requested that the Department conduct an administrative review of INI. On September 25, 2002, the Department published a notice of initiation of a review of SSB from Korea covering the period August 1, 2001 through July 31, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, (67 FR 60210) (September 25, 2002). The Department's preliminary results are currently due on May 3, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and section 351.213(h)(2) of the Department's regulations, state that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the review involves significant affiliation issues, and a large number of transactions for each company (*i.e.*, DSM and INI). Additionally, the Department is investigating sales and cost for both companies which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department is extending the time period for issuing the preliminary results of review by 120 days until August 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and Section 351.213(h)(2) of the Department's regulations.

Dated: April 11, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03-9513 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-DS-M

¹ Petitioners are Nucor Corporation, Nucor Yamato Steel Co., and TXI-Chaparral Steel Co.

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2002 through December 31, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD

Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (“the Act”) requires the Department of Commerce (≥the Department”) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department’s annual list of subsidies on articles of cheese that were imported during the period October 1, 2002 through December 31, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on

articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: April 9, 2003.

Susan Kuhnback,

Acting Assistant Secretary for Import Administration.

**APPENDIX
SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY**

Country	Program(s)	Gross ¹ Subsidy (\$/lb)	Net ² Subsidy (\$/lb)
Austria	European Union Restitution Payments	\$ 0.29	\$ 0.29
Belgium	EU Restitution Payments	\$ 0.02	\$ 0.02
Canada	Export Assistance on Certain Types of Cheese	\$ 0.22	\$ 0.22
Denmark	EU Restitution Payments	\$ 0.05	\$ 0.05
Finland	EU Restitution Payments	\$ 0.00	\$ 0.00
France	EU Restitution Payments	\$ 0.03	\$ 0.03
Germany	EU Restitution Payments	\$ 0.07	\$ 0.07
Greece	EU Restitution Payments	\$ 0.01	\$ 0.01
Ireland	EU Restitution Payments	\$ 0.07	\$ 0.07
Italy	EU Restitution Payments	\$ 0.03	\$ 0.03
Luxembourg	EU Restitution Payments	\$ 0.07	\$ 0.07
Netherlands	EU Restitution Payments	\$ 0.04	\$ 0.04
Norway	Indirect (Milk) Subsidy	\$ 0.34	\$ 0.34
.....	Consumer Subsidy	\$ 0.15	\$ 0.15
.....	.....	\$ 0.49	\$ 0.49
Portugal	EU Restitution Payments	\$ 0.04	\$ 0.04
Spain	EU Restitution Payments	\$ 0.02	\$ 0.02
Switzerland	Deficiency Payments	\$ 0.06	\$ 0.06
U.K.	EU Restitution Payments	\$ 0.05	\$ 0.05

¹Defined in 19 U.S.C. 1677(5).

²Defined in 19 U.S.C. 1677(6).

[FR Doc. 03-9512 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Mission

July 14-19, 2003.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to apply to participate in the below described overseas trade mission. For a more complete description of the trade mission, obtain a copy of the mission

statement from the contact officer indicated for this mission below.

Business Development Mission to Romania and Bulgaria

Bucharest and Sofia

Deputy Secretary of Commerce, Samuel Bodman, with Assistant Secretary and Director General of the U.S. and Foreign Commercial Service, Maria Cino, and Assistant Secretary of Commerce for Market Access and Compliance, William Lash, will lead a senior-level business development mission to help U.S. companies explore business opportunities in Romania and Bulgaria. The delegation will include 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, the following sectors: automotive parts, building products, information technology, telecommunications, defense industry, energy, medical products, environmental technologies, and tourism infrastructure.

Recruitment closes on May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Wright, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2012, Washington, DC 20230, telephone 202–482–2567, fax 202–482–0178, or e-mail Matthew.Wright@mail.doc.gov.

SUPPLEMENTARY INFORMATION:

Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is intended to: assist individual U.S. companies to pursue business opportunities by introducing them to government decision-making officials and to potential business partners; assist new-to-market firms to evaluate the market potential for their products and gain an understanding of how to operate successfully in Romania and Bulgaria; enhance the dialogue between government and industry on issues affecting the development of commercial relations; promote U.S. and Romanian and Bulgarian trade and investment and, as a result, contribute to the political and economic stability of important American allies; and assist U.S. companies to take advantage of opportunities arising from NATO accession.

Scenario for the Mission

American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from the in-country U.S.

Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Networking events also will be organized to provide opportunities to meet Romanian and Bulgarian business and government representatives, as well as U.S. business people living and working in Romania and Bulgaria. The tentative trip itinerary is as follows: July 14, arrive Bucharest; July 15–16, one-on-one business meetings in Bucharest and evening travel to Sofia; July 17–18, one-on-one business meetings in Sofia. The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Recruitment and selection of private sector participants for this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Dated: April 11, 2003.

Carlos Poza,

Deputy Director General, U.S. & Foreign Commercial Service.

[FR Doc. 03–9421 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403A]

Proposed Information Collection; Comment Request; Southwest Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 16, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, 808–973–2935, ext. 2072937, or at Alvin.Katekaru@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Permits are required for persons to participate in Federally-managed fisheries in the western Pacific region and off the West Coast. There are three types of permits: basic fishery permits (e.g., western Pacific general longline fishing and receiving permits, precious coral permits, and troll or handline permits for pelagic management unit species in waters around the U.S. Pacific remote island areas); limited entry permits for selected fisheries (e.g., Hawaii longline fishery, Northwestern Hawaiian Islands (NWHI) bottomfish fishery, West Coast coastal pelagic fishery); and experimental fishing permits (EFPs). Appeals and certain waivers requests can also be submitted. Some fisheries require an application to transfer a permit.

The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids enforcement of regulations.

II. Method of Collection

Paper forms are required for most permit applications. Experimental fishing permits, waivers, and appeals are submitted in paper format, but forms are not used.

III. Data

OMB Number: 0648–0204.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 369.

Estimated Time Per Response: 30 minutes for a permit application or permit transfer (unless otherwise noted below); 1 hour for additional permit information (when requested) for the coastal pelagic fishery of the Pacific coast; 1 hour for a limited entry permit application for bottomfish in the NWHI Ho'omalulu Zone; 2 hours for a permit appeal; 2 hours for an application for an exemption or experimental fishing permit; and 1 hour for a waiver for NWHI Ho'omalulu Zone or Mau Zone bottomfish permit renewal requirements.

Estimated Total Annual Burden Hours: 248.

Estimated Total Annual Cost to Public: \$185.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-9487 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403B]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Limits on Application of Take Prohibitions.

Form Number(s): None.

OMB Approval Number: 0648-0399.

Type of Request: Regular submission.

Burden Hours: 4,235.

Number of Respondents: 318.

Average Hours Per Response: 20

hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 15 hours for a tribal plan or joint state/tribal plan;

10 hours for a fishery harvest or hatchery plan; 5 hours for a report of aided, salvaged, or disposed of salmonids; 2 hours for a research permit; 5 hours for an artificial propagation plan; and 5 hours for an annual report.

Needs and Uses: Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it "deems necessary and advisable to provide for the conservation of" threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits "take" of any endangered species ("take" includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 20 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations.

NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted. The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Certain of these limits on the take prohibitions entail submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

Affected Public: State, Local, or Tribal Government; business or other for-profit organizations, and farms.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-9488 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403C]

Proposed Information Collection; Comment Request; Southwest Region Logbook Family of Forms.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 16, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, 808-973-2935, ext. 2072937, or at Alvin.Katekaru@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants in Federally-managed fisheries in the western Pacific are required to provide certain information about their fishing activities. These can include logbooks, notifications, and other requirements, as well as use of a Vessel monitoring system (VMS). The information is needed for the management of the fisheries.

II. Method of Collection

Reports from a Vessel Monitoring System VMS are automatic and electronic. Pre-landing and pre-offloading notifications are made by phone or FAX. Other submissions are made in paper form.

III. Data

OMB Number: 0648-0214.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 162.

Estimated Time Per Response: 5.25 minutes per day for a logbook in Pacific Pelagic fisheries (unless otherwise noted); 5 minutes per report for logbooks in the western Pacific Crustacean or pelagic troll or handline fisheries; 7 minutes per day for a logbook in the western Pacific Precious Coral fishery; 5 minutes per report for a pelagic longline transshipment logbook; 5 minutes for a crustacean sales report in a logbook; 3 minutes for an at-sea crustacean catch report; 3 minutes for a crustacean pre-trip or pre-offloading notice; 1 hour per longline observer placement meeting; 4 hours for a claim of lost longline fishing time; 5 minutes for a report on lobster trap gear left at sea; 5 minutes for a precious corals sales report; 2 hours for a protected species interaction report in the Northwestern Hawaiian Islands (NWHI) bottomfish fishery; 3 minutes for a NWHI lobster pre-season Vessel Monitoring System (VMS) report; 4 hours for installation of a VMS unit in Hawaii-based longline fishery; 2 hours for annual maintenance of a VMS unit in the Hawaii longline fishery; 24 seconds a day for automated VMS position reports from the Hawaii longline area closures; 4 hours for an experimental fishing report; 5 minutes for a pelagic management unit species dealer report; 24 seconds/day for notification of entry to/exit from a protected species zone [automated position report via a VMS]; 30 minutes for a request for longline closed area exemption; 5 minutes for crustacean dealer packing, weigh-out slips, and records; 3 minutes for a NWHI bottomfish fishery pre-trip notification; and 3 minutes for a NWHI bottomfish pre-landing notification.

Estimated Total Annual Burden Hours: 2,339.

Estimated Total Annual Cost to Public: \$3,293.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-9489 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits 1430 and 1431 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from Jones & Stokes (J&S) in Sacramento, CA (1430) and California Department of Water Resources (CDWR) in Sacramento, CA (1431). These permits would affect federally threatened Central Valley spring-run Chinook salmon and Central Valley steelhead. This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on May 19, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment, for permits 1430 and 1431: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814 (ph: 916-930-3600, fax: 916-930-3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT:

Rosalie del Rosario at phone number 916-930-3600, or e-mail:

Rosalie.delRosario@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and threatened Central Valley steelhead (*O. mykiss*).

Applications Received

J&S requests a 1-year permit (1430) for take of adult and juvenile threatened Central Valley spring-run Chinook

salmon and threatened Central Valley steelhead to assess potential impacts of water transfers on Central Valley fall-run Chinook salmon, spring-run Chinook salmon, and steelhead in the lower Yuba River. J&S requests authorization for an estimated total take of 18,306 adult spring-run Chinook salmon (that includes 0.5 percent incidental mortality) and 2,000 adult steelhead (0.5 percent incidental mortality) resulting from observation and release of adult fish, and 619,865 juvenile spring-run Chinook salmon (0.9 percent incidental mortality) and 18,324 juvenile steelhead (2 percent incidental mortality) resulting from capture, handling, and releasing of juvenile fish.

CDWR requests a 5-year permit (1431) for take of adult and juvenile Central Valley spring-run Chinook salmon and Central Valley steelhead associated with studies to evaluate the effects of Oroville-Thermalito Complex operations on anadromous fishes in the Feather River. The studies concern spring-run Chinook salmon holding areas and spawning areas, Chinook salmon spawning escapement surveys, and steelhead life history. CDWR requests authorization for an estimated annual take resulting from carcass surveys, marking, releasing, and/or tissue samples of 40,555 adult spring-run Chinook salmon (that includes >0.01 percent incidental mortality) for the first 3 years and 50 adult spring-run Chinook salmon annually thereafter, 115 adult steelhead (4 percent incidental mortality), and 775 juvenile steelhead (3 percent incidental mortality) resulting from the proposed studies.

Dated: April 11, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03-9492 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040103B]

Availability of Draft Environmental Assessment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft environmental assessment (EA) of impacts on the human environment of the potential issuance of three enhancement permits authorizing take of listed salmon and steelhead in the upper Columbia River Basin associated with the operation of artificial propagation programs. This document serves to notify the public of the availability of the draft EA for review and comment before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS.

DATES: Written comments on the draft EA must be received no later than 5 p.m. Pacific daylight time on May 2, 2003.

ADDRESSES: Written comments on the application should be sent to Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, NMFS, 525 N.E. Oregon Street, Suite 510, Portland, Oregon 97232. Comments may also be sent via fax to (503) 872-2737. Comments will not be accepted if submitted via e-mail or the Internet. Requests for copies of the draft EA should be directed to the Portland office. The document also is available on the Internet at <http://www.nwr.noaa.gov/> or it may be reviewed by appointment during business hours at the Portland office by calling (503) 230-5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, Oregon, at phone number: (503) 230-5409, e-mail: Kristine.Petersen@noaa.gov

SUPPLEMENTARY INFORMATION: This document is relevant to the following species and evolutionarily significant units (ESUs):

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Background

National Environmental Policy Act (NEPA) requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on ESA section 10(a)(1)(A) submittals expected from the applicants. Therefore NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

On June 12, 2002, NMFS received an application for an ESA section 10 permit from the Washington Department of Fish and Wildlife requesting a multi-

year authorization for an annual take of Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with proposed steelhead artificial propagation programs intended to enhance the natural production of ESA-listed Upper Columbia River steelhead. Notice of the receipt of this permit application was published in the **Federal Register** on August 1, 2002, and a public informational meeting was held on August 28, 2002, in Wenatchee, WA to inform the public of the receipt of this permit application.

In April 2002, negotiations on the Anadromous Fish Agreement and Habitat Conservation Plans (HCP) for Rocky Reach Hydroelectric Project (Federal Energy Regulatory Commission (FERC) License Number 2145), Rock Island Hydroelectric Project (FERC License Number 943), and the Wells Hydroelectric Project (FERC License Number 2149) were completed related to the re-licensing of Wells Dam with Public Utilities District No. 1 of Douglas County, and Rocky Reach Dam, and Rock Island Dam with Public Utilities District No. 1 of Chelan County. These long-term agreements provide for mitigation in the form of artificial propagation programs to replace unavoidable losses to natural fish production. The artificial propagation component of each HCP specifies the number and species to be reared. The impacts of the HCP on the environment were considered in an Environmental Impact Statement (EIS) which was published for comment in the **Federal Register** on December 27, 2002.

On June 11, 2002, NMFS received a similar application for an ESA section 10 permit from the U.S. Fish and Wildlife Service, requesting a multi-year authorization for an annual take of Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with a steelhead artificial propagation program in the Methow River Basin. Notice of the receipt of this permit application was published in the **Federal Register** on August 1, 2002, and a public informational meeting was held on August 28, 2002, in Wenatchee, WA to inform the public of the receipt of this permit application.

On October 23, 2002, NMFS received an application for a section 10 permit from the Confederated Tribes of the Colville Reservation, requesting a multi-year authorization for an annual take of ESA-listed Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with a steelhead artificial propagation program in the Okanogan River Basin.

Funding for this program has been allocated through the Pacific Salmon Coastal Recovery Fund administered by NMFS, and is consistent with Bureau of Reclamation steelhead recovery efforts ongoing in the Okanogan Basin. Notice of the receipt of this permit application was published in the **Federal Register** on January 14, 2003.

In total the proposed programs would provide artificial propagation and release of about 1.03 million ESA-listed Upper Columbia River steelhead into the Upper Columbia River Basin and for the monitoring and management of the returning adult steelhead to the Upper Columbia River Basin. The general effects on the environment considered include the impacts on the physical, biological, and socioeconomic environments of the Upper Columbia River Basin.

Dated: April 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 03-9493 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030409080-3080-01; I.D. 031103D]

RIN 0648-ZB41

Financial Assistance for North Atlantic Right Whale Research Programs Through A Competitive Grants Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter "we" or "us") issues this document to solicit applications for Federal assistance under the North Atlantic Right Whale Grant Program (RWGP). This document describes how to submit applications for funding in FY 2003 under the Program and how we will determine which applications will be funded. Under the RWGP, we will provide financial assistance to eligible researchers working within waters inhabited by North Atlantic right whales and submitting applications pertaining only to this species. Applications will be reviewed for eligibility, technical

merit, and consistency with the RWGP's goals and regional funding priorities. Final selection will be based on results of a peer review process (described below), as well as other restrictions based on appropriations language.

DATES: The application package must be postmarked by 5 p.m. (local time) June 16, 2003. The package must include: (1) one signed original of the entire application and all required forms, and (2) two signed copies of the entire application and all required forms (including supporting documentation). The applicant may also voluntarily submit an electronic copy (on CD or diskette in Microsoft Word v. 97 or earlier or WordPerfect v. 9 or lower) of the narrative project description.

ADDRESSES: All application packages should be sent to NOAA/NMFS Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, email rightwhalegrants@noaa.gov.

Federal forms and required elements of the application packages can be obtained from the NMFS Right Whale Grants Program webpage at <http://www.nefsc.noaa.gov/psb/grantforms>. We cannot accept completed applications via the Internet or facsimile at this time.

FOR FURTHER INFORMATION CONTACT: Dr Phillip J. Clapham, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495-2316, email rightwhalegrants@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

For fiscal year (FY) 2002, Congress directed that \$1 million for right whale research be administered through a competitive grants program operated by the Northeast Consortium. For FY 2003 (and in future years if continued), this grant program will be administered by NMFS as the Right Whale Grants Program (hereafter referred to as the RWGP). This document describes how to submit applications for funding in FY 2003 under the RWGP and how we will determine which applications will be funded.

A. Background

Management of marine mammal populations falls within the jurisdiction of the National Marine Fisheries Service (NMFS) under the Marine Mammal Protection Act (MMPA) of 1972 and, for some species, under the Endangered Species Act (ESA) of 1973. The agency is mandated to conserve the endangered species under its jurisdiction, and must undertake actions to prevent further

decline of populations, facilitate their recovery, and safeguard the quality of their habitat.

The North Atlantic right whale (*Eubalaena glacialis*) is among the world's most endangered cetaceans. The population is believed to number only about 300 individuals and appears to be declining. The lack of recovery is due in part to high mortality from human sources, notably fishing gear entanglements and vessel collisions. A Recovery Plan is in effect (NMFS 1991), and conservation of this species is a high priority for NMFS. Research directed at facilitating such conservation or to provide monitoring of the population's status and health, is also a high priority for the agency.

The RWGP is conducted by the Secretary of Commerce to provide Federal assistance to eligible researchers for: (1) detection and tracking of right whales; (2) behavior of right whales in relation to ships; (3) relationships between vessel speed, size or design with whale collisions; (4) modeling of ship traffic along the Atlantic coast; (5) population monitoring and assessment studies; (6) reproduction, health and genetic studies; (7) development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) habitat quality studies including food quality and pollutant levels; and (9) any other work relevant to the recovery of North Atlantic right whales. The RWGP is administered by the Protected Species Branch of the NOAA/NMFS Northeast Fisheries Science Center in Woods Hole, Massachusetts.

B. Objectives

The principal objectives of the RWGP are to fund research or other activities that can provide information useful to management of North Atlantic right whales, with emphasis on understanding or mitigation of factors inhibiting the species' recovery.

Successful applications will be those that have a high probability of providing novel information that can be used to monitor the status and health of the North Atlantic right whale population, or to improve management strategies aimed at reducing risk from human factors or at otherwise facilitating the population's recovery. Priority will be given to researchers with a demonstrated track record of publishing the results of previous work in the peer-reviewed scientific literature.

C. Funding

This solicitation announces that a maximum of \$2.0M may be available for distribution under the 2003 RWGP, in award amounts to be determined by the applications and available funds. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving any award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. There is no set minimum or maximum amount for any award.

There is no limit on the number of applications that can be submitted by the same researcher during the 2003 competitive grant cycle. However, there are insufficient funds to award financial assistance to every applicant. Multiple applications submitted must clearly identify different projects and must be successful in the competitive review process.

Other researchers may be identified as Co-Investigators or collaborators on as many RWGP applications as needed so long as the total of all support does not exceed 100 percent of their time. In addition, Department of Commerce may act as collaborators if they are responsible for performing analyses on data collected under a RWGP award. See section I.D. for Eligibility Requirements.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. However, multiple-year projects will be considered under the RWGP.

Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the award unless the Grants Officer approves them in accordance with 15 CFR 14.28.

D. Eligibility

Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or

employees of Federal agencies are not eligible to apply.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretary of Commerce in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from eligible individuals, government entities, universities, colleges, and businesses in U.S. insular areas as defined by the Marine Mammal Protection Act (MMPA) (section 3(14), 16 U.S.C. 1362). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

NOAA/NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of applications. NMFS staff are available to provide information regarding statistics on right whales, programmatic goals and objectives, ongoing marine mammal programs, Regional funding priorities, and, along with other Federal Program Officers, can provide information on application procedures and completion of required forms. Since this is a competitive program, NMFS and NOAA employees shall not provide assistance in conceptualizing, developing, or structuring applications, or write letters of support for any application. However, for activities that involve collaboration with current NMFS programs on North Atlantic right whales, employees of NMFS can write a letter verifying that they are collaborating with the project. Federal employee travel and salaries are not allowable costs under this program.

E. Permits and Approvals

It is the applicant's responsibility to obtain all necessary Federal, state, and

local government permits and approvals where necessary for the proposed work to be conducted.

Applicants are expected to design their proposals so that they minimize the potential adverse impact on the environment. If applicable, documentation of requests or approvals of environmental permits must be included in the proposal package. These documents will help the NMFS staff determine if the application requires the preparation of an environmental assessment. Applications will be reviewed to ensure that they have sufficient environmental documentation to allow program staff to determine whether the proposal is categorically excluded from further NEPA analysis or whether an environmental assessment is necessary. For those applications needing an environmental assessment, affected applicants will be informed after the peer review stage and will be requested to assist in the preparation of a draft of the assessment (prior to award).

If the proposed research involves intrusive research (50 CFR 216.27(c)(6)) or an approach to within 500 yds of a right whale, the applicant must have submitted a complete MMPA/ESA scientific research and enhancement permit application before funding will be awarded. Intrusive research is defined under 50 CFR 216.3 as a procedure that involves: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animals' immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (*i.e.*, chemical substances), or a stimulus directed at animals that poses a risk to the health or welfare of the animal or has the potential to impact normal function or behavior (e.g., audio broadcasts directed at animals that potentially affects behavior, brainstem auditory evoked responses, etc.).

If proposed activities will take place within National Marine Sanctuaries, National Parks, National Seashores, and other Federally designated protected areas, it is the applicant's responsibility to request and obtain from the appropriate government agencies any necessary permits or letters of agreement prior to award.

For further information on permit requirements and applications procedures for federal natural resource permits, contact the NMFS Office of Protected Resources or see http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.

Failure to apply for and/or obtain Federal, state, and local permits, approvals, letters of agreement, or failure to provide environmental analyses where necessary (*i.e.*, NEPA environmental assessment) will also delay the award of funds if a project is otherwise selected for funding.

F. Duration and Terms of Funding

Fiscal year 2003 awards under the RWGP will have a maximum project period of 3 years.

If an applicant wishes to continue work on a project funded through this program beyond the project period and obligated award funds have not been expended by the end of this period, the applicant can notify the assigned Federal Program Officer 30 days prior to the end of the period to determine eligibility for a no-cost extension.

If a application is selected for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award is totally at our discretion.

G. Cost Sharing

Not applicable.

H. Catalog of Federal Domestic Assistance

The RWGP will be listed in the "Catalog of Federal Domestic Assistance" under number 11.472, titled "Unallied Science Programs". This information should be included on the Application Form, 424, space 10 (see section III, Application Instructions and Requirements, below).

I. Where to Send Applications

All application packages should be sent to NOAA/NMFS Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495-2316, email rightwhalegrants@noaa.gov.

J. Electronic Access Addresses

This solicitation, complete application packages (including required Federal forms) with instructions and addresses for submission are available on the NMFS RWGP web page at <http://www.nefsc.noaa.gov/psb/grantforms>.

II. Funding Priorities

For this solicitation, all applications must fall within at least one of the 9 following categories: (1) Detection and tracking of right whales; (2) Behavior of right whales in relation to ships; (3) Relationships between vessel speed, size or design with whale collisions; (4) Modeling of ship traffic along the

Atlantic coast; (5) Population monitoring and assessment studies; (6) Reproduction, health and genetic studies; (7) Development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) Habitat quality studies including food quality and pollutant levels; and (9) Any other work relevant to the recovery of North Atlantic right whales.

You must select only one of the 9 categories that best fits your application. Since we recognize that some projects could be designed to meet more than one category, you should determine which category best fits the goals of your proposed project.

The priorities are not listed in any particular order and each is of equal importance. Note that the purpose of the priority list is to guide applicants in application development by identifying those applications that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. Applications will not be pooled or categorized by NMFS region, although regional funding priorities within NMFS may be a factor in the final ranking of applications.

Details of funding priorities for each of the 9 categories are as follows:

1. Detection and Tracking of Right Whales

Studies, including those involving passive or active acoustic tracking, as well as tagging or other telemetry, which improve knowledge of the distribution and movements of right whales in order to (among other things) better assess risks from ship-strike and fishing gear entanglements.

2. Behavior of Right Whales in Relation to Ships

Investigations of behavior or other biological factors which govern the response of right whales to ships and thus may affect the likelihood that right whales will collide with, or successfully avoid, oncoming vessels. This component may also include experiments to assess the response of right whales to ship-avoidance deterrence methods (e.g. "alarm" stimuli).

3. Relationships Between Vessel Speed, Size or Design with Whale Collisions

Investigations (using modeling or any other means) of how collision risk varies with the speed, size or design of a ship.

4. Modeling or Other Studies of Ship Traffic Along the Atlantic Coast

Investigations which provide novel information on patterns of ship traffic along the Atlantic coast of North America (U.S. and Atlantic Canada), in order to better assess, by area, the risk of collisions between ships and right whales.

5. Population Monitoring and Assessment Studies

Field or modeling studies which provide data or analysis for monitoring/assessment of population size and trend, vital rates, population structure, or distribution.

6. Reproduction, Health and Genetic Studies

Studies of the reproductive biology of right whales, of individual animal health (incorporating physiology, pathology or other methods), or of genetics (including but not limited to genetic diversity, population structure, effective population size, and paternity).

7. Development of a Geographic Information System Database or Other System Designed to Investigate Predictive Modeling of Right Whale Distribution in Relation to Environmental Variables

Studies seeking to correlate right whale distribution and environmental variables in order to reliably predict future aggregations of right whales from remotely sensed (or other) environmental data.

8. Habitat Quality Studies Including Food Quality and Pollutant Levels

Investigations of habitat quality, including abundance and quality of available prey resources, pollutant levels, and interactions of environmental variables with prey resources.

9. Any Other Work Relevant to the Recovery of North Atlantic Right Whales

Studies or other projects on topics not specifically covered in Categories 1-8 above, but which have the potential to contribute important information about North Atlantic right whales or to enhance their recovery.

III. Application Instructions and Requirements

The instructions in this document are designed to help applicants in preparing and submitting a application for Federal funding under the RWGP. All required federal forms, the narrative description of the budget and proposed project, and applicable supporting documentation must be complete and must follow the

format described here. One signed original and two signed copies of the complete application package must be submitted. The original application and copies should not be bound in any manner and must be printed on one side only. In addition, applicants may also voluntarily submit an electronic copy (on diskette or CD in Microsoft Word v. 97 or earlier or WordPerfect v. 9 or lower) of the narrative project description. The required unbound original and two copies, and the electronic copy (if the applicant wishes to submit one) must be sent to the address listed in section I.I of this document and postmarked by the submission deadline (see DATES) in order to be considered in the 2003 competition. We are not required to screen applications before the submission deadline, nor do we have to give applicants an opportunity to correct any deficiencies leading to rejection. However, we strongly recommend early submission of applications in the event that we have the resources to pre-screen. Note that there will be no extensions of the deadline for application revisions and that any revised applications must be re-submitted by the original solicitation deadline.

A. Required Federal Forms

Cover Sheets

SF-424 "Application for Federal Assistance" ("Catalog of Federal Domestic Assistance" number is 11.472, and title is "Unallied Science Programs")

SF-424B "Assurances - Non-Construction Programs" Project Budget

SF-424A "Budget Information - Non-Construction Programs ≥ Certifications and Disclosures

CD-511 "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"

SF-LLL "Disclosure of Lobbying Activities" (as required under 15 CFR part 28)

CD-346 "Name Check"

B. Required Federal Forms for Construction Applications

Not applicable.

C. Required Elements of all Project Applications

You must follow the instructions in this document in order to apply for a grant under the RWGP. Your application must be complete and must follow the format described here. Your application must not be bound in any manner and must be printed on one side only. You

must submit one signed original and two signed copies of your application. These unbound applications must be sent to the Application Addresses listed in Section I.I of this document by the application deadline (see DATES).

Assistance in filling out required forms and avoiding common problems can be found on the NOAA Grants web site at <http://www.rdc.noaa.gov/grants/index.html>. The RWGP web page at <http://www.nefsc.noaa.gov/psb/grantforms> has the forms necessary for applying for funds under the RWGP.

A complete application package must include the following elements:

1. Cover Sheet

Office of Management and Budget (OMB) Standard Forms 424 and 424B (4-92) or 424D must be the cover sheets for each application. To complete item 10 of Standard Form 424, the "Catalog of Federal Domestic Assistance" number is 11.472 and the title is "Unallied Science Program". For item 13 of Standard Form 424, a start date no earlier than 1 September 2003 should be selected.

2. Project Budget

Each application must include clear and concise budget information, both on the required Federal forms, in summary and in narrative detail.

Applications must use OMB standard form 424A, "Budget Information - Non Construction Programs" and associated form instructions.

All instructions should be read before completing the appropriate form. Federal columns on these forms must be filled in completely and separately and the amounts per category and total amounts must correspond with the budget narrative and justification.

On a separate sheet, describe and justify in narrative detail or on a spreadsheet the itemized costs per category and the corresponding direct and indirect cost totals. If the applicant currently has a negotiated indirect cost rate with the Federal Government, an amount for indirect costs can be included in the budget. Indirect costs are overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and, therefore, cannot be identified specifically within a particular project. Indirect costs can be included in the Federal cost as long as the method of calculation is clear and certain rules are followed. If indirect costs are included, the package should include a copy of the current, approved, negotiated indirect cost agreement with the Federal Government.

We will not consider fees, fund-raising activities, travel for Federal employees, salaries for federal employees, or profits as allowable costs in the proposed budget. The total costs of a project consist of all allowable costs you incur in accomplishing project activities during the project period. A project begins on the effective date of an award agreement between you and the Grants Officer and ends on the date specified in the award. Accordingly, we cannot reimburse applicants for time expended or costs incurred in developing a project or preparing the application, or in any discussions or negotiations with us prior to the award. We will not accept such expenditures as part of your cost share.

3. Title Page

A Title Page must be included for each project. The Title Page must list the project title, project duration (with a start date no earlier than 1 September 2003), applicant name, name of Principal Investigator or Contact, address and phone number of the Principal Investigator or Contact, the RWGP application category under which the project fits (see section II of this document), the project's objective(s), and a statement regarding the total costs of the project.

4. Project Summary

In 6 sentences or less, briefly summarize: project goals and objectives as they relate to the RWGP application categories (*i.e.*, Categories 1 to 9), Program goals; proposed activities; geographic area where activities would occur; and expected outcomes and benefits from the activities of the project. This summary will be posted on our website if the project is funded.

5. Narrative Project Description

The narrative description of the proposed project must not exceed 10 pages (not including curricula vitae, tables or figures, and supplemental documentation) and must be typed in Times New Roman size 12 font and double-spaced. The narrative should demonstrate the applicant's knowledge of the need for the project, and show how the proposed project builds upon any past and current work in the subject area, as well as relevant work in related fields. Applicants should not assume that reviewers already know the relative merits of the project.

The narrative project description must include each of the following elements in the order listed here:

(a) Project goals and objectives (maximum 2 pages). Identify the RWGP goal, listed earlier in this document, to

which the project's goals and objective(s) correspond. Identify the problem/opportunity the project intends to address and describe its significance to the understanding and management of North Atlantic right whales. State expected project accomplishments.

(b) Project management (maximum 3 pages, excluding resume and curricula vitae). Describe how the proposed project will be organized and managed (e.g., financial accounting systems to be used and point of contact responsible for managing those systems, etc.).

The lead organization/individual and person listed as the technical contact, should be identified as the Principal Investigator. The Principal Investigator may or may not be the applicant. However, if the applicant is not the Principal Investigator, there must be an explanation of the relationship between the applicant and Principal Investigator (e.g., applicant will be responsible for managing the grant funds and the Principal Investigator will be responsible for completing the project milestones on time and within budget, etc.). One Principal Investigator must be designated on each project. If a Principal Investigator is not identified, we will return the application. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, researchers contributing data or materials, should be referred to as Cooperators. Copies of the Principal Investigator's and all Co-investigator's current resumes or curricula vitae must be included in the package's Supporting Documentation section. In addition, the proof of eligibility documents (see II.C.6. Supporting Documentation) provided and listed in the Supporting Documents section of the application must name the Principal Investigator and/or Co-investigator. List any Federal awards the Principal Investigator and Co-investigators have received within the last five years and describe resultant products of such awards. Provide a statement of no more than one page on the qualifications and experience (e.g., resume or curriculum vitae) of consultants and/or subcontractors that are not named as Co-investigators and any Cooperators.

Include copies of agreements between the Principal Investigator and other participants in the project, describing the specific activities each participant would perform. Include copies of any endorsements received from institutions related to this project.

If any portion of the project will be conducted through consultants and/or

subcontracts, procurement guidance found in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations" must be followed. Describe how provisions for competitive subcontracting will be met if applicable.

(c) Project statement of work (maximum 6 pages). This is a narrative of the work plan that will ensure the proposed project's goals and objectives are met within the proposed award period. It should include detailed descriptions of activities, collaborators, milestones, and expected products resulting from a successfully completed project. The narrative should respond to the following questions:

(1) What specific activities does the project include and how do these activities relate to the project's goals and objectives?

(2) Who will be responsible for carrying out each activity? Highlight activities that will be conducted by Co-investigators or Cooperators, or by subcontractors, volunteers, and others designated as Co-investigators or Cooperators. For all projects, highlight activities that will be subcontracted. Use of volunteer staff time to complete project activities and oversight of those volunteers should be discussed. The Principal Investigator is responsible for all technical oversight and implementation of the approved work plan as delineated in this Statement of Work.

(3) What are the project milestones? List milestones, describing specific activities and associated time lines necessary to meet them. Describe the time lines in increments (e.g., month 1, month 2, etc.), rather than by specific dates. (d) What are the major outcomes, results, or products expected? Describe expected outcomes, results, or products that will directly relate to the RWGP goals (*i.e.*, under Categories 1–9).

(4) How will outcomes, results, or products be disseminated or shared? Describe how project outcomes, results or products will be disseminated to or shared with researchers, managers and other potential users.

(5) Project impacts (maximum 1 page). Describe the potential impacts of this proposed project on the recovery of North Atlantic right whales. Identify any other potential project impacts.

(6) Project performance evaluation (maximum 1 page). Specify the quantitative and/or qualitative criteria to be used in evaluating the relative

success or failure of the project in achieving the stated project goals and objectives.

6. Supporting Documentation

In order to be considered for an award in this funding cycle, the applicant must provide proof of eligibility documents. Applicants requiring MMPA/ESA scientific research and enhancement permits or a Letter of Authorization (LOA) to conduct work on entangled animals, must include evidence they have submitted a complete MMPA/ESA application or a copy of their LOA in this section.

Applicants proposing activities that may require an environmental assessment under NEPA must include sufficient environmental analyses (*i.e.*, permit documentation) to allow program staff to determine whether or not the proposal can be categorically excluded from further NEPA analysis.

Curricula vitae or resumes of the Principals and Co-Investigators and all other required federal forms (*i.e.*, CD-511, SF-LLL, CD-346) must be included here.

Any other relevant documents and additional information that will help us to understand the proposed project and the problem/opportunity the project seeks to address should be included in this section.

Supporting documents will not count as a part of the 10 page limit.

IV. Screening, Review, and Selection Procedures

Screening, review, and selection procedures will take place in 3 steps, described in detail in this section: initial screening, peer review, and final selection by the Selecting Official (*i.e.*, the Science and Research Director, Northeast Fisheries Science Center). The peer review step will involve at least 3 individual reviewers per application. The Selecting Official will make the final decision regarding which applications will be funded based upon evaluations submitted by the peer reviewers as well as policy considerations such as costs, financial need, and duplication with other federally funded projects.

A. Initial Screening

The initial screening will ensure that application packages have all required forms and application elements (listed below and in Section III), clearly relate to the 2003 RWGP, and meet all of the eligibility criteria identified in Section I.D of this document.

Application packages received by the Protected Species Branch, Northeast Fisheries Science Center and

postmarked by the submission deadline will be screened to ensure that they: were postmarked by the due date (see DATES); include one original and 2 signed copies of the entire application package; include the correct OMB forms (424, 424A or 424D, and 424B) signed and dated (see section III.A and III.B of this document); identify a Principal Investigator and provide current resumes or curricula vitae for both the Principal and Co-Investigators (see section III.C); identify one of the 9 project categories (see section II); include application package elements 1 through 6 (see section III.C); and include MMPA or ESA permit application cover letters, and other environmental documentation, if applicable. Applications that pass this initial screening will be pooled based on the application category (*i.e.*, Categories 1–9) identified by the applicant.

Our ability to pre-screen is dependent upon the submission deadline and the availability of resources.

B. Peer Review

After initial screening, a team of reviewers will be asked to independently evaluate applications in the reviewers' specific area of expertise for technical soundness and feasibility, and for relevance to the overall goals of the RWGP. The review results will be used to numerically rank the applications and provide comments on the technical aspects and Program relevance of each application.

The Program category and proposed activities of each application will be used in selecting the most appropriate technical reviewers. Reviewers will include private and public sector experts by application category, and will include (but not necessarily be limited to) experts from fields such as marine mammal biology, conservation biology, population biology, reproductive biology, telemetry, modeling, genetics, statistics, marine ecology, oceanography, toxicology, veterinary medicine, pathology, marine affairs, fisheries biology, fisheries management, and marine mammal management. Each technical reviewer will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing prior to their review.

To determine the technical soundness and feasibility of each application, and its relevance to the RWGP goals, the reviewers will provide an independent review using the weighted criteria outlined in Section IV.C. below. Each application will be reviewed by at least three reviewers. No consensus advice will be given by the reviewers. On a

scale of 0–100, the reviewers will score the application in each criterion. An average, weighted score will be generated from each review using the numeric score per criteria and the weights assigned to each criteria.

C. Review Criteria

1. Soundness of Project Goals, Objectives, and Activities

Applications will be evaluated on clear identification of project goals and objectives and the ability to link those goals and objectives to project activities and the applicability of the project's goals and objectives to the RWGP goals. Reviewers should consider: the likelihood of meeting milestones and achieving anticipated results in the time line specified in the statement of work; the sufficiency of information to evaluate the project technically; if such information is sufficient, the strengths and/or weaknesses of the technical design relative to securing productive results; and if data collection is proposed, the inclusion of quality assurance considerations, the contribution of potential outcomes, results, or products to North Atlantic right whale biology and management; and, the amount of collaboration with other researchers in the right whale field. (Score = 1–50; Weight = 50 percent)

2. Adequacy of Project Management

The management of the project will be evaluated based on documentation of previous related experience and qualifications of the project's Principal Investigator, Co-investigator(s) and other personnel, including designated contractors, consultants, and Cooperators. Consideration will be made to previous awards received by the Principal Investigator and outcomes, results, or products (notably peer-reviewed scientific publications) resulting from such awards. (Score = 1–25; Weight = 25 percent)

3. Identification and Suitability of Project Performance Evaluation Methods

Applications will be scored based on their clear identification of performance evaluation methods and the suitability of those methods for evaluating the success or failure of the project in terms of meeting its original goals and objectives. (Score = 1–10; Weight = 10 percent)

4. Justification, Clarity, and Allocation of Project Costs

The proposed costs and overall budget of the project will be evaluated in terms of the work proposed. The

itemized costs and the overall budget must be justified and allocated appropriately. (Score = 1–15; Weight = 15 percent)

Applicants proposing activities that may require an environmental assessment under NEPA must include sufficient environmental analyses to allow program staff to determine whether or not the proposal can be categorically excluded from further NEPA analysis. If insufficient documentation is provided or if proposals cannot be categorically excluded from NEPA review, the applicant will be notified after peer review that further information or an environmental assessment is necessary. Further documentation must be supplied immediately and the environmental assessments must be completed in time prior to the final consideration for funding.

After applications have undergone peer review, NMFS Protected Species staff will summarize panel rankings by averaging the scores and prepare recommendations for funding to the Selecting Official (*i.e.* the Science and Research Director (SRD), Northeast Fisheries Science Center). Only those applications having an average weighted score higher than 60 points in the peer review will be considered for funding.

In making recommendations to the Selecting Official, NMFS Protected Species staff generally recommend proposals in numerical rank order. They may make recommendations out of numerical rank order based upon a determination that the proposal satisfies one or more of the following factors: the potential value of the work to Program goals, NEPA review, and duplication with other federally funded or permitted projects.

D. Final Selection Procedures

The Selecting Official may reject the recommendation for any proposal selected out of numerical order or accept the recommendation as submitted. If the recommendation is rejected, the Selecting Official will provide a rationale for his/her selection based on the potential value of the work to Program goals, the NEPA review, and duplication with other federally funded or permitted projects. As a result, funding may not necessarily be given to applications which receive the highest rankings in the peer review process.

E. Project Funding

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the applicant and NOAA/

NMFS representatives. Applicants should not initiate any project in expectation of Federal funding until they receive a grant award document signed by an authorized NOAA official.

Unsuccessful applications will be held by the Program Office for a period of one year from the date of receipt and then destroyed.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements is contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. The notice advises applicants of their responsibilities as applicants for Federal assistance.

If costs are incurred prior to receiving an award agreement signed by an authorized NOAA official, applicants do so solely at their own risk of not being reimbursed by the Government.

Notwithstanding any verbal or written assurance that applicants have received, the Department of Commerce has no obligation to cover pre-award costs.

A. Obligations of Recipients (Successful Applicants)

Applicants awarded a grant for a project must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we suggest (but

do not require) that applicants submit final reports in electronic format for publication on the NMFS Protected Species Home Page. Should this prove impracticable, applicants must then submit three printed copies of the final report. Awardees can charge the costs associated with preparing and transmitting your final reports to the grant award.

4. In addition to the final report, we require that successful applicants publish the results of their work in a timely fashion in the peer-reviewed scientific literature (except in specific cases where publication is not relevant to the nature of the proposed work). NMFS request that awardees submit any publications printed with award funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Publications should be submitted either as three hard copies or in an electronic version.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)).

Because notice and comment is not required under the APA, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*)

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This document contains collection-of-information requirements subject to the PRA. The use of Standard Forms 424, 424A, 424B, 424D, 269, SF-LLL, and CD-436 have been approved by OMB under the respective OMB control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0042, 0348-0039, 0348-0046, and 0605-0001.

Dated: April 11, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs for NOAA Fisheries, National Marine Fisheries Service.

[FR Doc. 03-9491 Filed 4-16-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title, Form Number(s) and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Control Number 0704-0377.

Type of Request: Reinstatement.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 Hours.

Annual Burden Hours: 153,600.

Needs and Uses: The Industrial Capability Questionnaire will be used by all Services and Defense Logistics Agency to gather business, industrial capability (employment labor skills, facilities, equipment, processes and technology), and manufactured item information to conduct required industrial assessments and support DoD planning and decisions. The questionnaires are directed at key industrial facilities supporting DoD requirements.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR,

1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-9454 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title, Form Number, and OMB

Number: Acquisition Management Systems and Data Requirements Control List (AMSDDL); Numerous Forms; OMB Control Number: 0704-0188.

Type of Request: Reinstatement.

Number of Respondents: 921.

Responses per Respondent: 1.

Annual Responses: 397,872.

Average Burden per Response: 66 hours.

Annual Burden Hours: 26,259,552 hours.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDDL) is a list of data requirements used in DoD contracts. This information is contained in DoD contracts for supplies, services, hardware, and software. The information collected from the public, DoD contractors, is necessary for DoD to support the design, test, manufacture, training, operation, and maintenance of procured items.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should

be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03-9455 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title and OMB Number: Defense

Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing and the clause at 252. 232-7002, Progress Payment for Foreign Military Sales Acquisition; OMB Number 0704-0321.

Type of Request: Extension.

Number of Respondents: 306.

Responses per Respondent: 12.

Annual Responses: 3,672.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,836.

Needs and Uses: This information collection requires a contractor whose contract includes Foreign Military Sales (FMS) requirements and progress payments type of financing, to submit progress payment requests with supporting schedules that clearly distinguish the contract's FMS requirements from U.S.S contract requirements.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should

be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03-9456 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 19, 2003.

Title, Form Number, and OMB

Number: Disposition of Remains—Reimbursable Basis Request for Payment of Funeral and/or Interment Expenses; DD Forms 2065 and 1375; OMB Number 0704-0030.

Type of Request: Reinstatement.

Number of Respondents: 2,450.

Responses per Respondent: 1.

Annual Responses: 2,450.

Average Burden Per Response: DD 2065 = 20 minutes (average); DD 1375 = 10 minutes (average).

Annual Burden Hours: 425 hours.

Needs and Uses: The DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin with an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposals should

be sent to Mr. Cushing, WHS/DIOR,
1215 Jefferson Davis Highway, Suite
1204, Arlington, VA 22202-4302.

Dated: April 10, 2003.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 03-9457 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense
Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is
publishing the unclassified text of a
section 36(b)(1) arms sales notification.
This is published to fulfill the

requirements of section 155 of Public
Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms.
J. Hurd, DSCA/COMPT/RM, (703) 604-
6575.

The following is a copy of a letter to
the Speaker of the House of
Representatives, Transmittal 03-11 with
attached transmittal, policy justification,
and Sensitivity of Technology.

Dated: April 10, 2003.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 APR 2003

**In reply refer to:
I-03/003058**

**The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost \$482 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tome Walters, Jr.".

**TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR**

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Appropriations
Senate Committee on Appropriations
House Committee on Armed Services
Senate Committee on Armed Services**

Transmittal No. 03-11

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** Japan

(ii) **Total Estimated Value:**

Major Defense Equipment*	\$215 million
Other	<u>\$267 million</u>
TOTAL	\$482 million

(iii) **Description and Quantity or Quantities of Articles or Services under**

Consideration for Purchase: 1 MK 7 MOD 6(V) AEGIS Weapon System, 1 AN/SQQ-89(V) Surface Ship Undersea Combat System, 1 AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, 1 shipboard gridlock system, 1 Common Data Link Management System/Joint Tactical Information Distribution System, 1 MK 34 gun weapon system, 1 Navigation Sensor System Interface, 1 MK36 Decoy Launching System, 1 AN/WSN-7 Ring Laser Gyro Navigator, 1 AN/SQQ-121 Computer Aided Dead Reckoning Tracker, 18 SM-2 Block IIIB Standard missiles, 10 SM-2 Block IIIB Standard missiles with telemetry; 28 MK 13 MOD 0 canisters, containers, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support

(iv) **Military Department:** Navy (LTS, APG, and APP)

(v) **Prior Related Cases, if any:**

FMS case AOZ - \$ 21 million - 23Aug02
 FMS case LSU - \$521 million - 22Jul02
 FMS case AOO - \$ 18 million - 19Dec01
 FMS case AOI - \$ 17 million - 1Nov00
 FMS case AOB - \$ 16 million - 9Dec99
 FMS case ANU - \$ 17 million - 21Dec98
 FMS case AMZ - \$ 7 million - 17Oct94
 FMS case LPE - \$462 million - 27Aug93
 FMS case ALT - \$ 10 million - 27Aug93
 FMS case ALI - \$ 7 million - 28Oct92
 FMS case AKV - \$ 12 million - 24Mar92
 FMS case LNW - \$450 million - 11Sep91
 FMS case LND - \$478 million - 29Aug90
 FMS case LKL - \$468 million - 24Jun88

* as defined in Section 47(6) of the Arms Export Control Act.

- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**
- (viii) **Date Report Delivered to Congress: 10 APR 2003**

POLICY JUSTIFICATION

Japan – AEGIS Weapon Systems and Standard Missiles

The Government of Japan has requested a possible sale of 1 MK 7 MOD 6(V) AEGIS Weapon System, 1 AN/SQQ-89(V) Surface Ship Undersea Combat System, 1 AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, 1 shipboard gridlock system, 1 Common Data Link Management System/Joint Tactical Information Distribution System, 1 MK 34 gun weapon system, 1 Navigation Sensor System Interface, 1 MK36 Decoy Launching System, 1 AN/WSN-7 Ring Laser Gyro Navigator, 1 AN/SQQ-121 Computer Aided Dead Reckoning Tracker, 18 SM-2 Block IIIB Standard missiles, 10 SM-2 Block IIIB Standard missiles with telemetry; 28 MK 13 MOD 0 canisters, containers, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support. The estimated cost is \$482 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security. This proposed sale of SM-2 missiles and AEGIS Weapon System will provide substantial economic opportunities for U.S. industry and continue to promote greater interoperability and cooperation between our navies.

Installation of the AEGIS combat system on ships of the Japan Maritime Self Defense force will provide enhanced capabilities to Japan in providing for defense of its critical Sea Lines of Communication. AEGIS will be the keystone in Japan's effort to upgrade its anti-air warfare capability. Japan is fully capable of integrating this system into its operational forces and will receive data sufficient for basic maintenance of the equipment. Japan will use these missiles to update older or less reliable missiles currently in the Japan Maritime Self Defense Force fleet. Japan, which already has AEGIS systems and Standard missiles, will have no difficulty absorbing the additional system. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Naval Electronics and Surveillance Systems of Morristown, New Jersey; Lockheed Martin Naval Electronics and Surveillance Systems of Syracuse, New York; Raytheon Company of Andover, Massachusetts; General Dynamics Armament Systems of Burlington, Vermont; Lockheed Martin Naval Electronics and Surveillance Systems of Eagan, Minnesota and Raytheon Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment to Japan of any U.S. Government representatives. It will require the assignment of approximately 40 contractor representatives for approximately five years to support integration and testing of the AEGIS Combat Systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-11

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) (C) Sensitivity of Technology:

1. The AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified. However, seven operation and maintenance manuals are classified Confidential, and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational and organizational maintenance.

2. While the hardware associated with the SPY-1D(V) radar and AN/SQQ-89 Surface Ship Undersea Combat System are unclassified, the computer programs are classified Secret. It is the combination of the SPY-1D(V) and AN/SQQ-89 sonar hardware and the computer programs that constitutes the technology sensitive aspects. The SPY-1D(V) radar and AN/SQQ-89 sonar hardware design and computer program documentation will not be released and the U.S. Navy will perform life cycle maintenance of the AEGIS weapons system computer programs.

3. The SM-2 Block IIIB Standard missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The Standard missile hardware including: guidance section, Target Detecting Device, warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and flight analysis procedures.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-9459 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 03-14 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 APR 2003

**In reply refer to:
I-03/003307**

**The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-14, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost \$75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in cursive script that reads "Tome Walters, Jr.".

**TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR**

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Appropriations
Senate Committee on Appropriations
House Committee on Armed Services
Senate Committee on Armed Services**

Transmittal No. 03-14**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Australia
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$50 million |
| Other | <u>\$25 million</u> |
| TOTAL | \$75 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** up to nine Combat Control System MK2 Block 1C Mod 6 Tactical Subsystems (includes six ship sets, one integration/test/training module, and two engineering design modules), support/test equipment, spare and repair parts, supply support, training, documentation, U.S. Government and contractor technical assistance, and program management support.
- (iv) **Military Department:** Navy (LBR)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 10 APR 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Australia – Combat Control System MK2 Block 1C Mod 6 Tactical Subsystems**

The Government of Australia has requested a possible sale of up to nine Combat Control System (CCS) MK2 Block 1C Mod 6 Tactical Subsystems (includes six ship sets, one integration/test/ training module, and two engineering design modules), support/test equipment, spare and repair parts, supply support, training, documentation, U.S. Government and contractor technical assistance, and program management support. The estimated cost is \$75 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an ally which has been and continues to be an important force for political stability and economic progress in the Western Pacific region.

This proposed sale would not affect the military balance within the region. The CCS MK2 will be installed on an already existing fleet of diesel electric submarines, will improve the capabilities of the COLLINS-class submarines, and will enhance interoperability with the U.S. submarine force. The proposed sale of the MK2 CCS is another step in the Royal Australian Navy's commitment to further improving effectiveness of the COLLINS class submarine.

The prime contractor will be Raytheon Integrated Defense Systems of Tewksbury, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government representatives for up to three years to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-14

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The Combat Control System (CCS) MK2 Block 1C Mod 6 contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals: Torpedo and Harpoon engagement software, Target Motion Analysis (TMA) systems, All Sources Contact Management (ASCM) correlation, Weapon Data Converter (WDC) firmware, and Global Command and Control Communication System.

2. The CCS MK2 Block 1C Mod 6 Tactical Subsystem covers system hardware, software and associated documentation. It provides enhancements to achieve combat control commonality, improves maintainability, integrates new weapons capabilities and provides total combat system control of all surveillance and detection, target localization, weapon control, and communication functions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce combat system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-9460 Filed 4-16-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

**TRICARE: Termination of the
Worldwide TRICARE Transitional
Health Care Demonstration Project**

AGENCY: Office of the Secretary, DoD.
ACTION: Notice.

SUMMARY: Section 736 of the National Defense Authorization Act for Fiscal Year 2002 (NDAA-02), Pub. L. 107-107, eliminated transitional health care coverage for dependents of certain separating active duty members. On June 12, 2002, a **Federal Register** notice was published that created the Worldwide TRICARE Transitional Health Care Demonstration Project. The Demonstration provided eligibility for TRICARE transitional health care

coverage to dependents excluded in the NDAA-02. The Notice stated that the Demonstration was to be in effect for 2 years or until rescinded by another authority.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 re-inserted transitional health care coverage for dependents and deemed the provision to have been enacted as part of Section 736 of the NDAA-02 (retroactive to December 28, 2001). Consequently, the Worldwide TRICARE Transitional Health Care Demonstration Project is terminated.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Health Care Program Specialist (Reimbursement), TRICARE Management Activity, 16401 E. Centretech Parkway, Aurora, CO 80011-9066, telephone (303) 676-3803.

Dated: April 11, 2003.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 03-9452 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

**Department of the Army; Corps of
Engineers**

**Intent To Prepare a Draft
Environmental Impact Statement for
Coastal Storm Damage Reduction,
Barrow, AK**

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Alaska, intends to prepare a Draft Environmental Impact Statement (DEIS) for the construction of coastal storm damage reduction measures at

Barrow, AK. The city of Barrow is an isolated community on the Arctic Ocean at the northern tip of Alaska. Barrow is the economic center for the North Slope Borough with a population of 4,400 residents, the majority of which are Inupiat Eskimo. The community infrastructure at risk from storm damage, shoreline erosion, and flooding consists of roads, a utilidor, a sewage lagoon, and a landfill site.

The utilidor stretches more than 3 miles and contains sewage, water, and power lines, and communication facilities for the community. Beach erosion threatens over 1 mile of the utilidor and a low-lying beach road that separates Barrow's sewage lagoon and an old landfill from the sea.

FOR FURTHER INFORMATION CONTACT: Lizette Boyer (907) 753-2637, Alaska District, U.S. Corps of Engineers, Environmental Resources Section (CEPOA-EN-CW-ER), P.O. Box 6898, Elmendorf AFB, AK 99506-6898. E-mail:

Lizette.P.Boyer@poa02.usacearmy.mil.

SUPPLEMENTARY INFORMATION: The DEIS will consider alternatives including the placement of sands and gravels suitable for beach nourishment along approximately 5 miles of beach, elevation of coastal roadways, and other structural and non-structural alternatives identified during scoping. The initial nourishment would require a large quantity of material. Viable borrow sources have not been identified. However, nearby Elson Lagoon could have suitable material and will be investigated as a borrow alternative. Excavation of borrow material from Elson Lagoon may have a dual purpose of creating a needed navigation channel for lightering barges and harboring local boats. Other borrow alternatives will be investigated.

Issues: Construction and gravel extraction for beach nourishment and other alternatives could affect protected wildlife. One of the structural constraints in developing storm damage reduction measures for Barrow is the need to identify an adequate source of sand and gravel (about 4 million cubic yards) within an economic transport range of the project site. The DEIS will consider the needs of the community to protect their infrastructure and the need to avoid significant adverse impacts to critical arctic environmental and traditional subsistence activities. The Barrow area is one of the remaining areas in Alaska where the threatened Steller's eider and spectacled eider sea ducks are known to nest. Elson Lagoon is highly productive for fish and waterfowl. Polar bears, seals, walrus,

and beluga and bowhead whales are found in near shore waters at different times of the year. One known archeological site is along Elson Lagoon, but the Chukchi Seas coastline has many archeological artifacts that continue to be uncovered. The DEIS will consider impacts to marine intertidal and subtidal communities, fish and wildlife, wetlands, threatened and endangered species, essential fish habitat, water quality, cultural resources, socio-economic resources, justifiable and practicable mitigation, and other resources and concerns identified through scoping, public involvement, and interagency coordination.

Scoping: A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be held in June 2003 in Barrow, Alaska, at a place and time to be announced. The DEIS is estimated for release in spring 2007.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 03-9467 Filed 4-16-03; 8:45 am]

BILLING CODE 3710-NL-M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92-463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: May 20, 2003 (Partially-closed meeting). May 21, 2003 (Open meeting).

Times: 7:30 a.m.-5:45 p.m. (May 20, 2003). 7:30 a.m.-5:15 p.m. (May 21, 2003).

Location: Armed Forces Medical Intelligence Center, Fort Detrick, MD (May 20, 2003, 8:20 a.m.-12 p.m.) and U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702-5011 (May 20, 2003, 12 p.m.-5:45 p.m. and May 21, 2003, see above).

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

For Further Information Contact: Colonel James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, VA 22041-3258, (703) 681-8012/3.

Supplementary Information: In the interest of national security, and in accordance with Title 5, United States Code (U.S.C.) section 552b(c)(1), the morning session on 20 May 2003 will be closed to the public. The afternoon session on 20 May and the entire session on 21 May will be open to the public. Open sessions of the meeting will be limited by space accommodations. The meeting will be open to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-9468 Filed 4-16-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102-183, as amended.

DATES: May 20, 2003.

ADDRESS: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209-2248; (703) 696-1991. Electronic mail address: *colliere@ndu.edu*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-9458 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)**

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92-463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to provide further briefings on various topics to Committee members. The meeting is open to the public, subject to the availability of space.

DATES: 8-9 May 2003.

ADDRESSES: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Shannon Thaeler, USN DACOWITS, 4000 Defense Pentagon, Room 3D769, Washington, DC 20301-4000. Telephone (703) 679-2122.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement of consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than noon, May 9, 2003, from 4:45 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) copy of the presentation by noon, May 2, 2003 and bring 50 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement only must submit one (1) copy of the statement to the DACOWITS staff by the close of the meeting on May 9, 2003.

Meeting Agenda

Thursday, May 8, 2003

Welcome Administrative Remarks
Women's Work Issues Panel
Dr. Bonnie Moore/RADM (Sel) Deborah Lower
Break
Work/Family Conflict Issues for Soldier and Families
TriCare 101
Lunch (by invitation only)

Special Guests: Service Senior Enlisted Advisors
Air Force Quality of Life Programs
National Guard Quality of Life Programs
Marine Corps Quality of Life Programs
Break
Mr. Abell, PDUSD (P&R)
Dr. Wolfowiz, Deputy Secretary of Defense

Friday, May 9, 2003

Reserve Panel: Comprehensive Review of the Guard and Reserve Break
Best Practices, Civilian OB/GYN Hospital and Clinics
DOD Women's Health Research Program: LTC Karl Friedl
Lunch
Navy Family Summit: RADM (Sel) Marc Purcell
Caliber Associates Current Research Review Briefing
Committee Time
Public Forum

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-9453 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE**Department of the Army****Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ebola Virion Proteins Expressed From Venezuelan Equine Encephalitis (VEE) Virus Replicons**

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/337,946 entitled "Ebola Virion Proteins Expressed from Venezuelan Equine Encephalitis (VEE) Virus Replicons," filed June 22, 1999. Foreign rights are also available (PCT/US99/14311). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808. For licensing issues, Dr. Paul Mele, Office of

Research & Technology Assessment, (301) 619-6664, both at telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION: Using the Ebola GP, NP, VP24, VP30, VP35 and VP40 virion proteins, a method and composition for use in inducing an immune response which is protective against infection with Ebola virus is described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-9469 Filed 4-16-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Army****Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Monoclonal Antibody Against Ricin A Chain**

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 5,626,844 entitled "Monoclonal Antibody Against Ricin A Chain," issued May 6, 1997. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619-6664, both at telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION:

Monoclonal antibodies against the A chain of ricin have been found to be effective in protecting mammals from morbidity arising from exposure to ricin toxin. The neutralizing action of the antibodies does not appear to be mediated by complement or by immunoprecipitation. The antibodies of the invention are characterized as of isotype IgG1 having the binding characteristics which include: (a) binding specifically to the neutralizing epitope of the ricin A chain and (b) providing in vitro protection of at least 95% of EL-4 cells from 100 µg/mL ricin challenge when said antibody is present

in the tissue culture at a level of at least 1000 µg/mL.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-9470 Filed 4-16-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Protective Glove and Method for Making Same

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,543,059 B2 entitled "Protective Glove and Method for Making Same" issued April 8, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233-4928 or E-mail: Robert.Rosenkrans@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-9471 Filed 4-16-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting two systems of records notices from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 19, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153-3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-7137/DSN 656-7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program (March 23, 1999, 64 FR 13972).

REASON: THESE RECORDS ARE NOW BEING MAINTAINED UNDER THE SYSTEM OF RECORDS NOTICE A0351A DASG, U.S. ARMY MEDICAL DEPARTMENT SCHOOL AND ACADEMY OF HEALTH SCIENCES ACADEMIC RECORDS (JULY 31, 2002, 67 FR 49678).

A0351 HSC

SYSTEM NAME:

Practical Nurse Course Files (February 22, 1993, 58 FR 10002).

REASON:

Individual Academic and Class Academic records are now covered under the system of records notice A0351a DASG, entitled 'U.S. Army Medical Department School and Academy of Health Science Academic Records'. Individual training records and Faculty Board files have been destroyed.

[FR Doc. 03-9461 Filed 4-16-03; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 16, 2003.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 11, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Evaluation of the Voluntary Public School Choice (VPSC) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 988.

Burden Hours: 416.

Abstract: Based on evaluation questions in the authorizing legislation, this evaluation will document implementation of the Voluntary Public Choice Program and establish baseline data on student achievement. The purposes are to provide information that helps determine whether to modify or extend the VPSC concepts; identifies promising practices and lessons learned; and provides insights about public school choice.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2263. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivian_reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708-6287 or via her e-mail address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 03-9416 Filed 4-16-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03-539-001, FERC-539]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

April 10, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 28, 2003 (68 FR 4183-84) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 14, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202-395-7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03-539-001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202-502-8258 or by e-mail to efiling@ferc.gov. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202-502-8222, or by e-

mail to Webmaster@ferc.gov or the Public Reference at (202)-8371 Press 0, TTY (202) 502-8659 or by e-mail to public.reference.room@ferc.gov.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502-8415, by fax at (202)273-0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. Collection of Information: FERC-539 "Gas Pipeline Certificates: Import/Export"
2. Sponsor: Federal Energy Regulatory Commission
3. Control No. 1902-0062.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under Section 388.112 of the Commission's regulations.

4. Necessity of the Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717-717w. Section 3 requires prior authorization before exporting or importing natural gas from or to the United States. Section 3 authorizes the Commission to grant an application, in whole or in part, with modifications and upon terms and conditions as the Commission may find necessary or appropriate. The 1992 amendments to Section 3 of the NGA concern the importation or exportation from/to a nation which has a free trade agreement with the United States. With the passage of both the North American Free Trade Agreement and the Canadian Free Trade Agreement, the construction, operation and sitting of import or export facilities are also the subject of the Commission's regulatory focus.

In Order No. 608, 64 FR 51209-51222 (September 22, 1999), the Commission created voluntary procedures whereby prospective applicants could use a collaborative process to resolve significant issues prior to filing an application. This collaborative process allows applicants and interested parties to come together and come to mutual agreements that may help to defuse some of the controversial issues which may otherwise arise once an application has been filed with the Commission.

The pre-filing consultation process combines efforts to address NGA issues with the National Environmental Policy Act (NEPA) review process into a single pre-filing collaborative process that also includes the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act and other relevant statutes. Combining the pre-filing consultation and environmental review into a single pre-filing process simplifies and expedites the authorization of gas facilities and services.

The Commission uses the information to determine the appropriateness of the proposed facilities and their proposed location. The determination involves among other things, an examination of adequacy of design, cost, reliability, redundancy and environmental acceptability. The information is necessary for the Commission to make a determination that the facilities and location are consistent with the public interest. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 153.

5. Respondent Description: The respondent universe currently comprises 12 companies (on average) subject to the Commission's jurisdiction

6. Estimated Burden: 2,886 total hours, 12 respondents(average), 1 response per respondent, 241 hours per response (average).

7. Estimated Cost Burden to respondents: 2,886 hours / 2080 hours per years × \$117,041 per year = \$162,394. The cost per respondent is equal to \$13,533.00.

Statutory Authority: Section 3 of the Natural Gas Act, 15 U.S.C. 717-717w.

Magalie R. Salas,
Secretary.

[FR Doc. 03-9522 Filed 4-16-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-84-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 11, 2003.

Take notice that on April 2, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed pursuant to section 7(c) of the Natural Gas Act (NGA), an application, in abbreviated form, for a certificate of public convenience and necessity authorizing

Transco's replacement of certain pipeline facilities in Mobile County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Transco states that due to recent increases in the population density along its Mobile Bay Lateral, it must upgrade approximately 1.45 miles of pipeline in Mobile County, Alabama, in order to ensure compliance with USDOT regulations at 49 CFR 192.611 and maintain certificated service and the safety and reliability of the Mobile Bay Lateral. The replacement will take place in an area recently classified as meeting the DOT Class 3 Regulations, as defined at 49 CFR 192.5(b)(3)(i).

Transco requests an order granting the authorization requested by July 10, 2003. Transco states that this date is requested to enable commencement of the replacement activities on or about August 4, 2003, in order to restore service by September 15, 2003. Transco estimates the replacement costs to be \$4.0 million.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding, with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments

considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Any questions regarding the application should be directed to Steve Isenhower, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, at (713) 215-2704.

Comment Date: May 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-9521 Filed 4-16-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12347-000]

Universal Electric Power Corporation; Notice of Extension of Deadline for Filing Comments and or Motions on Notice of Preliminary Permit Application

April 11, 2003.

On January 28, 2003, the Commission issued in the above-captioned docket a "Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene" for the Coffeerville L&D Hydroelectric Project. Take notice that the deadline for filing comments, protests, or motions to intervene is extended to April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-9523 Filed 4-16-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2782-006]

Parowan City, Utah; Notice of Ava

April 11, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application

for license for the Red Creek Hydroelectric Project located on Red Creek, in Iron County, Utah, and has prepared a final Environmental Assessment (EA) for the project. The project occupies 19.06 acres of United States lands administered by the Bureau of Land Management.

The final EA contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

FOR FURTHER INFORMATION CONTACT:

Steve Hocking at (202) 502-8753 or steve.hocking@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 03-9524 Filed 4-16-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96-1-024]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice Regarding Standard Numbers for Compliance With Order No. 587-R

April 11, 2003.

In Order No. 587-R,¹ the Federal Energy Regulatory Commission (Commission) amended its regulations to adopt the most recent version, Version 1.6, of the consensus standards promulgated by the North American Energy Standards Board Wholesale Gas Quadrant (WGQ) and the WGQ standards governing partial day recalls. In addition, the Commission required pipelines to file tariff sheets to reflect the changed standards by May 1, 2003,

¹ Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-R, 102 FERC ¶ 61,273 (March 12, 2003).

with an effective date of July 1, 2003. In response to several comments on the appropriate method for referencing the standards, the Commission found that the pipelines could incorporate these standards by reference by identifying the number of the standard (using "z" as a placeholder such as 3.3.z2) and identifying whether the standard was adopted in Recommendation R02002 or R02002-2, as appropriate.

Subsequent to the issuance of Order No. 587-R, the WGQ assigned standard numbers to the partial day recall standards to replace the temporary reference numbers for the standards using the "z" placeholders. The WGQ assigned standard numbers are listed in a posting on the WGQ's Web site entitled "Assignment of Standard Numbers for Final Actions for R02002 and R02002-2, Ratified October 31, 2002" at <http://www.naesb.org/Final.htm>. Consequently, when incorporating partial day recall standards by reference, pipelines should use the WGQ assigned standard numbers as are listed in the Appendix to this Notice.

Magalie R. Salas,

Secretary.

APPENDIX.—ASSIGNED STANDARD NUMBERS FOR RECENT RATIFICATIONS R02002 AND R02002-2

Recommendation	Recommendation temporary reference ID for standard	WGQ assigned standard number
R02002	5.3.z1	5.3.44
	5.3.z2	5.3.45
	5.3.z3	5.3.46
	5.3.z4	5.3.47
	5.3.z5	5.3.48
	5.3.z6	5.3.49
	5.3.z7	5.3.50
	5.3.z8	5.3.51
	5.3.z9	5.3.52
	5.3.z10	5.3.53
R02002-2	5.3.z11	5.3.54
	5.1.z1	5.1.2
	5.1.z2	5.1.3
	5.1.z3	5.1.4
	5.2.z1	5.2.3
	5.3.z12	5.3.55
	5.3.z13	5.3.56
	5.3.z14	5.3.57
	5.3.z15	5.3.58

[FR Doc. 03-9525 Filed 4-16-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0296; FRL-7279-9]

Pesticides; Data Submitter Rights for Data Submitted in Support of Tolerance Actions; Notice of Availability**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: On January 19, 2000, EPA announced the availability for comment of a paper, discussing options to enable the Agency to appropriately implement the new provisions contained in section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions. EPA announces the availability for comment of a proposal which incorporates public comments received, and outlines the Agency's concept of the implementation of a data compensation program under FFDCA section 408(i). The Agency seeks public comment on this proposal.

DATES: Comments, identified by docket ID number OPP-2002-0296, must be received on or before July 16, 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: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5454; fax number: (703) 308-5884; and e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you submit data to EPA in support of establishing, maintaining, or exempting tolerances for pesticides under the FFDCA, or are a pesticide registrant or a person applying for pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS 32532) e.g., individuals or entities engaged in activities related to the registration of a pesticide product.

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 40 CFR part 152--Pesticide Registration and Classification Procedures and section 408(i) of the FFDCA. 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-2002-0296. 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-2002-0296. 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-2002-0296. 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-2002-0296.

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-2002-0296. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.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. What Action is the Agency Taking?

EPA is making available for comment a proposal to implement exclusive use and compensation rights for data submitted to the Environmental Protection Agency in support of tolerance and tolerance exemption actions and discussing confidentiality of tolerance and tolerance exemption data. On January 19, 2000 (65 FR 2947) (FRL-6385-7), EPA announced the availability for comment of a paper discussing options to enable the Agency to appropriately implement the new exclusive use and data compensation provisions contained in section 408(i) of the FFDCA. Today, the Agency is making available a paper that discusses the comments received and sets forth a proposal which considers those comments and incorporates the Agency's concept of the implementation of a data compensation program under FFDCA section 408(i). The Agency seeks public comment on this proposal.

List of Subjects

Environmental protection, Pesticides, Tolerances, Data compensation.

Dated: April 8, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03-9486 Filed 4-16-03; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7484-9]

Public Water System Supervision Program Revisions for Nebraska**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given that Nebraska is revising its approved Public Water System Supervision Program. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing on the approval.

DATES: A request for a public hearing must be submitted in writing by May 19, 2003 to the Regional Administrator at the EPA Region 7 address below.

ADDRESSES: Copies of documents related to this determination are available for inspection between the hours of 9 a.m. and 3 p.m., Monday through Friday, at the following locations: EPA Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101, and Nebraska Health and Human Services, Mr. Jack Daniel, Administrator, 301 Centennial Mall South, 3rd Floor, PO Box 95007, Lincoln, Nebraska 68509-5007.

FOR FURTHER INFORMATION CONTACT: Kenneth Deason, 913-551-7585.

SUPPLEMENTARY INFORMATION: Nebraska has adopted (1) a revised definition of "public water systems" (63 FR 23361-23368, April 28, 1998); (2) regulations establishing Administrative Penalty Authority for all violations of their approved primacy program (63 FR 23361-23368, April 28, 1998); (3) a Stage 1 Disinfectant/ Disinfection By-Products Rule, setting requirements to limit the formation of chemical disinfectant by-products in drinking water (63 FR 69389-69476, December 16, 1998); and (4) an Interim Enhanced Surface Water Treatment Rule to improve control of microbial pathogens in drinking water, including the protozoan, *Cryptosporidium* (63 FR 69477-69521, December 16, 1998).

Any request for a public hearing must include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of information that the

requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made by May 19, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become final and effective on May 19, 2003.

Authority: 40 CFR 142.12

Dated: April 3, 2003.

James B. Gulliford,
EPA Region 7 Administrator.

[FR Doc. 03-9481 Filed 4-16-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7484-8]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of West Virginia**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of tentative approval and Solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the State of West Virginia is revising its approved Public Water System Supervision Program. West Virginia has amended its administrative penalty authority and the definition of a public water system, and has adopted the Consumer Confidence Report Rule requiring annual drinking water quality reports to the public, an Interim Enhanced Surface Water Treatment Rule (IESWTR) to improve control of microbial pathogens in drinking water, including specifically the protozoan *Cryptosporidium*, and a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR), setting new requirements to limit the formation of chemical disinfection byproducts in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal

regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by May 19, 2003. This determination shall become effective on May 19, 2003 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
- West Virginia Department of Health and Human Resources, Environmental Engineering Division, 815 Quarrier Street, Suite 418, Charleston, WV 25301.

FOR FURTHER INFORMATION CONTACT: Donna Weiss, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814-2198 or fax (215) 814-2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 19, 2003, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: April 8, 2003.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 03-9482 Filed 4-16-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meetings

DATE AND TIME: *Tuesday, April 22, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g

Audits conducted pursuant to 2 U.S.C. 437g, 438(b) and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Thursday, April 24, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Committee 2003-03—State Senator Bill Boling, State Delegate Bill Janis, Chesterfield County School Board Member Beth Davis, and United States Representative Eric Cantor by counsel, Jan Witold Baran.

Draft Advisory Opinion 2003-04—Freeport-McMoRan Copper & Gold, Inc. (Freeport), and Freeport-McMoRan Copper & Gold, Inc. Citizenship Committee (the PAC) by counsel, R. Patrick Vance.

Final Audit Report: LaRouche's Committee for a New Bretton Woods.

Draft Notice of Public Hearing and Request for Comment Regarding Enforcement Procedures.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03-9586 Filed 4-15-03; 10:41 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer)
230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Myron Lee Scott*, Bethany, Illinois; to acquire additional voting shares of Scott Bancshares, Inc., Bethany, Illinois, and thereby indirectly acquire voting shares of Scott State Bank, Bethany, Illinois; Maroa Forsythe Community Bank, Maroa, Illinois; and State Bank of Niantic, Niantic, Illinois.

Board of Governors of the Federal Reserve System, April 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-9400 Filed 4-16-03; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Citizens Bancshares Employee Stock Ownership Plan*, Edmond, Oklahoma; to acquire up to 40 percent of the voting shares of Citizens Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire voting shares of Citizens Bank of Edmond, Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, April 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-9399 Filed 4-16-03; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Lighthouse Community State Bank, Hilton Head, South Carolina. Lighthouse Community State Bank is currently operating as Lighthouse Community Bank, Hilton Head, South Carolina.

Board of Governors of the Federal Reserve System, April 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-9401 Filed 4-16-03; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet on Thursday May 1, 2003, and Friday May 2, 2003, from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to examine the economics of blood and where blood fits into the overall cost of health care.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit 30

copies to the Acting Executive Secretary prior to close of business April 25, 2003. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Acting Executive Secretary prior to close of business April 25, 2003. In addition, anyone planning to comment is encouraged to contact the Acting Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT:

CAPT Lawrence C. McMurtry, Acting Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Room 275, Rockville, MD 20852, (301) 443-2823, FAX (301) 443-4361, e-mail lmcmurtry@osophs.dhhs.gov

Dated: April 11, 2003.

Lawrence C. McMurtry,

Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 03-9515 Filed 4-16-03; 8:45 am]

BILLING CODE 4150-28-M

DEPARTMENT OF HEALTH SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announced the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 8:30 a.m.-4:30 p.m., April 22, 2003.

Place: Sheraton Buckhead Hotel, 3405 Lenox Road, NE, Atlanta, GA 30326.

Status: Open.

Purpose: The Workgroup will hear testimony about issues related to the population health dimension of the national health information infrastructure, including public health surveillance, disease registries, and privacy issues.

Contact Person For More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260-2652, or Majorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436-7050. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where an agenda for the meeting will be posted when available.

Dated: April 9, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03-9365 Filed 4-16-03; 8:45 am]

BILLING CODE 4151-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS Act), established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to actions of the Agency to enhance the quality, improve the outcomes, and reduce the costs of health care services, as well as improve access to such services, through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. Seven current members' terms will expire in November 2003. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; individuals distinguished in the fields of health care quality research or health care improvement; individuals distinguished in the practice of medicine; individuals distinguished in the other health professions; individuals either representing the private health care sector (including health plans, providers, and purchasers) or individuals distinguished as administrators of health care delivery systems; individuals distinguished in the fields of health care economics, management science, information systems, law, ethics, business, or public policy, and individuals representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary

paragraph above, through which the Agency carries out its work.

DATES: Nominations should be received on or before May 23, 2003.

ADDRESSES: Nominations should be sent to Ms. Anne Lebbon, AHRQ, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852. Nominations also may be faxed to (301) 594-2249.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Lebbon, AHRQ, at (301) 594-7216.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Healthcare Research and Quality shall consist of 21 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and eight ex officio representatives from Federal agencies conducting or supporting health care research. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction and programs for AHRQ.

Nine individuals will presently be selected by the Secretary to serve on the Council beginning with the meeting in the fall of 2003. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall include a copy of the nominee's resume or curriculum vitae, and state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning their financial interests, consultant positions, and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: April 9, 2003.

Carolyn M. Clancy,
Director.

[FR Doc. 03-9415 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-03-61]

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 Dale Verell, 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

Youths Evaluation of Anti-Tobacco Ads—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

In FY 2002, Congress mandated CDC, Office on Smoking and Health (OSH), to facilitate programs to prevent tobacco use among young people using counter-advertising targeted to young people. Demoralization and the reduction of tobacco use among youth and adolescents are the focus of six objectives in *Healthy People 2010*. There are no nationwide studies assessing the perceived effectiveness of multiple categories of anti-tobacco advertisements (only one nationwide study exists which only explores the

effectiveness of one type of message). CDC is coordinating an effort to plan, implement, and evaluate a media literacy lesson plan designed to clearly communicate messages that will prevent tobacco use among young people. The lesson plan will be based on principles that have been shown to enhance success, including: showing messages based on research; testing messages with the intended audiences; involving young people in media literacy, providing salient reasons to not smoke; enlisting the involvement and support of teachers and other influencers; and tracking the lesson plan's effectiveness.

For tobacco control efforts to continue to be successful and to promote the use of CDC media resources for tobacco control (Media Campaign Resource Center), it is critical that we understand which ads are perceived as most effective with the target audience. CDC planners are seeking a vehicle to evaluate anti-tobacco ads that are used by state health departments. In order to maximize the CDC's Media Campaign Resource Center, it is important to determine which ads should be promoted to the state health departments for use with their constituents. This understanding will facilitate any strategic changes and or promotions that may be necessary to increase the Media Campaign Resource Center's effectiveness and sustainability. The data will provide state health departments, the government, health education and communication practitioners, and committees that make recommendations regarding which types of tobacco prevention advertisements may be perceived as most likely to reduce tobacco use among youth.

CDC proposes to use an evaluation tool with middle and high school students from schools across the United States. GIS mapping will inform the selection of approximately 200 public and private American schools. The data collection instrument is a paper and pencil computer scan sheet. Students will view 12 tobacco prevention advertisements and respond using a computer scan sheet. The survey will take 26 minutes to complete and will be delivered during school hours. CDC will support the cost for development, implementation, data collection, and analysis out of funds budgeted for these purposes. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
7th to 12th graders (ages 12–19)	8000	1	30/60	4000
Total				4000

Nancy E. Cheal,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–9422 Filed 4–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–60]

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 Dale Verell, 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

International Performance Standards Project—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) Public Health Practice Program Office (PHPPO), is proposing to implement a required data collection to:

- a. Assess public health preparedness of countries to respond to a public health threat or emergency.
- b. Assess progress of countries towards (1) identifying any gaps that need to be strengthened in their public health systems, (2) achieving the critical and enhanced capacities of their public health systems, and (3) setting optimal standards for system performance that will enhance the delivery of public health services.
- c. Identify the focus of future proposed work plans, as well as help countries develop a public health research agenda.
- d. Provide a consistent framework for each country to characterize the status of its public health infrastructure.

This assessment will use the International Instrument for performance measurement of Essential

Public Health Functions. This instrument is used for rapid assessment of capacity at the level of the National Health Authority of countries to respond to public health threats and emergencies. This instrument focuses on the six areas of fiscal year 2002 Supplemental Funds for Public Health Preparedness and Response for Bioterrorism (Announcement Number 99051), as the framework for data collection. The six focus areas are:

Preparedness Planning and Readiness Assessment; Surveillance and Epidemiology Capacity; Laboratory Capacity—Biological Agents; Health Alert Network/Communication and Information Technology; Risk Communication and Health Information Dissemination (Public Information and Communication); Education and Training.

Hard copy assessment instruments will be used in a group setting within countries to collect the data. The respondents will be individuals from all levels of the health system who are knowledgeable about the functions of their system. This process is being done in conjunction with the World Bank and the governments of the different countries who elect to undertake performance measurement of their public health systems using this methodology. The process will be funded through the Bank and the government of the countries. No Federal funds will be used in the process. It is anticipated that more than nine (9) countries may be involved. There will be no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Avg. burden response in hrs.	Total burden (in hrs.)
National Health Authorities in Europe and the Middle East	25	1	24	600
Total				600

Nancy E. Cheal,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03-9423 Filed 4-16-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03049]

Research on the Impact of Law on Public Health; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 1704 of the Public Health Service Act, 42 U.S.C. 300u-3, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for research to evaluate the impact of law on public health. This program addresses all the "Healthy People 2010" focus areas.

The purpose of the program is to stimulate research evaluating the implementation and impact of law on the prevention and control of death, disease, injury, and disability, on health promotion, on the conduct of public health services, and on the public health system and infrastructure. In this context, "law" means statutes, regulations and rules, contract specifications, licensing requirements, case law and other judicial rulings, and other legally enforceable policies of the federal government, state governments and their political subdivisions, tribes, and territories.

Special emphasis will be given to research that will produce, on an accelerated basis, scientifically valid findings that can be used to improve law's contribution to public health preparedness for, and response to, terrorism, outbreaks of infectious disease, and other major public health threats and emergencies.

Measurable outcomes of the program will be in alignment with the following performance goal for the CDC Public Health Practice Program Office (PHPPO): Prepare state and local health systems, departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, public health and healthcare organizations, community-based organizations, faith-based organizations, and other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted scientific research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing research evaluating public health law or other public policies, programs or interventions.
3. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.
4. The overall match between the applicant's proposed research objectives and those described under the heading "Program Requirements."

D. Funding

Availability of Funds

Approximately \$500,000 is available in FY 2003 to fund approximately three awards. It is expected that the average award will be \$165,000, ranging from \$150,000 to \$250,000. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a

project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Research applications are solicited that address the specific program areas of interest below (not listed in priority order), and other areas the applicant demonstrates are significant for improved public health.

1. Terrorism: The impact of laws on public health preparedness for, and response to terrorism.
2. Infectious Diseases: The impact of laws on the prevention and transmission of diseases not related to terrorism, on the prevention of drug-resistant disease, and on patient safety.
3. Public Health Reporting: The effectiveness of state and local laws regarding the reporting of disease, injury, disability, and risk factors associated with those conditions.
4. Child, Adolescent, and Adult Health:
 - a. The impact of the absence of school-entry immunization laws on immunization levels.
 - b. The impact of legislatively mandated immunization insurance benefits (e.g., first-dollar coverage laws) and of their enforcement on immunization levels.
 - c. The impact of standing orders laws on adult immunization levels.
 - d. The impact of state laws and case law on adolescent access to health care services and participation in research.
 - e. The impact of alcohol taxes on adolescent alcohol use and alcohol-related conditions.
5. HIV, STDs, and Tuberculosis: The impact of laws on the occurrence and transmission of HIV, sexually transmitted diseases, and tuberculosis, and the impact of laws on implementation of rapid HIV testing.
6. Injury: The impact of legislative and regulatory interventions on injury, and the impact of differing levels of their enforcement on injury.

7. The Built Environment and Public Health: The impact of State and local laws on the impact the Built Environment has on the health of the public.

8. Chronic Diseases:
 - a. The impact of State and local laws on chronic diseases and on risk factors for chronic diseases, with special

emphasis on diabetes, obesity, tobacco, physical activity, and nutrition.

b. The impact of state and local laws on utilization of cancer screening services, on cancer incidence and mortality reporting, and on the variability of state coverage for Medicaid cancer services (including screening, diagnosis, treatment, and post-treatment services).

c. The impact of State and local laws on the occurrence of environmental health hazards (e.g., mold and poor indoor air quality) in schools and on subsequent health and learning effects on students.

d. The impact of laws on self-administration of prescribed medications for students and on subsequent health and learning effects on students.

e. The impact of laws on the location of schools (e.g., in proximity to hazardous waste sites) and on subsequent health and learning effects on students.

9. Occupational Health: The impact of Federal and State regulations, municipal ordinances, contract specifications, and health-related litigation on the safety and health of workers.

10. Public Health System: The impact of laws on the public health system and infrastructure and on the capacity of the public health workforce, health departments and laboratories, and private entities to perform essential public health services.

11. Public Health Practice:

a. The impact on public health practice of the "Standards for Privacy of Individually Identifiable Health Information" (the Privacy Rule) of the Health Insurance Portability and Accountability Act.

b. The impact of privacy laws on establishment and use of electronic medical records, in general, and on immunization and other public health registries, in particular.

For all these programmatic areas, it is the intent of this program to fund applications comprising innovative, multi-disciplinary research strategies. Model approaches also are sought for evaluating the impact of public health laws, within or across different areas of public health (e.g., infectious diseases, chronic diseases, environmental health, injury prevention, and public health systems and infrastructure).

As appropriate and feasible, applicants are encouraged to address the fullest complement of possible measures for assessing outcomes. These measures could include health and safety outcomes (e.g., frequency and severity of injury, illness, disability, or hazard exposure; frequency of risk or of

preventive behaviors; economic outcomes (e.g., costs at the level of the individual, household, community, industry, or society; or distribution of costs among payers); social outcomes (e.g., impact on educational attainment, employment); as well as measures of change in behavior, knowledge, attitudes, use of technological interventions, the capacity of public health systems infrastructure, the quality and quantity of prevention services and public health practice, and other measures.

Applications are encouraged which include plans to obtain and analyze information on the implementation of the referenced laws, as appropriate and necessary for evaluating their impact, including quantitative and qualitative information on application, enforcement, or compliance activities associated with a law under evaluation, and on compliance-related knowledge, attitudes, and behaviors of the target audience(s). Information on implementation also may address factors that may either impede or promote the contribution laws make to public health.

F. Content

Letter of Intent (LOI)

An LOI is required for this program. LOIs will be evaluated to determine which applicants will be invited to submit a full application based on the reviewer's evaluation of the LOI, as described in Evaluation Criteria. LOIs must be no more than four pages, double-spaced, printed on one side, with one-inch margins, and un-reduced 12-point font.

Mandatory Identifying Information

The following identifying information must appear only on the first page of the LOI:

1. The Program Announcement and number.
2. The name, address, telephone number, and fax number of the applicant and the e-mail address of a contact person.
3. The names, degrees, and titles of the principal investigator and all key project personnel.

This identifying information must not appear on the second, third or the fourth page.

Mandatory Project Information

The following information on the proposed research project must appear on the second, third and fourth pages:

1. A narrative description of the proposed research plan.
2. The number of months or years the project will take to completion.

3. The total funding required for each year of the project.

LOIs that do not include the mandatory information will be deemed non-responsive; the applicants will not be invited to submit full applications.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Programmatic Interest Areas, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your PHS 398 (OMB Number 0925-0001) application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, single-spaced, printed on one side, with one-inch margins, and un-reduced 12-point font.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation and budget. Applications for research on the impact of public health laws should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to improving law's contribution to public health.
2. Specific, measurable, and time-framed objectives.
3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.
4. A description of the role and responsibilities of the principal investigator.
5. A description of all the project staff and their role in the proposed research, regardless of their funding source, including their title, qualifications, experience, percentage of time each will devote to the project, as well as the portion of their salary to be paid by the grant.
6. A description of those activities related to, but not supported by the grant.
7. A description of the involvement of other entities that will relate to the proposed research, if applicable, including a letter of commitment from each and a clear statement of their role.
8. A detailed first year's budget for the grant with future annual projections, if relevant, including direct and indirect costs.

G. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by 4 p.m. Eastern Time May 9, 2003. Submit the LOI to: Technical Information Management—PA#03049, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341-4146.

LOIs may not be submitted electronically.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925-0001) (Errata Instruction Sheet for PHS 398 is posted on the CDC Web site.) Forms are available at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at: 770-488-2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 9, 2003.

Submit the application to: Technical Information Management—PA#03049, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341-4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to 1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or 2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for

competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent (LOI) will be reviewed by a panel to include reviewers other than CDC staff from the funding Centers/Institutes/Offices, and who will be involved in the peer review panel for the applications. The panel will review the LOI to determine if it indicates research of sufficient relevance to CDC program priorities and potential scientific significance to warrant submission of a full application. Only principal investigators whose LOIs are determined to meet these criteria will be requested to submit full applications. Evaluation criteria to be applied include the following:

1. Relevance to CDC program priorities; (60 percent)
2. Potential Scientific Significance. (40 percent)

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and will be an element of evaluation.

Applications will be reviewed for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items one through four.) Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation procedure by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a peer review group.

Criteria to be considered in the review are listed below.

All criteria are of equal importance, however, an application does not need to be strong in all categories to be judged likely to have a major scientific impact.

1. Significance—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of this study on the concepts or methods that drive this field?

2. Approach—Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

3. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies?

4. Investigator—Is the principal investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other significant investigator participants?

5. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

6. Human Subjects—Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

- a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

7. Dissemination—What plans have been articulated for disseminating findings?

A second programmatic review will be conducted by a panel of Senior Federal Officials. The Officials will review the ranked proposals to assure maximal impact and balance of the proposed research. The factors to be considered will include:

1. The results of the peer review.
2. The importance of the proposed research for meeting the primary goals of this initiative, as described in "Program Requirements" section.
3. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
 - a. Current Budget Period Activities and Objectives.
 - b. Current Budget Period Financial Status.
 - c. New Budget Period Proposed Activities and Objectives.
 - d. Detailed Line-Item Budget and Justification for the new budget period.
 - e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC Web site.

AR-1 Human Subjects Requirements

AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-7 Executive Order 12372 Review

AR-8 Public Health System Reporting Requirements

AR-9 Paperwork Reduction Act Requirements

AR-10 Smoke-free Workplace Requirements

AR-11 Healthy People 2010

AR-12 Lobbying Restrictions

AR-13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR-15 Proof of Non-Profit Status (if applicable)

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements".

Business management technical assistance may be obtained from: Merlin J. Williams, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2765, E-mail address: MWilliams2@cdc.gov.

For program technical assistance, contact: Anthony D. Moulton, PhD, Public Health Law Program, Public Health Program Practice Office, Centers for Disease Control and Prevention, 4770 Buford Hwy. (K-36), Atlanta, Georgia 30341-3724, Phone: 770-488-2405/Fax 770-488-2474, E-mail: ADM6@CDC.GOV.

Dated: April 11, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03-9424 Filed 4-16-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., June 4, 2003; 8:30 a.m.–12 p.m., June 5, 2003.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639-8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB).

Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

Matters to be Discussed: Agenda items include issues pertaining to improving TB control efforts in the Southeast, TB among the foreign born, and other TB-related topics.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT:

Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E-07, Atlanta, Georgia 30333, telephone 404/639-8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03-9425 Filed 4-16-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0454]

Agency Information Collection Activities; Announcement of OMB Approval; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of a Claim for Generally Recognized as Safe Exemption Based on

a Generally Recognized as Safe Determination” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 3, 2003 (68 FR 5294), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0342. The approval expires on April 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9383 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N-0009]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection provisions by May 19, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control Number 0910-0129)—Extension

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the

device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	Numbers of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
Total					330

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in table 1 of this document on the number of submissions submitted in the last 3 years and on the number of inquiries received

indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9385 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 03N-0136]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adoption of the FDA Food Code by Local, State, and Tribal Governments**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's collection of information from local, State, and tribal agencies concerning their adoption of, or plans to adopt, all or portions of the FDA Food Code or its equivalent by regulation, law, or ordinance.

DATES: Submit written or electronic comments on the collection of information by June 16, 2003.

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

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

"Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Adoption of the FDA Food Code by Local, State, and Tribal Governments (OMB Control Number 0910-0448)—Extension

FDA has developed its model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243(a)) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service (IHS).

Nationwide adoption of the model FDA Food Code is an important step towards the agency's goal for consistent, scientifically sound, and risk-based food safety standards and practices. A current, comprehensive, and accurate inventory of food code adoptions by States and U.S. territories, local, and tribal governments is necessary to determine the status of up-to-date protection of the U.S. population and to identify areas where assistance to these governments may promote the adoption of regulations based on the FDA Food Code.

This collection effort, which began in 2001, has had remarkable success with 97 percent participation from State and territorial agencies. FDA contracted with the Association of Food and Drug Officials (AFDO) to conduct the initial survey using the OMB approved survey form. Contacts were made by telephone and e-mail to determine the Food Code status in their jurisdiction(s). Follow up contacts by telephone and e-mail to minimize the burden on respondents were made to clarify responses.

The rulemaking process that local, State, territorial, and tribal governments must follow to adopt the Food Code is often a long and complicated process that can extend 2 or more years. For this reason, many agencies reported in the initial survey that they were still in the rulemaking process to adopt or update their food codes for the years 2004 and 2005 or beyond. Thus, FDA believes that further implementation of the initial survey is needed to cover this additional rulemaking in order to keep the current database accurate and up-to-date. Based on experience gained in the past 3 years from the initial survey, FDA has developed a more condensed follow up survey to further minimize the burden requirements on respondent agencies. For example, FDA now knows if responding agencies have adopted a new code since 1993, the types of establishments regulated by those codes, the populations of the jurisdiction covered, and the status of local health agencies in the States. This information will not be collected again. We have reduced the number of questions from 16 to 5. Collection(s) of information will be electronically and/or telephonically obtained thus, providing respondents with data already in the database to further the ease of response and lower the burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Food Code Survey	150	4	600	1	600

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Experience in the initial survey has more clearly identified the respondents for updating the information in the database. For example, FDA will obtain information from IHS, relative to the tribal nations' adoption of the Food Code that IHS maintains, using the information categories in the revised follow up survey form for which this extension is requested. Seventy-three State and territorial agencies were identified as respondents for Food Code adoption and it appears that initially, only 30 local agencies in cities of 500,000 or more will need to be contacted because most local jurisdictions are under State requirements. This further reduces the total burden on respondents. Quarterly updates from respondents under active rulemaking will be requested by AFDO to keep the database current and accurate. Respondents that have concluded rulemaking will likely need only annual contact. Estimated response time is about 1 hour or less because most reporting will be done telephonically or electronically.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-9533 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E-0021]

Determination of Regulatory Review Period for Purposes of Patent Extension; HYPERION LTK SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HYPERION LTK SYSTEM 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 which claims that medical device.

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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. 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 (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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device HYPERION LTK SYSTEM. HYPERION LTK SYSTEM is indicated for temporary reduction of

hyperopia in patients with +0.75 to +2.5 diopters of manifest refraction spherical equivalent at the spectacle plane (with cylinder less than or equal to +0.75 diopters) who are 40 years of age or older with documented stability of refraction for the prior 6 months, as demonstrated by a change of less than or equal to 0.50D in spherical and cylindrical components of the manifest refraction. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for HYPERION LTK SYSTEM (U.S. Patent No. 4,976,709) from Sunrise Technologies International, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of HYPERION LTK SYSTEM 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 HYPERION LTK SYSTEM is 3,047 days. Of this time, 2,806 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* February 28, 1992. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective February 28, 1992.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* November 3, 1999. The applicant claims November 1, 1999, as the date the premarket approval application (PMA) for HYPERION LTK SYSTEM (PMA P990078) was initially submitted. However, FDA records

indicate that PMA P990078 was submitted on November 3, 1999.

3. *The date the application was approved:* June 30, 2000. FDA has verified the applicant's claim that PMA P990078 was approved on June 30, 2000.

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 1,644 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 June 16, 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 October 14, 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 (see **ADDRESSES**). Three copies of any mailed 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: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03-9535 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 23, 2003, from 8:30 a.m. to 3:30 p.m.

Location: Gaithersburg Marriott, Salons A, B and C, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2053, ext. 127, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an intraocular lens for primary implantation in the capsular bag for the correction of aphakia in an adult in whom a cataractous lens has been removed and who may benefit from improved near, intermediate and distance vision without spectacles. Background information for the day's topic, including the attendee list, agenda, and questions for the committee, will be available to the public one business day before the meeting, on the Internet at <http://www.fda.gov/cdrh/panel/index.html>. Material will be posted on May 22, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 16, 2003. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and for 30 minutes near the end of the committee deliberations on the PMA. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 16, 2003 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301-594-1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03-9386 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 3, 2003 (68 FR 16292). The notice announced a meeting of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science, which was scheduled for April 22-23, 2003. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03-8011, appearing on page 16292 in the **Federal Register** of Thursday, April 3, 2003, the following correction is made:

1. On page 16292, in the first column, in the "Location" section, "5600" is corrected to read "5630".

Dated: April 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03-9384 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
[Docket No. 03E-0030]
Determination of Regulatory Review Period for Purposes of Patent Extension; FASLODEX
AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FASLODEX 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 FASLODEX (fulvestrant). FASLODEX is indicated for the treatment of hormone receptor positive metastatic breast cancer in postmenopausal women with disease progression following anti-estrogen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FASLODEX (U.S. Patent No. 4,659,516) from AstraZeneca UK, Ltd., 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 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FASLODEX 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 FASLODEX is 1,935 days. Of this time, 1,541 days occurred during the testing phase of the regulatory review period, while 394 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* January 8, 1997. The applicant claims January 5, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 8, 1997, 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(b) of the act:* March 28, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for FASLODEX (NDA 21-344) was initially submitted on March 28, 2001.

3. *The date the application was approved:* April 25, 2002. FDA has verified the applicant's claim that NDA 21-344 was approved on April 25, 2002.

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 1,165 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 June 16, 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 October 14, 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 (see **ADDRESSES**). Three copies of any mailed 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: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03-9536 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
[Docket No. 03E-0035]
Determination of Regulatory Review Period for Purposes of Patent Extension; ZETIA
AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZETIA 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 ZETIA (ezetimibe). ZETIA, administered alone, is indicated as adjunctive therapy to diet for the reduction of elevated total-cholesterol (total-C), low density lipoprotein (LDL-C), and Apo B in patients with primary hypercholesterolemia. ZETIA, administered in combination with an

HMG-CoA reductase inhibitor, is indicated as adjunctive therapy to diet for the reduction of elevated total-C, LDL-C, and Apo B in patients with primary hypercholesterolemia. The combination of ZETIA atorvastatin or simvastatin is indicated for the reduction of elevated total-C and LDL-C levels in patients with HoFH, as an adjunct to other lipid-lowering treatments or if such treatments are unavailable. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZETIA (U.S. Patent No. 37,721) from Schering 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 3, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZETIA 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 ZETIA is 1,983 days. Of this time, 1,680 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* May 23, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 23, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 27, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for ZETIA (NDA 21-445) was initially submitted on December 27, 2001.

3. *The date the application was approved:* October 25, 2002. FDA has verified the applicant's claim that NDA 21-445 was approved on October 25, 2002.

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 497 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 June 16, 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 October 14, 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 (see **ADDRESSES**). Three copies of any mailed 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: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03-9534 Filed 4-16-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) and Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: <http://www.fedgrants.gov>.

This notice is not a complete description of the program; potential applicants must obtain a copy of the

Request for Applications (RFA), including Part I, State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders, Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161-1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders—Short Title: COSIG.

Funding Opportunity Number: TI 03-003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 509 of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS), are accepting applications for Fiscal Year 2003 grants to develop and enhance the infrastructure of States and their treatment service systems to increase the capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental health disorders, and their families.

Eligible Applicants: Only the immediate Office of the Governor of States may apply. State-level agencies are not considered to be part of the immediate Office of the Governor. This means, for example, that the State Mental Health or Substance Abuse Authorities or other State-level agencies within the Office of the Governor cannot apply independently. SAMHSA has limited the eligibility to Governors of States because the immediate Office of the Governor has the greatest potential to provide the multi-agency leadership needed to develop the State's infrastructure/treatment service systems to increase the State's capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based services to persons with co-occurring substance abuse and mental health disorders, and their families.

As defined in the Public Health Service (PHS) Act, the term "State" includes all 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American

Samoa, and the Trust Territory of the Pacific Islands. Applications from State agencies other than the Office of the Governor, or from government entities that do not meet the definition of "State," are not eligible for funding and will not be reviewed.

Due Date for Applications: June 13, 2003.

Estimated Funding Available/Number of Awards: It is expected that \$6.5 million will be available for 6 to 10 awards in FY 2003. The average annual award will range from \$500,000 to \$1.1 million in total costs (direct and indirect). Grantees in years 1-3 will receive up to \$1.1 million per year. Grantees with service pilots will receive up to half of the third year award in the 4th year to phase down the services pilot and up to \$100,000 for evaluation in year 5. Grantees without service pilots will receive up to \$100,000 for evaluation in both years 4 and 5. Applications with proposed budgets that exceed these amounts in any year will be returned without review.

Is Cost Sharing Required: No.

Period of Support: Up to 5 years, with annual continuations depending on availability of funds and progress achieved.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1-800-729-6686. The PHS 5161-1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: <http://www.samhsa.gov> (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Richard E. Lopez, J.D., Ph.D., Substance Abuse and Mental Health Agency, Center for Substance Abuse Treatment, Division of State and Community Assistance, 5600 Fishers Lane/Rockwall II, Room 8-147, Rockville, MD 20857, (301) 443-7615, E-Mail: rlopez@samsha.gov.

Dated: April 10, 2003.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03-9387 Filed 4-16-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Suspension of Application Receipt Dates for a Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Suspension of future application receipt dates until further notice for SAMHSA/CSAT Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need Program (PA 03-001).

SUMMARY: This notice is to inform the public that future application receipt dates under the SAMHSA/CSAT program announcement, Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need—PA 03-001, are being cancelled until further notice. Effective immediately, no applications will be received for the future September 10 and January 10 receipt dates under this announcement.

The notice of funding opportunity for PA 03-001 was published in the **Federal Register** on June 24, 2002, (Vol. 67, Number 121, pages 42573-42574).

SAMHSA is currently re-engineering its discretionary grants process and it is possible that PA 03-001 may ultimately be withdrawn.

Information related to this notice may be obtained from: Tom Edwards, Division of Services Improvement, CSAT/SAMHSA, Tele: (301) 443-8453, e-mail: tedwards@samhsa.gov.

Dated: April 10, 2003.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03-9388 Filed 4-16-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Paperless Drawback Prototype: Delay of Commencement of Test and Reopening of Application Period

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: General notice.

SUMMARY: In a document published in the **Federal Register** on September 27,

2002, Customs announced its plan to conduct a prototype test to determine the feasibility of filing paperless drawback claims. The document stated that drawback claimants who wished to participate in the test must submit applications to Customs by October 28, 2002. In an effort to encourage greater participation in the prototype, Customs in this document is announcing a reopening of the period for drawback claimants to submit applications to participate in the Paperless Drawback Prototype and sets a new timeframe for commencement of the test.

DATES: Drawback claimants who wish to participate in the Paperless Drawback Prototype must submit applications to Customs no later than May 19, 2003. The Paperless Drawback Prototype will commence no earlier than May 19, 2003, and will run for approximately one year with a final evaluation taking place at the end of the first 12-months of the prototype.

ADDRESS: Written comments regarding this notice, and prototype applications, should be addressed to the Bureau of Customs and Border Protection, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, NW., Room 5.2-33, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to any aspect of this prototype should be directed to Sherri Lee Hoffman, Bureau of Customs and Border Protection, Entry and Drawback Management Branch, at (202) 927-0300 or via email at sherri.lee.hoffman@customs.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411-1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(F) identifies the electronic (*i.e.*, paperless) filing of drawback claims, records or entries as a planned NCAP component.

Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned components. The Paperless Drawback

prototype is being tested in accordance with this provision.

A notice describing the Paperless Drawback Prototype, and setting forth the prototype's terms and conditions, was published in the **Federal Register** (67 FR 61197) on September 27, 2002. That document stated that the prototype was to commence no earlier than August 1, 2002, and the deadline by which drawback claimants were required to submit applications to Customs to participate in the prototype was October 28, 2002. In an effort to encourage greater participation in the prototype, Customs is reopening the application period until 30 days from the date of publication of this notice in the **Federal Register**. The Paperless Drawback Prototype will commence no earlier than 30 days from the application deadline date.

All of the remaining Paperless Drawback Prototype terms and conditions set forth in the September 27, 2002, **Federal Register** notice remain in effect.

Dated: April 11, 2003.

William S. Heffelfinger III,
Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 03-9405 Filed 4-16-03; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Continued orientation to the Trinity River Restoration Program, establishment of Committee bylaws, establishment of subcommittees, and setting future meeting dates. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Tuesday, April 22, 2003, and from 8 a.m. to 5 p.m. on Wednesday, April 23, 2003.

ADDRESSES: The meeting will be held at the Victorian Inn, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W-2606, Sacramento, California 95825, (916) 414-6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623-1800.

Dated: April 11, 2003.

Ken McDermond,
Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03-9573 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-962-1410-HY-P; AA-10767; CHA-7]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chugach Alaska Corporation for 3.93 acres of land located in the vicinity of Constantine Harbor, Alaska. Notice of this decision will be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until May 19, 2003 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, (907) 271-3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03-9369 Filed 4-16-03; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-962-1410-HY-P; AA-6689-A; ALA-2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sanak Corporation for lands within T. 60 S., R. 90 W., Seward Meridian, located in the vicinity of Pauloff Harbor, Alaska, containing approximately 3,200 acres. Notice of the decision will also be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 19, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Ron Royer by phone at (907) 271-5677 or by e-mail at Ron_Royer@ak.blm.gov.

Ronald E. Royer,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03-9367 Filed 4-16-03; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-030-1210-NJ]

Vehicular Road Closure to Motorized Public Access on Selected Public Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Closure of approximately 0.50 miles of access road, south of the main road, that historically accessed the now closed Mohave County refuse transfer station South of Truxton in T 24N R 12W sec 11, Gila and Salt River Baseline and Meridian within the Kingman Field Office Mohave County, Arizona. This action is intended to prevent motorized access to an area known for the frequent dumping of household and industrial waste, and to prevent further erosion and environmental damage to the adjacent wash.

DATES: Road Closure is effective immediately and extends until June 21, 2004.

SUPPLEMENTARY INFORMATION: In June, 2002, the Bureau of Land Management spent in excess of \$30,000 removing hazardous materials and related debris from a trash dump at the end of this access road. Furthermore, this action is taken to prevent further degradation of environmental resources due to the illegal dumping of household waste, industrial waste, and hazardous materials. Exceptions to this closure include motorized vehicle use for administrative and emergency purposes and for authorized permittees. The authorized officer may issue a written authorization allowing motorized access for specific purposes. This closure is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and 43 CFR 8364.1. The authority for this restriction is provided in 43 CFR 8364.1(a). Persons who violate this restriction are subject to arrest and, upon conviction, may be fined up to \$100,000.00 and/or imprisoned for not more than 12 months as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581.

FOR FURTHER INFORMATION CONTACT: Bob Hall, Public Affairs Specialist, (928) 692-4454 Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman AZ, 86401.

Dated: June 24, 2002.

John Christensen,

Kingman Field Office Manager.

[FR Doc. 03-9375 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-094-2810-HT;GPO DBG030001]

Notice of Shooting Closure Near Black Canyon Exit 13, Payette County, ID

SUMMARY: The following described public lands, as provided by title 43 CFR 8364, located in Payette County, Idaho, are closed to the discharge of all firearms, subject to the exemption below. The following public lands south of the Interstate Highway I-84 are involved with this closure order:

T. 6 N., R. 4 W., Boise Meridian, Payette County, Idaho
 Section 10: SE¹/₄,
 Section 11: SW¹/₄,
 Section 14: NW¹/₄,
 Section 15: NE¹/₄,
 Containing 533.20 acres.

DATES: This order shall become effective immediately upon publication in the **Federal Register** and shall be in effect continuously for the next 10 years. At that time, this closure order shall be reviewed and a determination shall be made whether to reinstate, amend, modify or change the order by similar notification. This closure order may be rescinded at anytime if in the judgment of the authorized officer it is not effective or not needed.

ADDRESSES: Copies of maps that outline the closed area are available at the Bureau of Land Management, Lower Snake River District, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: The Fire Management Officer at (208) 384-3410.

SUPPLEMENTARY INFORMATION: The subject lands are being closed to protect Bureau of Land Management employees stationed at Wild West Guard Station and to safeguard personal and government owned property which amounts to considerable investment of public funds. Public safety is dependent on these facilities being operational at all times. Malicious vandalism by random and deliberate shooting has made this government facility extremely hazardous in recent years.

Exempt from this order are law enforcement officers of Federal, State and county governments while on official business of that agency. Any person who fails to comply with this closure order shall be subject to prosecution under penalty of law as provided by title 43 § 8360.0-7 and State or county statutes, as applicable. Noncompliance is considered a misdemeanor, punishable by a fine not

to exceed \$1,000 and/or imprisonment not to exceed 12 months.

Dated: January 28, 2003.

Daryl L. Albiston,

Four Rivers Field Manager.

[FR Doc. 03-9370 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-070-03-1230-EA]

Temporary Closure of Public Lands—Recreation Special Events: New Mexico, Farmington Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of affected public lands in San Juan County.

SUMMARY: The Bureau of Land Management, Farmington Field Office (BLM), announces the temporary closure of selected public lands under its administration in San Juan County. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

SUMMARY: The State Director, New Mexico State Office, announces the temporary closure of selected public lands under BLM administration. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

EFFECTIVE DATES: March through December 2003. Events may be canceled or rescheduled at short notice.

FOR FURTHER INFORMATION CONTACT: Richard Simmons, Outdoor Recreation Planner, Farmington Field Office, Bureau of Land Management, 1235 La Plata Hwy, Suite A, Farmington, New Mexico 87410, telephone: (505) 599-6345.

SUPPLEMENTARY INFORMATION: This notice applies to closures on and adjacent to permitted special events including but not limited to: Motorized Off Highway Vehicle events, Mountain Bike races, and Horse Endurance competitive event sites and routes. Competitive events are conducted along dirt roads, trails, washes, and areas approved for such use through the Special Recreation Permit application process. Events occur from March through December 2003. Closure period is from 6 a.m. event day until event finish or until the event has cleared

between affected Check Point locations; approximately 2 to 48 hour periods. The general public will be advised of each event and closure specifics via local newspapers and mailed public letters within seven (7) to thirty (30) days prior to the running of an event. Event maps and information will be posted at the Farmington Field Office.

Locations most commonly used for permitted events include, but are not limited to:

1. Glade Recreation Area—San Juan Co., T30-31N R12-13W.
2. Alien Run Mountain Bike Trail—San Juan Co.: T31N R10W.
3. The Rock Garden—San Juan Co.: T30-31N R9W.
4. Pinyon Mesa—San Juan Co.: T30N R13-14W.
5. Navajo Lake Horse Trails—San Juan Co.: T30N R7-8W.
6. The Dunes OHV Area—San Juan Co.: T29N R13W.
7. Head Canyon Motocross Track—San Juan Co.: T30N R13W.
8. Simon Canyon—San Juan Co.: T30-31N R8W.
9. Angel Peak Recreation Area—San Juan Co.: T26-27N R10W.

Marking and effect of closure. BLM lands to be temporarily closed to public use include the width and length of those roads, trails and routes identified as the route for the permitted event, identified by colored flagging, chalk arrows in the dirt, traffic cones, temporary barricades and/or directional arrows attached to wooden stakes; vehicle closures for the public in vendor areas and spectator viewing areas, identified with colored ribbon and signs; camping closures, except in such areas designated for camping by the BLM, identified with signs and colored ribbon and/or barricades, gates, cones, and fences. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes and area during closure periods. Public uses generally affected by a Temporary Closure include: road and trail uses, camping, picnicking, parking, cross-country travel, and public land exploration.

Spectator and support vehicles may be driven in designated areas and routes only. Spectators may observe the races from specified locations as directed by event and agency officials.

Interested parties may obtain a map and schedule of each closure area at the contact address.

Exceptions. Closure restrictions do not apply to permittee, their employees, competitors, medical/rescue, law enforcement, Oil and Gas Industry employees doing day-to-day necessary

service, and BLM personnel monitoring the event.

Authority: 43 CFR 8364.1 and 43 CFR part 2930.

Penalty. Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: March 7, 2003.

Linda Rundell,

New Mexico State Director.

[FR Doc. 03-9379 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-BP-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-1320-DO]

Notice of Intent To Prepare a Resource Management Plan Amendment and Environmental Assessment and Call for Coal or Other Resource Information

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a Resource Management Plan Amendment (RMPA) and associated Environmental Assessment (EA) for Federal coal resources in Haskell, Latimer, and LeFlore Counties, Oklahoma, and notice of scoping meetings.

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976 and the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM) Oklahoma Field Office will prepare an amendment to the Oklahoma Resource Management Plan (RMP) (1994, as amended 1996) and complete an EA on the amendment for three potential competitive Federal coal lease sales covering lands in Haskell, Latimer, and LeFlore Counties, Oklahoma. The RMPA would evaluate three Lease Application Areas (LAAs) to determine whether they are suitable for further consideration for leasing. The LAAs total approximately 6,883 acres of previously unleased coal and are part of the Federal mineral estate. The RMPA will be prepared under guidance provided through BLM Planning Regulations. This notice is also to solicit coal and other resource information pursuant to 43 CFR 3420.1-2.

This notice formally initiates the public scoping phase to identify issues and review preliminary planning criteria that will help guide the preparation of the RMPA/EA. The BLM will encourage public participation and will begin by conducting two public

scoping meetings near the LAAs to solicit input from all concerned parties. The dates, times, and locations for these meetings will be announced in local and regional newspapers. Coal companies, other mineral extraction companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determination of coal development potential and possible conflicts with other resources.

DATES: The scoping comment period will commence with the publication of this notice. Meetings and comment closing dates will be announced through local media, a newsletter, and the BLM Web site: <http://www.nm.blm.gov>. At least 15 days public notice in local news media will be given for activities where the public is invited to attend.

ADDRESSES: Written comments should be sent to "RMPA/EA COMMENTS," BLM, Oklahoma Field Office, 7906 East 33rd Street, Tulsa, Oklahoma 74145-1352, Fax: (918) 621-4130. Comments, including the names and street addresses of respondents, will be available for public review at the Oklahoma Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the RMPA/EA. Individual respondents may request confidentiality. If you wish to withhold your name or address from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be available for public inspection in their entirety. The current RMP and all other documents relevant to this planning effort are also available for public review at the Oklahoma Field Office at the address dates and times listed above.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact: Doug Cook, Co-Team Leader, BLM, Oklahoma Field Office, 7906 East 33rd Street, Tulsa, Oklahoma 74145-1352, phone (918) 621-4124 or Keith Tyler, Co-Team Leader, BLM, Oklahoma Field Office, 221 North Service Road, Moore, Oklahoma 73160-4946, phone (405) 790-1015.

SUPPLEMENTARY INFORMATION: In February and June of 2002, BLM received three applications from Farrell-Cooper Mining Company for three competitive coal lease sales for land in Haskell, Latimer, and LeFlore Counties. The sizes and locations of these three

LAAs are as follows: (1) Liberty West, 640 acres, in parts of sections 1 and 12, T. 10 N., R. 12 E. in Haskell County; (2) McCurtain, 2,380 acres, in parts of sections 8-11, 14-17, T. 8 N., R. 22 E. in Haskell County; and (3) Bull Hill, 3,863.17 acres, in parts of sections 9-12, T. 5 N., R. 20 E., and in parts of sections 1-3 and 7-10, T. 5 N., R. 21 E. in Latimer County and in parts of sections 4-6, T. 5 N., R. 23 E., sections 31-34, T. 6 N., R. 24 E.; sections 33-36, T. 6 N., R. 23 E. and sections 1-3, T. 5 N., R. 22 E. in LeFlore County. The total 6,883.17 acres of Federal mineral estate is administered by the BLM and the surface is privately owned.

Opportunities for the public to be informed and participate will occur throughout the planning process. To ensure local community participation and input, public scoping meetings will be held in two towns strategically located near the LAAs. Early participation by all interested parties is encouraged and will help guide the planning process and decision. The summary and list of attendees for each meeting will be available to the public and open for 30 days to any participants who wish to clarify their views. The results of scoping will be sent to all of those interested parties on the mailing list for this project in a newsletter or scoping report. BLM personnel have identified preliminary issues and management concerns. Preliminary issues include the following: Access and traffic; public interest/benefits regarding the extraction of the coal; identification of resource values on the private lands; and water quality. Preliminary management concerns include the following: Special status species of plants and animals; maintaining government-to-government relationships with tribal governments; effects of disproportionate impacts on disadvantaged communities resulting from the potential execution of the decision to lease the coal (Environmental Justice Executive Order 12898); potential for spread of noxious weeds; protection of designated streams (Clean Water Act, section 303-d), and application of unsuitability criteria. The public is encouraged to help identify any additional issues, questions, and concerns during the initial scoping phase. Industry and other interested parties are asked to provide any information that will be useful in meeting the Federal Coal Management Program defined in 43 CFR part 3420, including the application of coal planning screens.

Information resulting from this call for information will be used to determine potential for coal

development and likelihood of conflict with other resources. Lands already considered in the Oklahoma RMP, adopted in January 1994 and as amended in 1996, need not be addressed.

The issue of Federal coal leasing and development will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations;

2. Determining areas acceptable for consideration with special stipulations; and

3. Determining areas unacceptable for further coal leasing consideration. Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call. Planning criteria will be developed during the initial public scoping early in the process to help guide the planning effort. Preliminary planning criteria being considered by BLM for the planning effort include the following: Recognize valid existing rights; comply with existing law, executive orders, regulations, and BLM policy and program guidance; seek public input; consider adjoining lands to minimize land use conflict when making decisions; consider planning jurisdictions of other Federal agencies and State, local, and tribal governments; develop reasonable and sound alternatives; use current scientific data to evaluate appropriate strategies; analyze socioeconomic effects of alternatives along with the environmental effects; and consider public welfare and safety.

Written comments should address one or more of the following: (1) Issues to be considered, (2) whether the planning criteria are adequate for the issues, (3) feasible and reasonable alternatives to examine, or (4) relevant coal or other resource information having a bearing on the RMPA/EA.

Following the initial scoping phase, BLM will prepare an inventory to determine the existing condition of the environment in the three areas. The resources to be inventoried include air quality, geology, energy and mineral resources, soils, water resources, vegetation, wildlife, special status species, noxious weeds, land use, access, visual resources, noise, social and economic conditions, environmental justice, hazardous materials, and cultural and paleontological resources. A range of reasonable alternatives, including an alternative considering no action as required by NEPA, will be developed and analyzed. Through the comments received during the initial scoping, the

public will assist in developing the alternatives. It is anticipated that the RMPA/EA process will require approximately 14 months to complete, resulting in a Decision Record and RMPA being published in spring of 2004.

Dated: February 13, 2003.

Timothy R. Spisak,

Acting State Director.

[FR Doc. 03-9374 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-260-09-1060-00-24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below under **ADDRESSES** no later than May 15, 2003.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520-0006, Attn: Janet Nordin; FAX 775-861-6711.

FOR FURTHER INFORMATION CONTACT: Sally Hampton, Acting Group Manager—Wild Horse and Burro Group, (202) 452-0379. Individuals who use a telecommunications device for the deaf (TDD) may contact Ms. Hampton at any time by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to

the address listed under **ADDRESSES**, above. Nominations for the following categories of interest are needed: Wild Horse and Burro Research Natural Resources Management Livestock Management

The specific category that the nominee will represent should be identified in the letter of nomination. Board membership must be balanced in terms of categories of interest represented. Each member must be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above. Members will be appointed to a term of 3 years.

Pursuant to section 7 of the Wild Free-Roaming Horse and Burro Act, Members of the Board cannot be employed by either Federal or State government.

Members will serve without salary, but will be reimbursed for travel and *per diem* expenses at current rates for government employees.

The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: April 11, 2003.

Aaron Horton,

Acting Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 03-9462 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-190.50-1610-DO]

Notice of Intent To Prepare an Amendment to the Hollister Resource Management Plan and Environmental Impact Statement for the Fort Ord Public Lands Project in Monterey County, CA

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent to Prepare an Amendment to the Hollister Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Fort Ord Public Lands Project in Monterey County, California.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an amendment to the Hollister RMP for the Fort Ord Public Lands Project. Fort Ord is the site of a former United States military base in Monterey County,

California that was closed pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510. Since 1992, the BLM has worked with the community in Monterey County to help facilitate the reuse of the former Fort Ord military base. The plan amendment would incorporate management prescriptions for the Fort Ord Project within the broader framework of the Hollister RMP. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted for 60 days following the publication of this notice in the **Federal Register**.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, open houses will be held in locations most closely affiliated with the BLM lands at Fort Ord. Probable locations include Monterey/Pacific Grove, Salinas, and Seaside/Marina. Information concerning the planning process, including any public participation opportunities, will be announced by BLM through news releases, direct mailings or other applicable means of public notification. Current information about the Fort Ord planning process is also maintained on BLM's Web site (<http://www.ca.blm.gov/hollister>).

ADDRESSES: Scoping comments should be sent to Eric Morgan, Project Manager, Bureau of Land Management, Hollister Field Office, 20 Hamilton Court, Hollister, California, 95023; Fax 831.394.8346. BLM will maintain a record of public documents related to the development of the RMP Amendment at the Hollister Field Office at the address listed above. Comments, including names and street addresses of respondents, will be available for public review at the Hollister Field Office located in Hollister, California during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, excluding federal holidays, and may be published as part of the EIS. Individual

respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Eric Morgan, telephone (831) 394-8314 or E-Mail emorgan@ca.blm.gov.

SUPPLEMENTARY INFORMATION: A plan amendment is needed because the existing 1984 Hollister RMP does not address management of the Fort Ord Project area. Approximately 7,200 acres of former Army lands at Fort Ord were transferred to the BLM in October 1996, and approximately 8,000 additional acres are expected to be transferred to the BLM in the coming years. The new "public lands" transferred to the BLM are part of a base-wide mitigation strategy to assure the survival of numerous rare plants and animals. Reuse of the base is centered upon the three keystones of "Education, Economics and Environment (The Three E's)". BLM's management of these new public lands is currently governed by the BLM/Army Memorandum of Understanding (April 19, 1995), the U.S. Army Letter of Transfer (October 18, 1996), and the Fort Ord Multi-Species Habitat Management Plan. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups, including: management and protection of sensitive, rare, threatened or endangered species; fire management; management integration with other agencies; management of recreation/visitor use and safety; management of livestock grazing; management consistent with community; and access and transportation on the public lands. Disciplines involved in the planning process will include specialists with expertise in wildlife management, minerals and geology, outdoor recreation, archaeology, lands and

realty, botany, soils, information technology, sociology, and economics.

Eric Morgan,
Fort Ord Project Manager.
[FR Doc. 03-9366 Filed 4-16-03; 8:45 am]
BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-933-1430-00; GPO-03-0002; IDI-07702]

Expiration of Public Land Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 5734 which withdrew national forest system lands from the mining laws for use as a campground in the Boise National Forest was allowed to expire on July 20, 2002 in Valley County, Idaho.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208-373-3867.

SUPPLEMENTARY INFORMATION: Public Land Order No. 5734, published in the *Federal Register*, 45 FR 48629, dated July 21, 1980, as FR Doc. 80-21731, for the Boise National Forest, withdrew 20 acres of national forest lands from the mining laws for use as a campground has been allowed to expire.

1. At 9 a.m. on May 19, 2003, the segregative effect for the Federal interests in the above mentioned PLO, is lifted, and the land opened to such forms of disposition as may by law be made of forest system lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Don Dunn,
Acting Branch Chief for Lands and Minerals.
[FR Doc. 03-9371 Filed 4-16-03; 8:45 am]
BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-ET; HAG 03-0034; ORE-06585]

Public Land Order No. 7559; Partial Revocation of Public Land Order No. 2298; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Public Land Order No. 2298 insofar as it affects 44.15 acres of public land withdrawn for the Forest Service's Warner Canyon Recreation Area. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to make the land available for exchange. This action will open the land to such forms of disposition as may by law be made of National Forest System lands.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208-2965, (503) 952-6189.

SUPPLEMENTARY INFORMATION: The remaining land withdrawn for the Warner Canyon Recreation Area has been conveyed out of Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2298, which withdrew public lands for Forest Service administrative sites and recreation areas, is hereby revoked insofar as it affects the following described land:

Fremont National Forest

Willamette Meridian

Warner Canyon Recreation Area

T. 38 S., R. 21 E.,

Sec. 30, lots 8 and 10 (formerly part of lot 4).

The area described contains 44.15 acres in Lake County.

2. At 8:30 a.m. on April 17, 2003, the land described in Paragraph 1 will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 11, 2003.

Rebecca W. Watson,
Assistant Secretary—Land and Minerals Management.

[FR Doc. 03-9451 Filed 4-16-03; 8:45 am]

BILLING CODE 4370-33-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[NV-930-1430-ES; N-75424]****Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Lease and Conveyance of Public Lands near Silver Peak, Nevada****AGENCY:** Bureau of Land Management.**ACTION:** Classification of public land for lease and conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Esmeralda County, Nevada has been examined and found suitable for lease and conveyance under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), for the purposes of an emergency services training center, in the town of Silver Peak, Nevada.

Mount Diablo Meridian, Nevada

T. 2 S., R. 39 E.,

Section 21, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;Section 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;Section 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Containing 40 acres more or less.

These lands are hereby classified as suitable for lease or conveyance in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910.

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. Lease and patent will be issued to Esmeralda County and will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

3. A right-of-way authorized under the Act of March 4, 1911, 36 Stat. 1253 (43 U.S.C. 961) for powerline purposes granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N-3931.

4. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a power

transmission line granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N-13241.

5. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a waterline to serve Silver Peak, granted to Esmeralda County, its successor or assignees, by right-of-way No. N-15898.

6. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a power transmission line granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N-30965.

7. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a water line granted to Foote Mineral Company, its successor or assignees, by right-of-way No. N-44618.

8. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a road granted to Homestead Minerals Company, its successor or assignees, by right-of-way No. N-51529.

9. A right-of-way authorized under the Act of February 15, 1901, 31 Stat. 790 (U.S.C. 959) for a water facility pipeline granted to Esmeralda County, its successor or assignees, by right-of-way No. N-74296.

Patent will contain the following provisions:

1. Esmeralda County, a political subdivision of the State of Nevada, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 2 S., R. 39 E., section 21, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; section 27, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$; section 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other

purpose which may result in the disposal, placement, storage, or release of any hazardous substance; and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Assistant Field Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV 89049.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as an emergency services training center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: February 2, 2003.

William S. Fisher,*Assistant Field Manager, Tonopah.*

[FR Doc. 03-9372 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[NV-030-1430-ES; NVN 61027]****Notice of Realty Action; Recreation and Public Purposes Act Classification; Douglas County, NV****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The following described land, comprising 85.67 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Mt. Diablo Meridian, Nevada

T. 14 N., R. 20 E.

sec. 5, Lots 3, 4, 9 and 10 and

S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,

S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,

W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

sec. 6, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

sec. 7, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

sec. 8, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,

N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 85.67 acres.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Realty Specialist, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701; (702) 885-6000.

SUPPLEMENTARY INFORMATION: The public land is located within Douglas County, Nevada. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The Carson City Field Office has received several applications from churches expressing an interest in constructing churches and schools on the land.

The lease/patent, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

4. Those rights for highway purposes granted to the Nevada Department of Transportation, by right-of-way CC 018400, and its assigns, under the Act of November 9, 1921 (42 Stat. 216).

5. Those rights for gas pipeline purposes that have been granted to Paiute Pipeline Company, and its assigns, by rights-of-way Nev 064632 and N 17001 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

6. Those rights for gas pipeline purposes that have been granted to Southwest Gas Corporation, and its assigns, by rights-of-way N 58973 and N 59816 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

7. Those rights for communication line purposes that have been granted to Verizon California, Inc., and its assigns, by right-of-way N 40377 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

8. Those rights for access road purposes that have been granted to Hilltop Community Church, and its assigns, by right-of-way N 39139 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

9. Those rights for road and water pipeline purposes that have been granted to Douglas County, and its assigns, by rights-of-way N 56768, N 59346, N 59540 and N 74267 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

10. Those rights for drainage facility purposes that have been granted to the Indian Hills GID, and its assigns, by right-of-way N 58950 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of a conveyance document or publication in the **Federal Register** of an order specifying the date and time of opening. A previous classification for Recreation and Public Purposes under case number N 4481, as it affects the described land, is no longer appropriate and is hereby terminated.

Dated: March 7, 2003.

Charles P. Pope,

Assistant Manager, Non-renewable Resources, Carson City Field Office.

[FR Doc. 03-9373 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-086-1430-AE]

Restriction Order for Blackwell Island, Kootenai County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Restriction Order for Blackwell Island, Kootenai County, Idaho, Order No. ID-080-34.

SUMMARY: By order the following restrictions apply to Blackwell Island described as all public lands administered by the Bureau of Land Management (BLM) located in Lots 1, 2, 3, 4, 7, 8, 10, 11, 14, 17, and 18 of the Aqua Terrace plat, portions of Government Lots 3, 4, and 5 all in the NW $\frac{1}{4}$ sec. 14, T.50N., R.4W., B.M. and a portion of Government Lot 23 in the SW $\frac{1}{4}$ sec. 11, T.50N., R.4W., B.M. all in Kootenai County, Idaho.

1. Overnight camping by any person or groups of persons is prohibited. Camping means entering, using or remaining in the closed area during the established night closure period from 11 p.m. to 5 a.m. or as otherwise posted.

2. Overnight boat moorage is prohibited. Moorage means making fast any vessel by use of anchor, line, painter or other means during the established night closure period from 11 p.m. to 5 a.m. or as otherwise posted.

3. Motorized boating use of the Blackwell Canals is prohibited except that portion from the developed boat launch ramp extending downstream to the Spokane River.

4. The consumption of or the possession of open containers of any alcoholic beverage is prohibited.

A map depicting the restricted areas is available for public inspection at the Bureau of Land Management, Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. These restrictions become effective immediately and shall remain in effect unless revoked and/or replaced with supplemental rules.

FOR FURTHER INFORMATION CONTACT: Terry Kincaid at BLM UCSC District, 1808 N. Third St., Coeur d'Alene, ID, 83814 or call (208) 769-5431.

SUPPLEMENTARY INFORMATION: The authority for establishing these restrictions is Title 43, Code of Federal Regulations, 8364.1.

These restrictions do not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperater while in the performance of an official duty.

These restrictions are necessary to ensure public safety and to protect the resources of the public lands. A new public boat launching facility has been constructed on Blackwell Island. Constructed facilities are designed and provided only to accommodate day-use recreational activities. The small size of the site and its urban setting also make overnight camping activities incompatible with site management objectives. Further, it is recognized that an increase in boating use of the area will occur as a direct result of providing this new public boating access facility. The adjacent canals are narrow and shallow. Water depth and maneuvering space is not sufficient for safe motorized vessel navigation. Public input during the site development planning process supported a motorized boating restriction to protect canal banks and riparian habitat. Additionally, portions of the public lands were annexed into the City of Coeur d'Alene. The alcoholic beverage prohibition is necessary to make federal restrictions consistent with the city ordinance banning alcoholic beverages from any public park.

Violation of this order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

Dated: January 30, 2003.

Stephanie Snook,

Acting District Manager.

[FR Doc. 03-9377 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-074-1654-HB DD8V]

Notice of Proposed Closure of Warm Springs to Overnight Camping To Implement the Snake River Activity/Operations Plan, Upper Snake River District, ID

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The BLM Idaho Falls Field Office proposes to close Warm Springs to overnight camping in accordance with 43 CFR 8365.1-6. The notice affects lands covered by one land use plan and one activity level plan. The Snake River Activity/Operations Plan described the certain lands as closed to overnight camping. The proposed closure implements this plan, and it will remain in effect permanently with

the publication of the final notice. Day use access will still be permitted.

EFFECTIVE DATE: Effective May 19, 2003.

Legal Description

Warm Springs: Those portions of the following described lands lying east of the South Fork Snake River.

Boise Meridian, Idaho

Township 3N, Range 42 E, Section 12, Lots 3-6, 10 and 11; Section 13, Lots 10 and 11.

SUPPLEMENTARY INFORMATION: Two federally listed species inhabit the Warm Springs area, the bald eagle (*Haliaeetus leucophaeus*; listed as threatened) and the Ute ladies'-tresses orchid (*Spiranthes diluvialis*; listed as threatened). The closure will help protect prime habitat for the two species; and protect watershed, wildlife, and scenic values.

A new parking area has been constructed at Warm Springs. Constructed facilities are designed and provided only to accommodate day-use recreational activities. The overnight camping closure is mitigation identified for the parking area construction under section 7 consultation with U.S. Fish and Wildlife Service (FWS). FWS concurrence with the construction was contingent on this stipulation. The closure limits recreation use in the area and limits human interaction with sensitive species.

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8365.1-6. Violation of this closure is punishable by a fine not to exceed \$1,000.00 and/or imprisonment not to exceed 12 months. Persons who are exempt from these rules include members of any organized rescue or fire-fighting force in performance of an official duty. Other exemptions may apply for administrative or operational purposes.

Maps of the closure area and information may be obtained from the Idaho Falls Field Office.

FOR FURTHER INFORMATION CONTACT: Monica Zimmerman, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524-7543.

Dated: March 18, 2003.

Glen Guenther,

Acting Idaho Falls Field Manager.

[FR Doc. 03-9376 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-080-1430-ET; Serial No. NMNM-109118]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of proposed withdrawal and opportunity for public meeting; New Mexico.

SUMMARY: The United States Department of Treasury for the Federal Law Enforcement Training Center (FLETC), has filed an application to withdraw and transfer jurisdiction of 1280.54 acres of surface and minerals and 640.26 acres of mineral estate underlying FLETC private surface from mining and mineral leasing for a period of 20 years. This notice closes the public lands for up to two years from all forms of appropriation under the public land laws, including location under the United States mining laws, to allow for continued firearms training and safety from bullets within the safety fan. The land will remain open to mineral leasing.

DATES: Comments must be received by July 16, 2003.

ADDRESSES: Comments or requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502-7115.

FOR FURTHER INFORMATION CONTACT: John Bruin, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505-438-7419.

SUPPLEMENTARY INFORMATION: On December 17, 2002, the United States Department of Treasury filed an application to withdraw the following described lands from public land laws, including the United States mining laws, subject to valid existing rights. The purpose of this withdrawal is to facilitate a multipurpose firearms training range and safety fan.

Federal Land and Mineral Estate

New Mexico Principal Meridian

T.16 S., R. 25 E.,
sec. 27, All;
sec. 28, E¹/₂E¹/₂;
sec. 33, E¹/₂NE¹/₄;
sec. 34, NW¹/₄. T. 17 S., R. 25 E.,
sec. 03, Lots 3, 4, S¹/₂NW¹/₄, N¹/₂N¹/₂S¹/₂.

Containing 1280.54 acres of surface and minerals in Eddy County, New Mexico.

The area described below is Federal reserved mineral estate underlying Department of Treasury (FLETC) lands. This

notice closes the land to mining under the United States mining laws, subject to valid existing rights.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
sec. 33, SE $\frac{1}{4}$;
sec. 34, SW $\frac{1}{4}$;
sec. 35, S $\frac{1}{2}$ S $\frac{1}{2}$.

T. 17 S., R. 25 E.,
sec. 04: Lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$.

Containing 640.26 acres of mineral estate underlying FLETC private surface, in Eddy County New Mexico.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502-6544.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. Public meeting requests must be submitted in writing to the New Mexico State Director, BLM, within 90 days from the date of publication of this notice.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the land withdrawal is approved prior to that date. The temporary uses which may be permitted during the segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature, but only with the approval of the authorized officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: December 23, 2002.

Cathy Queen,

Acting Field Manager.

[FR Doc. 03-9378 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010-0126).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "Royalty-in-Kind (RIK) Pilot Program—Directed Communications by Operators of Federal Oil and Gas Leases."

DATES: Submit written comments on or before May 19, 2003.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010-0126), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at 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 that we have received your email, contact Ms. Gebhardt at (303) 231-3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231-3211, FAX (303) 231-3781, email Sharron.Gebhardt@mms.gov. You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: "Royalty-in-Kind (RIK) Pilot Program—Directed Communications by Operators of Federal Oil and Gas Leases."

OMB Control Number: 1010-0126.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 192) and the OCS Lands Act (43 U.S.C. 1353) is responsible for

managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

Most royalties are now paid in value. For example, when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK.

Collection of RIK requires communication between MMS and the operators of a lease to assure accurate and timely delivery of MMS's royalty share of production volumes.

MMS, as responsible steward of oil and gas royalties, must direct operators of affected MMS leases to carry out three types of communication to take MMS's RIK crude oil or natural gas. The types of information that operators must provide are as follows:

(1) About 8-10 days before end of the month, report initial information about the projected volumes and qualities of RIK production the operator expects to make available in the next month, and corrections to those projected volumes and qualities for the month, submitted at varying frequencies during the month;

(2) When needed, report billing information about transportation/billing arrangements for the RIK to the delivery point, and

(3) Report month-end summary information (lease imbalance statement) about total RIK volumes and qualities needed to carry over to the next month to resolve aggregated imbalances that have incurred in prior months of RIK deliveries.

Experience with the Wyoming and Texas 8(g) Pilots demonstrate directed communication requirements differed according to the needs of each pilot situation. For example, in the Wyoming Pilot, RIK was delivered to the purchasers at the lease. Therefore, the direction to make transportation arrangements was included in "Dear Operator" letters issued to those operators. For these reasons, we are not requesting OMB approval of specific "Dear Operator" letters to operators but, instead, requesting OMB approval to continue collecting the three kinds of reporting requirements concerning

communications between operators and MMS. By obtaining continued approval for these three kinds of reporting requirements, MMS will be able to select the types of directed communications needed for each situation and include only those types in a "Dear Operator" letter appropriate to the operation.

The types of communication and the supporting data MMS will require operators to use in setting up the monthly delivery of RIK to the purchaser are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and gas and is exchanged as a normal part of the conduct of those business activities, even when the operators are not directed to do so.

In addition, due to their similarity, we are merging this ICR with OMB Control Number 1010-0130, Directed Communications between Operators of Federal RIK Leases and Deliverers of Equivalent Oil Production to the Strategic Petroleum Reserve (SPR).

On February 11, 1999, DOI announced that it would assist in an initiative to refill the SPR. This initiative involved collecting RIK oil production from Federal lessees in the Gulf of Mexico and transferring it to the Department of Energy (DOE). DOE issued contracts to companies to take

Federal RIK crude oil delivered by MMS's operators and, in exchange, to deliver to DOE's SPR an equivalent volume and quality of crude oil. DOE was projected to use 28 million barrels of RIK oil to refill the SPR.

On November 6, 2001, President Bush announced an initiative to refill the SPR. MMS, in coordination with DOE, entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the Gulf of Mexico will deliver MMS's royalty oil to MMS's exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for the exchange or direct movement of exchange oil to the SPR.

MMS, as responsible steward of oil royalties, must direct operators of affected MMS leases to carry out three types of communication with MMS. The types of information operators must provide are as stated previously.

These types of information are necessary so that DOE's exchange contractors can arrange to timely accept accurate amounts and qualities of royalty oil that will be delivered by MMS's exchange partner and for MMS to verify timely fulfillment of operators' and lessees' royalty obligations to the Federal Government.

MMS received OMB approval for the three types of communications between MMS operators and MMS rather than approval of a single "Dear Operator" letter directing these communications. By obtaining approval for these kinds of reporting requirements, MMS is able to draft situation-specific "Dear Operator" letters—that is, letters addressing only the types of directed communications and other issues relevant to the specific situation.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge her duties. No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Frequency: Intra-Monthly (variable).
Estimated Number and Description of Respondents: 145 lessees or operators of Federal oil and gas leases participating in RIK.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 4,050 hours.

The following chart details the individual components and estimated hour burdens. 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.

RESPONDENT ANNUAL BURDEN HOUR CHART

Reporting requirement	Burden hour per response	Annual number of responses	Annual burden hours
Wyoming Oil (OMB Control Number 1010-0126)	1	100	100
Natural Gas (Texas 8G and GOM) (OMB Control Number 1010-0126)	1	3,600	3,600
GOM Oil (OMB Control Number 1010-0126)	1	50	50
SPR Fill Initiative (OMB Control Number 1010-0130)	1	300	300
Totals .....	.....	4,050	4,050

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: 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.

Comments: Section 3506(c)(2)(A) of the PRA 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.

To comply with the public consultation process, we published a notice in the **Federal Register** on December 21, 2002 (67 FR 79142), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days.

Therefore, to ensure maximum consideration, OMB should receive public comments by May 19, 2003.

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/InfoColl/InfoColCom.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 that 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: March 31, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03-9417 Filed 4-16-03; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Clean Air Act

Notice is hereby given that on March 25, 2003, a proposed Settlement Agreement (the "Agreement") in *In re: Farmland Industries, Inc., et al.*, Case No. 02-50557, was lodged with the United States Bankruptcy Court for the Western District of Missouri.

In this settlement the United States resolves all but one¹ of the Environmental Protection Agency's pre-petition (presently known and outstanding) claims for cost recovery and civil penalties under CERCLA, the

Clean Water Act, and the Clean Air Act against Farmland Industries, Inc. The Settlement Agreement resolves EPA's claims for civil penalties in connection with three oil spills from pipelines owned and operated by Farmland, violations of "mobile source" regulations, 42 U.S.C. 7545(h) and (k), 40 CFR 105(a)(5)(v), 105(a)(6), 80.101(i), and 80.46(b) and (f), at Farmland's Coffeyville, Kansas refinery, and for cost recovery at six CERCLA sites at which Farmland Industries has been identified as a responsible party. The Settlement Agreement provides that the United States will have an allowed general unsecured claim totaling \$2,693,882.60, in settlement of the above-described claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *In re: Farmland Industries, Inc., et al.*, Case No. 02-50557, Bankruptcy Court for Western District of Missouri, D.J. Ref. # 90-5-1-1-06976/2,3.

The Settlement Agreement may be examined at the Office of the United States Attorney, 400 E. 9th Street, Kansas City, MO, 64106, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 03-9404 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that, on March 27, 2003, the United States lodged with the United States District Court for the District of Rhode Island a proposed Consent Decree with Kayser-Roth corporation ("Kayser-Roth") in *United States v. Kayser-Roth Corp.*, Civil Action No. 98-160ML (D.R.I.). In the action, which was filed in March, 1998, the United States brought a claim against Kayser-Roth, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), seeking to recover past unreimbursed costs and prejudgment interest incurred with respect to the Stamina Mills, Inc. Superfund Site located in North Smithfield, Rhode Island (the "Site").

Pursuant to the terms of the proposed Consent Decree, Kayser-Roth has agreed to pay the United States, within 30 days of entry of the Decree, an amount equal to the sum of (a) \$7,169,432, plus interest accruing from September 30, 2002 and (b) \$45,211, plus interest accruing from October 17, 2002. The United States has agreed to provide Kayser-Roth with a covenant not to sue, pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs, which are defined as all costs that the Environmental Protection Agency paid at or in connection with the site through May 31, 2002 or that the Department of Justice, on behalf of the environmental Protection Agency, paid at or in connection with the Site through May 31, 2002, plus accrued interest on such costs. The United States has also agreed to extend the covenant to Collins & Aikman Products Co., Inc., which has provided an indemnity to Kayser-Roth in connection with the Site.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Kayser-Roth Corp.*, Civil Action No. 98-160ML (D.R.I.), DOJ No. 90-11-2-356B. A copy of the comments should also be sent to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458.

The proposed Consent Decree may be examined at EPA Region 1, One

¹ The one known EPA claim against Debtors not resolved by the subject settlement agreement arises in connection with violations of Clean Air Act regulations at Debtor's Coffeyville, Kansas refinery. EPA has filed a Proof of Claim in the bankruptcy reserving the right to pursue Debtor for this claim.

Congress Street, Suite 1100, Boston, MA 02114-2023 (contact Lloyd Selbst at 617-918-1739), and at the Office of the United States Attorney for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903 (contact Lisa Dinerman at 410-528-5477). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web Site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@ussdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547, referencing *United States v. Kayser-Roth Corp.*, Civil Action No. 98-160ML (D.R.I.), DOJ No. 90-11-2-356B. In requesting a copy, please enclose a check in the amount of \$6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03-9402 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 27, 2003, a proposed Consent Decree in *United States v. Mattiace Industries, Inc., et al.*, Civil Action No. CV-03-1011 (JS), was lodged with the United States District Court for the Eastern District of New York.

In this action, filed pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9607(a), the United States seeks recovery of all response costs incurred and to be incurred by the United States at or in connection with the Mattiace Petrochemicals Superfund Site located at 16 Garvies Point Road in the City of Glen Cove, Nassau County, New York. The Consent Decree, which was lodged concurrently with the filing of the complaint, provides for reimbursement of a portion of EPA's past costs and interim and future costs, as well as a work takeover of the remedial action at

the Site that will last for approximately 25 years. Approximately eighty parties are participating in the settlement and they are funding the future cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to Mattiace Petrochemicals Superfund Site, D.J. Ref. 90-11-3-07234.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, and at U.S. EPA Region II, 290 Broadway, New York, New York 10007. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$37.00 (exclusive of attachments) (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03-9403 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 50-day notice of information collection under review; extension of a currently approved collection, Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 31, pages 7612-7613 on February 14, 2003, allow for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 295-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice Office.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions, Federal government, State, local, or tribal government. *Abstract:* Under the provisions of the Government Performance and Results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weakness and external opportunities and risks.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,500 respondents, who will complete a 18 minute questionnaire.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 450 total burden hours associated with this collection.

If additional information is required contact: Mr. Robert B. Briggs, Clearance officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03-9526 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection, Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, November 30, page 7392 on February 13, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comments until May 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one more of the following four points:

(1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,600 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03-9527 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collective Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection, application for restoration of firearms privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Donnie Hacker, Firearms Programs Division, 650 Massachusetts Avenue, NW., Room 7400, Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number ATF F 3210.1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for profit. Certain categories of persons are

prohibited from possessing firearms. ATF F 3210.1, Application For Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs.

Department Clearance Officer, Department of Justice.

[FR Doc. 03-9528 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection; application and permit for permanent Exportation of firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information,

please contact Dave Marshall, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Permanent Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 9 (5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearm from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 70 respondents will complete a 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,050

annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03-9529 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; application to transport interstate or temporarily export certain National Firearms Act (NFA) firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dave Marshall, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or household. Other: None. The form is used to request permission to move certain NFA firearms in interstate or foreign commerce.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 800 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW. Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03-9530 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; annual Firearms Manufacturing and Exportation Report under 18 U.S.C. chapter 44, firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (AFT), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nancy Smith, Firearms Programs Division, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. ATF collects this data for the purpose of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act are met.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03-9531 Filed 4-16-03; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 10, 2003.

The Department of Labor (DOL) has submitted the following 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). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693-4129 or E-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office

of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Agency (ESA).

Type of Review: New collection.

Title: Statement Recovery Forms.

OMB Number: 1215-0NEW.

Affected Public: Business or other for-profit and Individuals or households.

Frequency: As needed.

Number of Respondents: 3,200.

Form	Annual responses	Average response time (hours)	Annual burden hours
CA/EN-1108	2,720	0.5	1,360
EB/EN-1108	160	0.5	80
CA/EN-1122	320	0.25	80
Total	3,200	.....	1,520

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$1,280.

Description: The information collected through Forms CA/EN-1108, EB/EN-1108 and CA/EN-1122 will be used by the U.S. Department of Labor to determine the amount of refund due to the United States out of the proceeds of an action asserted by an injured Federal employee against a liable third party for a compensable injury.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-9448 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-CH-P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

President's Council on the 21st Century Workforce and the Committees on Skills Gap, Demographics and Workplace Issues; Postponement of Meetings

AGENCY: Office of the Secretary of Labor.

ACTION: Notice of postponement of meeting of the President's Council on the 21st Century Workforce and meeting of Committees.

SUMMARY: The meetings scheduled for Tuesday, April 29, 2003, have been postponed indefinitely. These meetings were announced in the **Federal Register**

on Friday, April 11, 2003, at 68 FR 17830.

FOR FURTHER INFORMATION CONTACT:

Melanie Baker, Staff Assistant, Office of the 21st Century Workforce, U.S. Department of Labor, Room S-2235, 200 Constitution Avenue, NW., Washington, DC 20210. The contact telephone number is (202) 693-6490.

Signed in Washington, DC on April 11, 2003.

Shelley S. Hymes,

Director, Office of the 21st Century Workforce.

[FR Doc. 03-9449 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR**Employment and Training Administration****Solicitation for Grant Applications; National Farm Worker Jobs Program; Housing Assistance for Migrants and Seasonal Farmworkers**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for the National Farm Worker Jobs Program and for Housing Assistance to Migrant and Seasonal Farmworkers.

SUMMARY: The U.S. Department of Labor (the Department or DOL), Employment and Training Administration (ETA), Office of National Programs (ONP), Division of Seasonal Farm Worker Programs (DSFP), announces a grant competition for operating the National Farm Worker Jobs Program (NFJP), AND for housing assistance for migrants and seasonal farmworkers (MSFWs), under Section 167 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 9201. All applicants for grant funds should read this notice in its entirety.

Section 167, paragraph (a) of WIA requires that the Secretary award grants or contracts on a competitive basis to eligible entities for the purposes of carrying out the activities authorized under Section 167. Under this solicitation, DSFP anticipates that approximately \$72,213,541 will be available for grant awards for the NFJP, and approximately \$4,609,840 will be available for grant awards to provide housing assistance to migrants and seasonal farmworkers.

DATES: Applications, including those hand-delivered, must be received at the address below no later than 4:45 p.m., Eastern Time, on May 16, 2003.

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to mail screening to detect anthrax contamination. All applicants should take this into consideration when preparing to meet the application deadline. Each applicant assumes the risk for ensuring a timely submission of an application. If, because of mail screening delays, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, it will not be considered.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any

grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement; *i.e.*, avoid competition.

ADDRESS: Applications must be directed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Serena Boyd, Room S-4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Serena Boyd, Division of Federal Assistance, phone (202) 693-3301 or fax (202) 693-2879. (These are not toll-free numbers). All inquiries should reference SGA/DFA-03-108 and include a contact name, fax and phone numbers. This announcement will be posted on the Internet on ETA's homepage at <http://wdsc.doleta.gov>. Award notifications will also be published on this homepage.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) FY 2003 Appropriations Act provided funding for PY 2003 (July 1, 2003 through June 30, 2004 only). No additional funds are being requested for PY 2004. Applicants should therefore note that awards made through this SGA process are for only one year. An applicant's description of the services to be provided should be limited to those service strategies that can be provided within the Program Year (PY) specified above.

Please note that two separate grants applications are being sought from this SGA. Applicants are invited to apply for funding to operate the local NFJP grants for the delivery of workforce investment services and related activities to migrant and seasonal farmworkers; or funding to provide farm worker housing assistance to eligible migrants and seasonal farmworkers; or both. Applications for funding the NFJP grants and the housing grants should be submitted separately, and will be reviewed and paneled by the Department separately.

Part I. National Farmworker Jobs Program*Purpose and Background*

The U.S. Department of Labor, Division of Seasonal Farm Worker Programs of the Employment and Training Administration is requesting grant applications for operating the National Farm Worker Jobs Program

(NFJP), and/or the farm worker Housing Assistance program, in accordance with Section 167 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 9201. WIA calls for a competition for the NFJP program to be conducted every two years, but authorizes the Secretary to waive this requirement for an additional two years if the grantees are performing satisfactorily and upon receipt of an acceptable two-year plan for the succeeding two years.

The current NFJP grants were originally awarded to begin program operation on July 1, 1999, and subsequently extended for an additional two-year cycle in 2001. Therefore, operational authority for the current NFJP grants expires on June 30, 2003, ending the cycle that began on July 1, 2001. Housing Assistance grants were also last competed in 2001, and their operational authority will also expire on June 30, 2003.

The National Farm Worker Jobs Program (NFJP) is authorized by WIA Section 167 to serve economically disadvantaged persons who primarily depend on employment in agricultural labor performed within the United States, including Puerto Rico, who experience chronic unemployment and underemployment. Qualifying participants are typically those persons employed on a seasonal or part-time basis in the unskilled and semi-skilled manual labor occupations in crop and animal production. Through training and other workforce development services, the program assists eligible seasonal farmworkers and their families to prepare for jobs likely to provide stable, year-round employment in agricultural and non-agricultural occupations.

For many years, the NFJP served as the primary vehicle through which migrant and seasonal farmworkers were assisted through job training to achieve employment in higher-skills, better paying jobs, and through supportive services that allowed them to continue their agricultural work while providing for their families. Over the years, this "categorical" targeting resulted in the development of expertise among a small number of organizations that devoted their efforts almost exclusively to serving farmworkers. As the workforce development system continued to evolve toward integrated service delivery rooted in collaboration among workforce development programs, these organizations continued to be considered the primary, and sometimes the only, program operators equipped to serve farmworkers.

The enactment of the Workforce Investment Act (WIA) changed the way

services were delivered at the local level, by establishing the One-Stop Career Center system as the cornerstone of the workforce investment system. One-Stop Career Centers are intended to be the "location," whether physical or electronic, where all persons in the community may access services from a variety of partner programs. Thus, a key feature of the One-Stop system is its universality.

To ensure that the One-Stop system serves everyone in the community, WIA required that specific programs become partners in the system, including the NFJP. The NFJP's participation in the One-Stop system contributes to creating a seamless delivery of services through which collaborating programs provide improved and comprehensive services. One-Stop systems can also ensure a greater use of state and local formula funded grant programs to serve farmworkers through the intensive and training services they need.

This solicitation is intended to increase farmworkers' access to workforce investment services by supporting the continued movement of the One-Stop Career Center system toward universality and integrated service delivery based on initiatives that:

1. Remove barriers and disincentives to serving farmworkers and increase the access migrant and seasonal farmworkers have to services provided through the One-Stop system, including services provided by other One-Stop partner agencies.

2. Develop methods of collaboration, coordination and service delivery enhancement leading to optimal use of NFJP resources within the One-Stop system that promote employment, earnings and training opportunities for farmworkers through the One-Stop system.

3. Increase the opportunities for migrant and seasonal farmworkers to transition into occupations with high employment and wage growth potential both within and outside agricultural industry.

4. Use the expertise of community-based, faith-based and other organizations that specialize in serving farmworkers' workforce development needs to build the capacity of One-Stop systems to be effective in serving farmworkers.

This solicitation establishes the following objectives for the National Farmworker Jobs Program to support these initiatives:

- Development of workforce investment service arrangements that lead to co-enrollment of migrant and seasonal farmworkers in WIA Title I

formula funded adult and dislocated worker services, and services provided by other One-Stop partner agencies.

- Development of training strategies leading to the specific skill training activities that enable farmworkers to transition into higher skilled and higher paid employment either in agriculture or outside the industry. These training strategies should also target employment with high growth potential.

- Improvement of English language proficiency of farmworkers who are not bilingual, and achievement of competencies for farmworkers who are basic skills deficient.

- The enabling of farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

Legal and Regulatory Requirements: The NFJP program is subject to Section 167 of the Workforce Investment Act and the Department's regulations at 20 CFR part 669. This program is also subject to the requirements of 29 CFR parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension, and Drug-Free Workplace Requirements); as well as the Department's non-discrimination regulations at 29 CFR part 34 and the non-discrimination regulations implementing WIA Section 188 at 29 CFR part 37. Applicants should be familiar with and consult the WIA regulations at 20 CFR parts 660 through 671 in developing their grant proposals. Should the regulations at part 669 of WIA conflict with regulations elsewhere in 20 CFR, the regulations at part 669 will control.

In addition, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107-288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. Please note that, to obtain priority of service, a veteran must meet that program's eligibility requirements (NFJP, in this instance). Comprehensive policy guidance is being developed and will be issued in the near future.

State Areas and Planning Estimates: State area planning estimates will be announced in a separate **Federal Register** Notice. The amount available nationally for the NFJP allotments is \$72,213,541, and \$4,609,840 is available for housing assistance. For purposes of this grant application, proposals are assumed to cover the entire agricultural area of the state unless otherwise stated by the applicant, including supporting rationale. The FY 2003 appropriation for this program provides that no state area shall receive less than 85 percent of its

1998 funding level. Funds will be awarded for one year only, as no budget authority has been requested for this program in FY 2004, and current congressional action affects only FY 2003.

Consultation with Governors and Local Boards: Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR part 17 are applicable to this program. Under these requirements, an applicant must provide a copy of the funding proposal for comment to the states that have established a consultation process under the Executive Order. Applications must be submitted to the state's Single Point of Contact (SPOC), no later than the deadline for submission of the application to the Department. For states that have not established a consultative process under E.O. 12372, but have a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultative process fulfills the requirement of WIA Section 167(e) concerning consultation with Governors and Local Workforce Investment Boards. To strengthen the implementation of E.O. 12372, the Department establishes the following timeframe for its treatment of comments from the state's SPOC on WIA Section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for the submission of applications;

2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;

3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and

4. The Department will implement that decision within 10 days after it has notified the SPOC.

Contents of Grant Application

Note: The following requirements apply to applicants for the NFJP portion of the program. Applicants for the housing assistance component of the program are directed to PART II of this SGA. Applicants seeking funding for both the NFJP program and the Housing Assistance program should submit two separate applications, as noted in the **SUMMARY** section of this SGA.

Applicants need not be a current or prior WIA Section 167 grantee to establish eligibility to be awarded a grant under this solicitation.

To provide training and employment opportunities and other related

assistance services to eligible migrant and seasonal farmworkers under WIA Section 167, the Department will select those applicants submitting proposals that are deemed the most responsive to the requirements of this SGA. WIA Section 167 provides that, in order for an applicant to be eligible to receive a grant the grantee must have:

1. An understanding of the problems of eligible migrant and seasonal farmworkers, including their dependents;
2. A familiarity with the geographical area to be served; and
3. A demonstrated capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers.

Additionally, to be responsive to the objectives of this SGA, applications for a grant award must demonstrate how:

1. Service delivery arrangements will be put in place that lead to an expanded co-enrollment of migrant and seasonal farmworkers in WIA Title I formula funded adult and dislocated worker services, as well as services provided by other One-Stop partner agencies. Applicants must also demonstrate how they will work with Local Workforce Development Boards in the proposed service area(s) to assure that activities proposed under the Section 167 grant are coordinated with, and build on, the workforce development strategies and services indicated in the local workforce investment plan (*see* Workforce Investment Act final rules at § 661.345 to § 661.355).

If the applicant is a Local Workforce Investment Board (LWIB), a One-Stop Career Center operator applying on behalf of a LWIB, the application must demonstrate how efforts were undertaken to integrate services provided by all One-Stop partners and to enhance the workforce and related services provided to farmworkers.

2. Training strategies and specific skill opportunities will be provided that enable farmworkers to transition into higher skilled and higher paid jobs with employment growth potential either in agriculture or outside the industry.

3. The English language proficiency of farmworkers who are not bilingual will be improved and how competencies for farmworkers who are basic skill deficient will be improved.

4. Training strategies will be established to enable farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

For purposes of this grant application, applications are solicited for a single NFJP operation per state, to serve the migrant and seasonal farmworkers of each state and Puerto Rico, with the following exceptions:

- Connecticut and Rhode Island are a combined state service area;
- Delaware and Maryland are a combined state service area;
- Applications for the combined state areas mentioned above must address the two states as a single geographic area, but the proposed service delivery plan for the combined state area must show that consideration has been given to the entire population of migrant and seasonal farmworkers working or residing within the combined state geographic area;
- Between 4 and 6 applications will be selected to operate the NFJP program in the agricultural counties of California; and
- No application will be accepted to provide services in Alaska due to the State's small relative share of seasonal agricultural employment.

Submission of Proposals

A cover letter, an original plus two (2) copies of the proposal, and one (1) blue ink-signed original SF 424 must be timely submitted to the U.S. Department of Labor, Employment and Training Administration, Division of Financial Assistance, Room S-4203, 200 Constitution Avenue, NW., Washington, DC 20210. This proposal must have two parts: (1) A technical proposal; and (2) a cost proposal.

Hand-delivered applications. To be considered for funding, hand-delivered applications must be received not later than 4:45 p.m., Eastern Time, on the closing date, at the specified address.

Withdrawal of applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative, if the representative's identity is made known and the representative signs a receipt for the application. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness.

Format and Content of Grant Application

An application must consist of two (2) separate and distinct parts: A technical proposal and a cost proposal. The grant application should be limited to 50 numbered pages, double spaced, in 12-point type and typewritten on one side of the paper only. Letters of support and any required attachments will not be

subject to the page limitations. Include all attachments under Part III.

Applicant Eligibility for the NFJP Program

A. Understanding the Problems of the Eligible Migrants and Seasonal Farmworkers in the State or Area

Understanding the area's economy and the problems faced by the migrant and seasonal farmworkers working within that economy is essential to formulating a comprehensive service strategy to increase their employment and earnings. In this section, applicants must describe the economy in the geographic area they propose to serve, and how that economy affects the employment conditions of migrant and seasonal farmworkers over the course of the service year.

1. Describe the agricultural economy present in the geographic area to be served. Include information about the general employment conditions, numbers of employers, and any changes in the economic conditions expected during the course of the year that hold implications for how best to meet the employment and training needs of farmworkers. In addition to indicating the number of employers in the geographic area to be served, describe the key growers and agribusiness employers in the area, especially those that are likely to make a significant contribution to employment growth in the higher-wage, higher-skilled agricultural occupations.

2. Describe the agricultural and non-agricultural labor markets in proposed service area(s). Applicants should be specific about the job opportunities that are expected to be available and the applicant's capacity to serve as a broker, both within the business community and the One-Stop system, to improve farmworkers' access to these opportunities. The description should also include a discussion of projected high growth occupations in the proposed service the area that hold the potential for improved employment and earnings for farmworkers.

3. Describe the socio-economic characteristics and problems faced by eligible migrant and seasonal farmworkers, and their dependents, in the proposed service area.

4. Summarize the applicant's understanding of the economy and labor market in the proposed service area and discuss the implications of descriptions provided in sub-sections 1, 2 and 3, above, for the kind of workforce development assistance required to significantly increase the employment

and earnings of migrant and seasonal farmworkers in the area.

B. Familiarity With the Proposed Service Area

To achieve high performance in increasing farmworkers' employment and earnings, an NFJP grantee must have the capacity to mobilize a broad array of resources to meet the diverse needs of migrant and seasonal farmworkers in the proposed service area. The task of mobilizing resources must be informed by an understanding of the One-Stop Career Center system in the area(s) and the network of social, educational and health services available to support farmworkers' labor force participation and to assist them in improving their employment and earnings over time.

This section calls for information that demonstrates an understanding of the One-Stop system and the applicant's experience and effectiveness in establishing collaborative working relationships that achieve the integrated service delivery needed to increase employment and training opportunities for farmworkers. This section also calls for information that demonstrates the applicant's experience and effectiveness in collaborating with the network of social, educational and other services that exist in the proposed service area(s) and how the applicant proposes to engage these service networks to obtain appropriate services for migrant and seasonal farmworkers.

1. Describe the applicant's experience, if any, as an operator of a WIA Title I formula-funded program that served farmworkers. Include a description of how the applicant's work with the local One-Stop Career Center system resulted in enhancing the scope of workforce development assistance available to farmworkers. If the applicant is currently, or was previously, designated as the One-Stop Career Center operator, the operator of a "satellite" One-Stop Career Center, by the Local Workforce Investment Board, describe efforts to integrate services provided by all One-Stop partners to enhance workforce and related services to farmworkers. Indicate the success of these efforts.

2. Describe the applicant's experience in engaging One-Stop partners, other than the NFJP partner, in its service delivery strategy for migrant and seasonal farmworkers. The discussion should include a description of the applicant's experience at developing or continuously improving the working relationships between partners to enhance the scope and quality of workforce development services available to farmworkers. Include

instances where co-enrollment of eligible migrant and seasonal farmworkers was achieved and how.

3. Describe the network of faith-based and community-based organizations in the service area; describe the applicant's experience in engaging these organizations in its service delivery strategy for migrants and seasonal farmworkers. Include a description of the applicant's experience in working with grassroots faith-based and community-based organizations in providing for supplementary and supportive services.

4. Describe the applicant's experience in representing the NFJP or another One-Stop partner in negotiations of Memoranda of Understanding (MOUs) with local workforce investment boards (local boards). Include specific examples of successfully negotiated arrangements that benefited the partner program represented by the organization, whether NFJP or any other partner. Also discuss how the negotiated terms of the MOU enhanced services for farmworkers and/or other participants. Where the applicant represents a partner program in a state and has been unable to negotiate an MOU with a local board, describe the efforts to develop an action plan with the local board and the results achieved.

5. If the applicant is a Local Workforce Investment Board (LWIB), or a One-Stop Career Center operator applying on behalf of a LWIB, describe efforts to integrate services provided by all One-Stop partners to enhance workforce and related services provided to farmworkers. Indicate the success of these efforts. Additionally, describe the success achieved in enrolling and serving farm workers in WIA formula-funded programs.

6. Describe the network of social, educational, faith-based and other services that exist in the proposed service area. Include a discussion of the applicant's existing (or proposed) working relationships with the One-Stop system and with other agencies, organizations, and institutions that are part of the service network and are relevant to the needs of farmworkers. Provide examples of the other services available, such as adult education, English as a Second Language, etc.

7. Describe the applicant's strategy mobilizing the local services network to provide comprehensive services to farmworkers while achieving optimal use of limited NFJP resources. The description should clearly present how the strategy will engage the local services network, including faith-based and community-based organizations, to provide the supportive services (also

called "related assistance services") farmworkers may need to remain in the labor force or to participate in training. A major objective of the strategy should be to maximize the amount of NFJP funds available for training and other workforce development assistance by identifying other funding sources for supportive services.

C. Administrative Capacity

The information provided in this section should describe the applicant's capacity to effectively administer a diversified program of workforce investment activities. Applicants must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and integrity.

1. Program Integrity

The applicant should describe its management information and performance management systems and its plans to maintain the program records (including individual participant records) needed for reporting and performance accountability and management, and to establish and to maintain a case management system.

Additionally, the applicant must describe its experience with performance management systems and explain its perspective on the role of performance management and how it should be used to improve customer service.

Case management presumes a client-centered approach to delivering workforce investment activities and support services. For optimum results, case management should be technology-based; *i.e.*, fully utilizing computer technology and other electronic tools. Applicants should describe their experience in using case management systems, including the results achieved from using that approach.

2. Fiscal Integrity

The applicant must describe a record keeping system that is sufficient to prepare financial reports and to trace funds to adequate levels of expenditures to ensure lawful spending. In this connection, applicants must describe their capacity to manage the supportive services, often referred to as "related assistance services" and to account for expenditures related to these services.

"Related assistance services" refers to short-term support services designed to assist farmworkers to retain or stabilize their agricultural employment or to enable their participation in NFJP activities.

Describe the applicant's approach to managing the delivery of related

assistance services to farmworkers (except those housing assistance supportive services provided through a housing assistance grant). Include a description of how the need for related assistance services will be determined. The description should discuss whether the criteria used to determine the need for related assistance services differs among migrant and seasonal farmworker groups, what the differences are and the rationale for the differentiation.

Also describe the applicant's strategy for minimizing the use of NFJP funds for related assistance services and significantly increasing funding from other sources that are the traditional resource in rural communities of the state for providing supportive services.

3. Electronic Reporting

The NFJP program is required to use electronic reporting via the Internet. In this section, applicants' should describe the applicant's capacity to provide the equipment, access and staff qualified to perform on-line reporting. In addition, describe the applicant's capacity to provide all case management staff and others, as appropriate, with electronic tools such as PCs, software for word processing and spreadsheets, individual e-mail accounts, and Internet access with an agency provided ISP.

Note: PY 2003 grantees will be required to provide personal computers, individual e-mail accounts and Internet access for all customer service staff. For purposes of this SGA, customer service staff are those personnel who have or make the contacts with farm worker customers to conduct outreach, recruitment, objective assessment, testing, counseling, individual employment planning, job training planning, placement and follow-up.

D. Activities and Services Proposed for the State Service Area

This section calls for information that describes the proposed service approach in detail and elaborates on other aspects of the program design other than those provided in the qualifications statements under Sections A through C.

The proposed service plan should describe in detail the major program activities proposed for the service area for PY 2003 (July 1, 2003–June 30, 2004).

The applicant's proposal should show how the program activities described in this Section are intended to achieve the NFJP's objectives for PY 2003, as defined in this solicitation's Purpose and Background Section:

- Development of workforce investment service arrangements that lead to co-enrollment of migrant and seasonal farmworkers in WIA Title I

formula funded adult and dislocated worker services, and services provided by other One-Stop partner agencies.

- Development of the training strategies and provision of the specific skill training that enable farmworkers to transition into higher skilled and higher paid employment, either in agriculture or outside the industry. These training strategies should also target employment with high growth potential.

- Improvement of English language proficiency of farmworkers who are not bilingual, and achievement of competencies for farmworkers who are basic skills deficient.

- Enabling farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

The applicant's proposal should include the following information and descriptions and discuss how the plan of service achieves the above objectives:

Service strategy: Provide a brief statement of vision, strategy, goals and objectives that guide the proposed plan of services for farmworkers and the results expected to be achieved from implementing the strategy. Also, identify opportunities to strengthen the service strategy through new partnerships (e.g., with faith-based and community-based organizations). The strategy and the service plan should strengthen migrant and seasonal farmworkers' ability to obtain or retain employment through activities that stabilize their agricultural employment, prepare them for higher-skill, higher-paid jobs within or outside of agriculture, or prepare them for success as entrepreneurs. The service strategy must describe how it reflects the result of collaboration with Local Workforce Investment Boards and complements the workforce development strategies and services presented in the local workforce investment plan. Discuss how the services strategy expands workforce and related services available to farm workers due to closer coordination between the Section 167 service strategy and plan and the local workforce investment plan.

If the applicant is a Local Workforce Investment Board (LWIB), a One-Stop Career Center operator applying on behalf of a LWIB, the application must demonstrate how the service strategy integrates services provided by all One-Stop partners, especially services provided by Section 167 grantees resulting in an enhancement of the workforce and related services provided to farmworkers.

1. State service area: Identify the state service area. If the proposal is for less

than the entire agricultural area of the state, identify the geographic areas of the state where the organization proposes to operate. Provide the rationale for supporting the geographic area selected.

2. Program plan of service: Include an estimate of the number of migrant and seasonal farmworkers, respectively, who will be provided training services. Additionally, provide an estimate of the number of migrant and seasonal farmworkers, respectively, who will be provided related assistance services (excluding housing assistance). For the specific activities included in the plan, describe the program of services proposed according to the following categories:

(a) Outreach and recruitment: Describe strategies for conducting outreach and recruitment for eligible migrant and non-migratory farmworkers, respectively. Include descriptions of the specific types of places, such as through faith-based or community-based organizations, where outreach and recruitment will occur.

(b) Case Management: Describe the proposed customer-centered case management system. Include specific details, such as information about the staff's responsibilities for managing the case management system, the community resources that are available to staff, and the staff's capacity for developing those resources through alliances and other joint endeavors, such as participation in the One-Stop system, in order to expand the availability of services for farmworker customers.

(c) Core Services: Describe how the organization expects to provide core services as a One-Stop Career Center, or in partnership with the local One-Stop Center, and the workforce investment delivery system in the service area. Briefly explain the eligibility determination system and how service priorities are determined.

(d) Intensive Services: Describe the intensive services proposed, the strategy for providing those services, and how the One-Stop system will be involved in the provision of services. Intensive services are defined in WIA section 134(d)(3) and 20 CFR 669.370 and include such activities as group and individual counseling, skill assessment, work experience, objective assessment and supportive services.

The description must include the proposed strategy for providing Individual Employment Plans, described at 20 CFR 669.400; case management, and must specifically address how the organization proposes to incorporate case management

concepts to provide an individualized operating system for the delivery of client services, as well as how the organization plans to use objective assessments as described at 20 CFR 669.380 (*i.e.*, the delivery of intensive and training services should flow from the objective assessment process).

Additionally, please describe how the organization will build its capacity for responding appropriately to an individual's needs that are identified by the objective assessment. This may include how the program will develop and provide its intensive services, such as the ones identified in WIA 134(d)((3)(C) and 20 CFR 669.370, which specifically includes drop-out prevention, allowance payments and work experience. Descriptions should show that the case management system ensures a client-centered approach, one designed to prepare and coordinate comprehensive employment plans for participants that include access to necessary workforce investment activities and supportive services, using, where feasible, computer-based technologies. (*See* WIA subsection 101(5).)

If work experience is expected to be offered as an activity, describe how the determination as to its appropriateness will be made, as well as how the organization will measure its effectiveness. Include a description of any controls to be used. It should be noted that work experience activities are WIA Intensive Services; therefore, applicants should provide a complete description and justification for any planned work experience activity that will be unpaid or that will use the for-profit sector to host the work experience participants. (To be allowed, work experience activities incorporating these concepts must be described in the approved grant plan. *See* 20 CFR 669.370 (b)(i) and (b)(ii)(B))

Include descriptions of any additional intensive services to be provided that have not been already described, such as provision of allowance payments.

(e) Training Services: Describe the training strategies to be used to significantly increase employment and earnings of farmworkers. Indicate how these training strategies will:

- Transition farmworkers into higher-skilled and higher-paid employment either in agriculture or outside the industry;
- Create cross training opportunities and assist farmworkers to qualify for cross training employment opportunities;
- Create entrepreneurial training and micro-enterprise development opportunities for farmworkers;

- Target appropriate individuals and provide training to improve the English language proficiency of farmworkers who are not bilingual, and achieve competency for farmworkers who are basic skills deficient; and

- Enable farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

(f) Performance results: Describe how the organization will provide for job placement and other positive outcomes for participants. The description should address how job placement opportunities will be pursued among key growers and agribusiness employers likely to contribute to employment growth in the higher-wage, higher-skilled agricultural occupations. Similarly, the description should address how high-growth, high-wage, and high-skills job placement opportunities will be secured for farmworkers from those employers outside agriculture.

(g) Follow-up Services: Describe how the organization will conduct follow up for those who are placed in jobs and who are engaged in entrepreneurial activities.

(h) Related Assistance Services: Describe the supportive services needed by migrant and seasonal farmworkers and their dependents to assist them in retaining employment, engaging in cross training, training for other, non-agricultural occupations, or engaging in entrepreneurial training.

Describe the strategy for providing related assistance services under the NFJP. Provide separate descriptions for those farmworkers for whom only related assistance services will be provided. Describe the kinds of services anticipated and the limitations to be imposed, such as a unit cost limitation.

Discuss how supportive services available through the NFJP will be linked with the supportive services available to farmworkers through One-Stop partner programs, or other agencies providing needed supportive services.

Discuss how faith-based and community-based organizations will be used, where applicable, in providing related assistance services.

(i) Administrative Costs: Grantees are generally limited to 15 percent of the grant for administrative costs (*see* definition at 20 CFR Part 667). If the organization expects that the administrative cost burden will exceed 15 percent, provide the justification in this section.

Rating Criteria for Award

A DOL review panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their applications in response to this SGA.

Scoring: The following full review criteria (totaling a maximum score of 100 points) apply to all applicants.

(1) Understanding the Problems of Migrants and Seasonal Farmworkers (20 points)

The application must demonstrate an in-depth understanding of the dynamics of the agricultural economy in the geographic area to be served, the socio-economic characteristics of eligible migrant and seasonal farmworkers and their families in the service area, and the implications of the foregoing for the kind of workforce development assistance strategies required to increase the employment and earnings of eligible workers in the proposed area of service.

Scoring on this factor will be based on how well the applicant links its understanding of the agricultural economy and the characteristics of the eligible population in the geographic area to be served to the workforce development assistance needed to achieve significant employment and earnings increases. The evaluation of the application's response to this factor will also look for evidence of insight into the opportunities that the local economy presents to move farmworkers into higher-paid, higher-skilled employment both within and outside the agricultural industry.

(2) Familiarity With Proposed Service Area (20 points)

The applicant must demonstrate its familiarity with the network of workforce development and related services, including, where applicable, services provided by faith-based and community-based organizations, available to assist farmworkers to increase their employment and earnings, and the applicant's experience and success with causing these networks to direct their resources to address farmworkers' employment, earnings and supportive services needs.

Scoring on this factor will be based on the comprehensiveness of the applicant's knowledge of the One-Stop Career Center system in the proposed area(s) of service and the related services offered by social, educational,

faith-based and community-based organizations, and health services whose services support farmworkers' labor force participation and assist them to improve their employment and earnings over time. The evaluation of the applicant's response to this factor will also look for evidence that the applicant has had experience in working within the One-Stop Career Center system as a partner or service provider and will be effective in mobilizing both the One-Stop system and other service systems in a way that maximizes the amount of NFJP funds that are available to fill training gaps in the local One-Stop system with respect to farmworkers and maximizes the funding available from non-NFJP sources for supportive services.

If the applicant is a Local Workforce Investment Board (LWIB), or a One-Stop Career Center operator applying on behalf of a LWIB, scoring will be based on the success of efforts to integrate services provided by all One-Stop partners, including Section 167 grantees, to enhance the workforce and related services provided to farmworkers. Special emphasis will be placed on the success achieved in enrolling and serving farm workers in WIA formula-funded programs.

(3) Administrative Capacity (20 points)

The applicant must demonstrate that it has or will have adequate management information, performance management, case management, accounting and program and fiscal reporting systems in place to assure the program and fiscal integrity of the services financed with funds awarded through this solicitation.

Scoring on this factor will be based on evidence that the applicant has the capacity to effectively administer a diversified program of workforce investment assistance using appropriate administrative systems to maintain program and fiscal oversight and monitoring. The evaluation of the application's response to this factor will look for evidence of effective accounting performance management, and program and fiscal reporting systems as well as the applicant's ability to report electronically through the Internet.

(4) Proposed Plan of Service (40 points)

The applicant must demonstrate that its proposed plan service will meet the objectives of this solicitation. The objectives in question seek to increase farmworkers' co-enrollment in WIA Title I formula funded adult and displaced worker services; transition farmworkers into higher-skilled, higher-paid jobs in or outside agriculture;

improve the English language proficiency of farmworkers who are not bilingual; and enable farm workers to become proficient in computer skills and Internet use.

Scoring on this factor will be based on evidence that the applicant has used (1) its understanding of the problems of eligible migrant and seasonal farmworkers, (2) its knowledge of the agricultural economy (including placement opportunities among key growers, agribusiness, and non-agricultural employers), and (3) its familiarity with the proposed service area (including the network of social, educational, faith-based and community-based organizations) to develop a service strategy and plan of service that will be successful in meeting the objectives of this solicitation and holds the potential to have a measurable impact on improving the employment and earnings of farmworkers. Additionally, the evaluation of the applicant's response to this factor will look for (4) evidence of comprehensiveness and the potential effectiveness of the proposed service strategy and plan of service within the context of the background the proposal provides of the workforce development needs of farmworkers in the proposed service area and the opportunities to address those needs. If the applicant is a LWIB or a One-Stop Career Center operator applying on behalf of a LWIB, the evaluation (5) will assess whether significant success has been achieved in integrating services provided by all One-Stop partners, especially services provided by Section 167 grantees, to enhance of the workforce and related services farmworkers receive. Special emphasis will be placed on the success achieved in enrolling and serving farm workers in WIA formula-funded programs. Finally, if the applicant is not a LWIB or One-Stop operator applying on behalf of an LWIB, the evaluation of this factor will (6) assess whether the Section 167 service strategy and service plan reflect a knowledge of the local workforce investment plan and proposes services that complement that plan in a way that expands workforce services available to farm workers.

Review Process for Grant Applications

Panel Review: The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal according to the criteria specified in the SGA. Panel results are critical to selecting grantees but are advisory in nature and not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to

submit additional or clarifying information if needed to make a selection. However, selections may be made without further contact with the applicants. In such situations, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer.

Responsibility Review: Prior to awarding a grant, the Department will conduct a responsibility review of each potential grantee through available records. The responsibility review relies on testing available records to determine if the applicant has a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of a Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be applied are those present in the WIA regulations (20 CFR 667.170).

Areas not Competed: In the event that no grant applications are received for a state, or all applications received are deemed non-responsive, or a grant agreement is not successfully negotiated with a selected applicant, the Department will offer the Governor of the State a right of first refusal to submit an acceptable application if that state has not applied. If the Governor does not accept this offer within 15 days after being notified, the Department may designate another organization, reopen the area for competitive bidding, allocate the area funds by formula to all other service areas, or transfer the funds for that service area to national account activities.

Notification of Non-Selection: Any applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer and advised of all appeal rights.

Notification of Selection: Applicants submitting applications in response to this SGA that are selected as potential grantees will be notified in writing by the Grant Officer. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for the negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant. FY 2003 funds will be awarded for the period July 1, 2003 to June 30, 2004. Grant plans will be approved for that one year only.

Part II. Housing Assistance

In the FY 2003 Appropriations bill Congress made available \$4,609,840 for housing assistance services to eligible migrants and seasonal farmworkers. As noted in the Purpose and Background section of this SGA, applicants for Housing Assistance grants that are also applying for the NFJP grants must submit a separate application for the Housing Assistance grants. The Department will fund proposals according to the Rating Criteria listed at the end of this Part, up to the level of funding available.

The Department is committed to greater accountability in the utilization of Housing Assistance grants to ensure that housing supportive services are provided, as a first priority, to eligible migrant and seasonal farmworkers who have the greatest need for housing assistance. The Department intends to achieve greater accountability for addressing this priority through the following requirements:

- Housing assistance may only be provided to Section 167 eligible migrant and seasonal farmworkers;
- Housing assistance will be permitted for direct support payments for emergency and temporary housing and for direct investments in housing assistance for migrant and seasonal farmworkers at their home base. Indirect services, such as leveraging services to increase or maintain the housing stock available to farmworkers, are also authorized. However, these indirect services must focus exclusively on increasing (or maintaining) the stock of emergency and temporary housing, including portable housing units.
- Housing assistance must be related to the promotion of a farmworker's employment through a documented strategy that supports that farmworker's housing needs while they are employed in agricultural labor or while they are receiving intensive and/or training services. This strategy may be identified through an Individual Employment Plan (IEP).

The Department seeks to promote the use of temporary and portable housing designs that meet safety and health standards for use by migrant and seasonal farmworkers that have been unable to find safe, affordable housing during their migrations. Proposals that include such strategies should provide for the utilization of Energy Star-rated designs whenever possible. Please note that, as before, grant funds may not be used for facilities construction.

Contents of Grant Application

A. Understanding the Problems of the Eligible Migrant and Seasonal Farmworkers of the State or Area

An understanding of the area's economy, the housing market in the area and the problems faced by migrant and seasonal farmworkers working within that economy, is essential to formulating an effective strategy to provide housing assistance to migrant and seasonal farmworkers.

1. Describe the housing market in the area including the role that employer-provided housing and publicly subsidized housing plays in defining the stock of standard housing available to farmworkers and discuss the problems Section 167 eligible farmworkers encounter when seeking temporary and emergency housing in the state. Discuss how these problems affect their ability to obtain and retain employment, or to participate in job search and or training activities to improve their employment and earnings whether in or outside agriculture.

2. Describe the strategy for identifying, and conducting outreach to, eligible migrant farmworkers who have critical housing needs.

B. Familiarity With the Area To Be Served

In order to provide housing services that are appropriate for the migrant and seasonal farmworkers the program serves, the applicant must be familiar with the housing conditions in the proposed service area and the housing assistance available from other agencies that provide relevant assistance—for example, the One-Stop Career Center system, and the wider community of social service agencies, including faith-based and community-based agencies. The application should:

1. Provide an analysis of the housing assistance resources available from employers and state and local agencies to respond to the temporary and year-round housing needs of migrant and seasonal farmworkers in the state. Include housing assistance available through faith-based and community-based organizations. Discuss the applicant's experience and effectiveness in engaging the resources of these agencies to meet farmworkers' temporary and emergency housing needs.

2. Describe the types of housing assistance activities appropriate for addressing the needs of the eligible migrant and seasonal farmworkers in the area. Provide a housing assistance strategy for those farmworkers that require assistance in order to remain in

agricultural labor, as well as for those who require temporary or emergency housing to obtain and retain employment, or to participate in job search and or job training activities to improve their employment and earnings, whether in or outside agriculture.

C. Administrative Capacity

The information provided in this section should describe the applicant's capacity to effectively administer a program of temporary and emergency housing assistance. Applicants must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and integrity.

1. Program Integrity

The applicant should describe its management information and performance management systems and its plans to maintain the program records (including individual participant records) needed for reporting and performance accountability and management, and to establish and to maintain a case management system.

Additionally, the applicant must describe its experience with performance management systems and explain its perspective on the role of performance management and how it should be used to improve customer service.

Case management presumes a client-centered approach to housing assistance as a support service. For optimum results, case management should be technology-based; *i.e.*, fully utilizing computer technology and other electronic tools. Applicants should describe their experience in using case management systems, including the results achieved from using the approach.

2. Fiscal Integrity

The applicant must describe a record keeping system that is sufficient to prepare financial reports and to trace funds to adequate levels of expenditures to ensure lawful spending.

Applicants must describe their capacity to manage housing assistance services, including a description of how eligibility to receive related assistance services will be determined. The description should discuss whether the criteria used to determine eligibility for housing assistance services differs among migrant and seasonal farmworker groups, what the differences are and the rationale for the differentiation.

Also describe the applicant's strategy for minimizing the use of WIA Section 167 funds for temporary and emergency

assistance services and significantly increasing funding from other sources that provide housing assistance in rural communities.

3. Electronic Reporting

The WIA Section 167 housing assistance program is required to use electronic reporting via the Internet. Describe the applicant's capacity to provide the equipment, access and staff qualified to perform on-line reporting. Describe the applicant's capacity to provide all case management staff and others, as appropriate, with electronic tools such as PCs, software for word processing and spreadsheets, individual e-mail accounts, and Internet access with an agency provided ISP.

Note: PY 2003 grantees will be required to provide personal computers, individual e-mail accounts and Internet access for all customer service staff.

D. Proposed Activities and Services

This section will elaborate on the description of an applicant's proposed service approach by describing the specific activities in the proposed service plan not already covered in the previous sections. Applicants should:

1. Describe the plan for identifying those farmworkers in need of housing assistance, including the process for eligibility determination and the coordination with the NFJP grantee in the state (to ensure that the housing assistance made available to individual migrant and seasonal farmworkers is supported by an individual plan or workforce investment activities).
2. Describe, if not done elsewhere, the case management approach to be used for housing assistance, and how the organization will manage the delivery of housing assistance services.
3. Describe in detail the specific housing assistance services to be offered, including an estimate of the number of migrant and seasonal farmworkers, respectively, that will be provided housing assistance. Provide separate information for temporary housing and for emergency housing.
4. Describe how eligible farmworkers' housing assistance will be coordinated with training and related assistance services provided through the NFJP partner if the applicant did not apply for or is not awarded an NFJP grant.

Format and Content of Application

The grant application is limited to 15 pages, double-spaced, in 12 point type. Letters of support and any required attachments are additional pages. Do not include detailed budgets or planning estimates with this grant application.

Planning and budget documents will be requested from selected applicants.

Rating Criteria for Award

A DOL review panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their applications in response to this SGA.

Scoring: The following full review criteria totaling a maximum score of 100 points apply to all applicants.

(1) Eligibility and Understanding (20 points)

The application must demonstrate an in-depth understanding of the area's economy, the housing market in the area, and the problems faced by migrants and seasonal farmworkers in obtaining housing in the area where they live and work.

Scoring on this factor will be based on how well the applicant describes the housing market in the area, including the role that employer-provided housing and publicly-subsidized housing, and where, applicable, housing provided through faith-based and community-based organizations, play in defining the standard housing stock available to migrants and seasonal farmworkers. The applicant must also demonstrate knowledge of how housing availability impacts the farmworkers' ability to obtain and retain employment, or participate in job search and job training activities.

(2) Familiarity With Proposed Service Area (20 points)

The applicant must be able to demonstrate an in-depth knowledge of the housing conditions in the service area, the relevant social services agencies that provide housing assistance in the service area (including those in the One-Stop system, as well as faith-based and community-based organizations), and the resources available to those agencies, in order to maximize housing opportunities for migrants and seasonal farmworkers, both temporary and permanent.

Scoring on this factor will be based on the comprehensiveness of the analysis presented regarding the housing market in the area, the resources available from all other sources in the community, both public and private, and the impact on solutions to the temporary and/or permanent housing needs of migrants and seasonal farmworkers who are trying to get a job, keep a job, or

participate in job search and job training activities.

(3) Administrative Capacity (20 points)

The applicant must demonstrate that it has or will have adequate management, fiscal and program integrity mechanisms plans to effectively administer a temporary and emergency housing assistance program.

Scoring on this factor will be based on evidence that the applicant has the capacity to effectively administer a housing assistance program, using the appropriate administrative systems to maintain program and fiscal oversight and monitoring. The evaluation of the applicant's response to this factor will look for evidence of effective management, program and fiscal accounting and reporting systems.

(4) Proposed Activities and Services (40 points)

The applicant must demonstrate that its proposed services plan will meet the objectives of this solicitation. The objectives in question seek to link services provided through the housing assistance strategy to those services provided to eligible migrants and seasonal farmworkers participating in an NFJP program (or other formula-funded programs of the state), to enable eligible migrants and seasonal farmworkers to obtain and retain employment, or participate in job search and job training activities.

Scoring on this factor will be based on evidence that the applicant has used its understanding of the housing problems of eligible migrant and seasonal farmworkers, its knowledge of the housing market in the proposed service area, and its knowledge of the housing resources available in the service area to develop a plan of service that successfully meets the objectives of this solicitation.

Review Process for Grant Applications

Panel Review: The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal according to the criteria specified in the SGA. Panel results are critical to selecting grantees but are advisory in nature and not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if needed to make a selection. However, selections may be made without further contact with the applicants. In such situations, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer.

Responsibility Review: Prior to awarding a grant, the Department will conduct a responsibility review of each potential grantee through available records. The responsibility review relies on testing available records to determine if the applicant has a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of a Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be applied are those present in the WIA regulations at 20 CFR 667.170.

Areas Not Competed: In the event that no grant applications are received for a specific service delivery area, or all

applications received are deemed non-responsive, or a grant agreement is not successfully negotiated with a selected applicant, the Department will offer the Governor of the State a right of first refusal to submit an acceptable application if that state has not applied. If the Governor does not accept this offer within 15 days after being notified, the Department may designate another organization, reopen the service delivery area for competitive bidding, allocate the area funds by formula to all other service areas, or transfer the funds for that service area to national account activities.

Notification of Non Selection: Any applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer and advised of all appeal rights.

Notification of Selection: Applicants submitting applications in response to this SGA that are selected as potential grantees will be notified in writing by the Grant Officer. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for the negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant. PY 2003 funds will be awarded for the period July 1, 2003 to June 30, 2004. Grant plans will be approved for that one year only.

Signed at Washington, DC, this 14th day of April, 2003.

Lorraine H. Saunders,

Grant Officer, Employment and Training Administration.

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): <input type="text"/> <input type="text"/> - <input type="text"/>		7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):			
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b. Applicant	\$.00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372	
c. State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d. Local	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
e. Other	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
f. Program Income	\$.00	18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.	
g. TOTAL	\$.00	a. Typed Name of Authorized Representative	b. Title
		c. Telephone number	
d. Signature of Authorized Representative		e. Date Signed	

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00

SECTION B - BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY					Total (5)
	(1)	(2)	(3)	(4)	(5)	
a. Personnel	\$	\$	\$	\$	\$	0.00
b. Fringe Benefits						0.00
c. Travel						0.00
d. Equipment						0.00
e. Supplies						0.00
f. Contractual						0.00
g. Construction						0.00
h. Other						0.00
i. Total Direct Charges (sum of 6a-6h)	0.00	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges						0.00
k. TOTALS (sum of 6i and 6j)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00
7. Program Income	\$	\$	\$	\$	\$	0.00

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Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES						
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS		
8.	\$	\$	\$	\$	0.00	0.00
9.					0.00	0.00
10.					0.00	0.00
11.					0.00	0.00
12. TOTAL (sum of lines 8-11)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00	0.00
SECTION D - FORECASTED CASH NEEDS						
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
	\$	\$	\$	\$	\$	\$
13. Federal	0.00					
14. Non-Federal	0.00					
15. TOTAL (sum of lines 13 and 14)	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT						
(a) Grant Program	FUTURE FUNDING PERIODS (Years)					
	(b) First	(c) Second	(d) Third	(e) Fourth		
16.	\$	\$	\$	\$	\$	\$
17.						
18.						
19.						
20. TOTAL (sum of lines 16-19)	\$	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
SECTION F - OTHER BUDGET INFORMATION						
21. Direct Charges:	22. Indirect Charges:					
23. Remarks:						

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-l - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.



SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

Yes No

2. How many full-time equivalent employees does the applicant have?
(Check only one box).

3 or Fewer 15-50
 4-5 51-100
 6-14 over 100

3. What is the size of the applicant's annual budget? (Check only one box.)

Less Than \$150,000
 \$150,000 - \$299,999
 \$300,000 - \$499,999
 \$500,000 - \$999,999
 \$1,000,000 - \$4,999,999
 \$5,000,000 or more

4. Is the applicant a faith-based/religious organization?

Yes No

5. Is the applicant a non-religious community-based organization?

Yes No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

Yes No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

Yes No

8. Is the applicant a local affiliate of a national organization?

Yes No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.
2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.
3. Annual budget means the amount of money your organization spends each year on all of its activities.
4. Self-identify.
5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.
6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.
7. Self-explanatory.
8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

DEPARTMENT OF LABOR**Employment and Training Administration****Workforce Investment Act (WIA) Section 167, the National Farmworker Jobs Program (NFJP), and Housing Assistance Grants**

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice of formula allocations for the Program Year (PY) 2003 National Farmworker Jobs Program (NFJP), and for the Housing Assistance Grants; request for comments.

SUMMARY: Under section 182(d) of the Workforce Investment Act (WIA) of 1998, ETA is publishing the PY 2003 allocations for the NFJP authorized under section 167 of the WIA, and for the housing assistance grants authorized by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7). The NFJP program allocations are distributed to the states by a formula that estimates, by state, the relative demand for NFJP services. The housing assistance allocations are distributed among the 12 agricultural regions established for the National Agricultural Worker Survey (NAWS). The allocations in this notice apply to the Program Year (PY) beginning July 1, 2003.

DATES: Comments must be submitted on or before May 31, 2003.

ADDRESSES: Comments should be submitted to Ms. Alina M. Walker, Acting Chief, Division of Seasonal Farmworker Programs, Room C-5325, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The e-mail address is walker.alina@dol.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Alina M. Walker, Acting Chief, Division of Seasonal Farmworker Programs, Room C-5325, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number is (202) 693-2706. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background. On May 19, 1999, we published a notice of formula allocations with a new formula for allocating funds available for the NFJP (formerly referred to as the section 402 Migrant and Seasonal Farmworker (MSFW) Program) in the **FEDERAL REGISTER** at 64 FR 27390 (May 19, 1999). The notice explained how the new formula achieved its purpose of

distributing funds geographically by state service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The new formula consists of a rational combination of multiple data sets that were selected to yield the relative share distribution of eligible farmworkers. The combined-data formula is substantially more relevant to the purpose of aligning the allocations with the eligible population than the allocations determined by the prior formula.

As stated in our notice of May 19, 1999, PY 2003 is the first year the allocation formula is scheduled to be applied without adjustment for the hold-harmless provisions described in section IV of the notice. However, as explained in section III of this notice, the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7) requires that no area receive less than 85% of its 1998 level. Section III also explains the methodology used for PY 2003 to allocate all funds under the formula that are not required to satisfy the 85% requirement. This methodology produces a more equitable result than the one applied for each of the 4 years of the hold-harmless phase. The methodology under the hold-harmless phase funded all states at their required minimum level before allocating the remaining funds in accordance with the formula. One result of this change is that the Rhode Island area is allocated its full share in PY 2003.

II. *Limitations on Uses of Section 167 Funds.* In appropriating the funds for PY 2003, Congress provided in its Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7) as follows: "That, notwithstanding any other provision of law or related regulation, \$77,836,000 shall be for carrying out section 167 of the Workforce Investment Act of 1998, including \$72,686,000 for formula grants, \$4,640,000 for migrant and seasonal housing, and \$510,000 for other discretionary purposes * * *." The Conference Agreement includes a 0.65 percent across-the-board rescission to discretionary budgetary resources provided in divisions A through K of this Act, as well as to any previously enacted fiscal year 2003 advanced appropriations. A total of \$72,213,541 for formula grants, and \$4,609,840 for housing assistance, is allocated as a result of applying this requirement.

III. PY 2003 Allocation Formula. The first step of the formula for PY 2003 distributes the total formula funds of \$72,213,541 based on the same relative share of eligible farmworkers derived from the combined datasets described above, which is unchanged from PY

2002. Congress, furthermore, in its Appropriations Conference Report 108-010, provided that those states impacted by formula reductions from the prior year would receive no less than 85 percent of their comparable 1998 allocation levels. Consequently, the amount for each State calculated in step one was compared to an amount equal to 85 percent of each State's PY 1998 allocation. If the 1998 comparison level was higher for a State, that amount was assigned to that State. All such States' assigned 1998 comparison levels were added and these States were removed from the remaining calculations. For the remaining States whose formula amounts were higher, their formula amounts were added and the total was compared to the total amount of remaining funds. Since there were less funds remaining available, each remaining State's formula amount was reduced by the same proportion the total remaining available funds bore to the total remaining States' formula amounts. This reduced distribution was again tested against the 1998 comparison level and the above process was repeated until there were no remaining States being assigned the 1998 comparison level. Each State's final allocation was either the assigned 1998 comparison level or the final proportionally reduced formula amount.

IV. State Combinations: We anticipate a single plan of service for operating the PY 2003 NFJP in the jurisdiction comprised of Delaware and Maryland and the jurisdiction comprised of Rhode Island and Connecticut.

V. Housing Assistance Allocations: The funds available for new grants to provide housing assistance to eligible farmworkers in PY 2003 will be awarded to applicants selected under the competition for the housing assistance grants. This notice provides information on how ETA will be guided in the geographic distribution of the housing assistance funds.

The Department is relying on the allocation formula to distribute the housing assistance funds among 12 agricultural regions. The arrangement of the regions is the one used by the Department in its application of the data from the National Agricultural Workers Survey (NAWS) to the allocation formula. These regions are identical to the regions established for the NAWS with the exception that the NAWS recognizes Oklahoma as one of the Southern Plains states. The 12 regions established for these allocation objectives are as follows:

Delta/South East: Alabama, Arkansas, Georgia, Louisiana, Mississippi, Oklahoma, and South Carolina.

North East 1: Connecticut, Maine, New Hampshire, New York, Rhode Island, Massachusetts, and Vermont.

Appalachia: Kentucky, North Carolina, Tennessee, West Virginia and Virginia.

Mountain 3: Arizona and New Mexico.

Northeast 2: Delaware, Maryland, New Jersey and Pennsylvania.

Lake District: Michigan, Minnesota and Wisconsin.

Pacific Southwest: California.

Florida Peninsula: Florida.

Southern Plains: Texas.

Mountain 1 & 2: Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

Corn Belt/Northern Plains: Kansas, Illinois, Indiana, Iowa, Missouri, Nebraska, North Dakota, Ohio, and South Dakota.

Pacific Northwest: Oregon and Washington.

PY 2003 Allocations: The first table in the attachment provides the allocations for the NFJP in PY 2003. NFJP grantees will use these figures in preparing the

PY 2003 grant plans. The result of the regional allocation of the housing assistance funds is provided in the second table, entitled "Worker Housing Assistance PY 2003/Regional Allocations".

Signed in Washington, DC, this 11th day of April, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510-30-P

U. S. Department of Labor
Employment and Training Administration
National Farmworker Jobs Program
PY 2003 Allocations to States

State	PY 2002	PY 2003	Difference	% Diff
Total	\$74,965,000	\$72,213,541	(\$2,751,459)	-3.7%
Alabama	791,835	673,060	(118,775)	-15.0%
Alaska	-	-	-	0.0%
Arizona	1,782,406	1,662,726	(119,680)	-6.7%
Arkansas	1,167,409	992,298	(175,111)	-15.0%
California	18,079,946	19,407,350	1,327,404	7.3%
Colorado	978,063	959,800	(18,263)	-1.9%
Connecticut	258,821	293,698	34,877	13.5%
Delaware	130,521	121,757	(8,764)	-6.7%
Dist of Columbia	-	-	-	0.0%
Florida	4,631,415	3,936,703	(694,712)	-15.0%
Georgia	1,711,615	1,454,873	(256,742)	-15.0%
Hawaii	251,607	213,866	(37,741)	-15.0%
Idaho	1,065,059	1,043,681	(21,378)	-2.0%
Illinois	1,478,120	1,378,036	(100,084)	-6.8%
Indiana	942,812	896,699	(46,113)	-4.9%
Iowa	1,314,394	1,117,235	(197,159)	-15.0%
Kansas	885,389	1,043,293	157,904	17.8%
Kentucky	1,352,613	1,149,721	(202,892)	-15.0%
Louisiana	796,032	676,627	(119,405)	-15.0%
Maine	327,397	278,287	(49,110)	-15.0%
Maryland	369,537	351,821	(17,716)	-4.8%
Massachusetts	351,027	298,373	(52,654)	-15.0%
Michigan	979,102	913,360	(65,742)	-6.7%
Minnesota	1,274,775	1,083,559	(191,216)	-15.0%
Mississippi	1,449,044	1,231,687	(217,357)	-15.0%
Missouri	1,094,524	944,258	(150,266)	-13.7%
Montana	667,189	567,111	(100,078)	-15.0%
Nebraska	964,801	1,056,460	91,659	9.5%
Nevada	200,795	170,676	(30,119)	-15.0%
New Hampshire	112,600	97,637	(14,963)	-13.3%
New Jersey	521,483	675,564	154,081	29.5%
New Mexico	761,269	904,219	142,950	18.8%
New York	1,850,667	1,573,067	(277,600)	-15.0%
North Carolina	3,006,003	2,555,103	(450,900)	-15.0%
North Dakota	574,325	589,445	15,120	2.6%
Ohio	1,124,788	1,222,893	98,105	8.7%
Oklahoma	830,137	1,234,884	404,747	48.8%
Oregon	1,340,187	1,404,533	64,346	4.8%
Pennsylvania	1,490,911	1,498,994	8,083	0.5%
Puerto Rico	3,042,070	2,719,687	(322,383)	-10.6%
Rhode Island	6,751	37,555	30,804	456.3%
South Carolina	1,080,106	918,090	(162,016)	-15.0%
South Dakota	692,869	588,939	(103,930)	-15.0%
Tennessee	957,799	814,129	(143,670)	-15.0%
Texas	6,943,642	6,477,411	(466,231)	-6.7%
Utah	295,442	278,628	(16,814)	-5.7%
Vermont	213,134	181,164	(31,970)	-15.0%
Virginia	1,036,441	880,975	(155,466)	-15.0%
Washington	2,098,870	2,187,794	88,924	4.2%
West Virginia	219,325	186,426	(32,899)	-15.0%
Wisconsin	1,229,201	1,044,821	(184,380)	-15.0%
Wyoming	240,732	224,568	(16,164)	-6.7%

U. S Department of Labor
Employment and Training Administration
Farm Worker Housing Assistance (WIA 167)
PY 2003 Regional Allocations

Agricultural Regions	Share	Amount
Delta SE	0.0737564	\$340,005
North East 1	0.0326755	\$150,629
Appalachia	0.0692097	\$319,046
Mountain 3	0.0411004	\$189,466
Northeast 2	0.0424005	\$195,460
Lake	0.0429960	\$198,205
California	0.3107392	\$1,432,458
Florida	0.0381806	\$176,006
Southern Plain (TX)	0.1037126	\$478,098
Mountain 1 & 2	0.0497507	\$229,343
Corn Belt/Northern Plains	0.1379600	\$635,974
Pacific NW	0.0575183	\$265,150
Totals	0.9999999	\$4,609,840
multiplier	4609840	

[FR Doc. 03-9520 Filed 4-16-03; 8:45 am]
BILLING CODE 4510-30-C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Underground Retorts

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the

30 CFR Section 57.22401; Underground Retorts.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209-3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

This regulation pertains to the safety requirements to be followed by the mine operators in the use of underground retorts to extract oil from shale by heat or fire. Prior to ignition of retorts, the mine operator must submit a written plan indicating the acceptable levels of combustible gases and oxygen; specifications and location of off-gas monitoring procedures and equipment;

procedures for ignition of retorts and details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure safety of miners.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (<http://www.msha.gov>) and then

choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

This request for information contains provisions whereby mine operators can maintain compliance with the regulations and assure the safety of miners where underground retorts are used.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Underground Retorts.

OMB Number: 1219-0096.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1.

Estimated Time Per Respondent: 160 hours.

Total Burden Hours: 160 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

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 at Arlington, Virginia, this 3rd day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03-9444 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Methane Detected in Mine Atmosphere

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 57.22004(c), 57.22229, 57.22230, 57.22231, and 57.22239; Methane Detected in Mine Atmosphere. **DATES:** Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to Tarr-Jane@Msha.Gov. Ms. Tarr can be reached at (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209-3939. Ms. Tarr can be reached at Tarr-Jane@Msha.Gov (Internet E-mail), (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 103(c), (l), and (j) of the Federal Mine Safety and Health Act of 1977 authorizes the inspection, recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart T-Safety Standards for Methane in Metal and Nonmetal mines. Methane is a flammable gas found in underground mining. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces oxygen content by dilution when mixed with air, and consequently can act as an asphyxiant when present in large quantities. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine.

Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere;

(c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I-B, I-C, II-B, V-B, or Category VI mine. If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I-B, II-B, V-B, and VI mines, MSHA shall be notified immediately. MSHA investigates these occurrences to determine that the mine is placed in the proper category.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (<http://www.msha.gov>) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking an extension of the information collection related to certification and notification of methane detected in mine atmosphere.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Methane Detected in Mine Atmosphere.

OMB Number: 1219-0103.

Recordkeeping: Certification of examinations shall be kept for at least one year.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 8.

Estimated Time Per Respondent: 3.88 hours.

Total Burden Hours: 31 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

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 at Arlington, Virginia, this third day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03-9445 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 56.3203(a), 57.3203(a), and 75.204(a); Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209-3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR 56/57.3203 and 75.204 address the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. These standards require that metal and nonmetal and coal mine operators obtain a certification from the manufacturer that rock bolts and accessories are manufactured and tested in accordance with the 1995 American Society for Testing and Materials (ASTM) publication "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432-95).

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (<http://www.msha.gov>) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable American Society for testing and Materials (ASTM) specifications and make that certification available to an authorized representative of the Secretary.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

OMB Number: 1219-0121.

Section	Total respondents	Frequency	Total responses	Avg. time/response (hrs)	Burden hours
56/57.3203(a); M/NM Surface	20	On Occasion	40	0.05	2
M/NM Underground	180	On Occasion	720	0.05	36
75.204(a); Coal Underground	893	On Occasion	3,572	0.05	179
Total	1,093	.....	4,332	.....	217

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,093.

Estimated Time Per Respondent: .2 hours.

Total Burden Hours: 217 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

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 at Arlington, Virginia, this third day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03-9446 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Product Testing by Applicant or Third Party

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 7.3, 7.4, 7.6, 7.7, 7.23, 7.27, 7.28, 7.30, 7.43, 7.46, 7.47, 7.48, 7.50, 7.51, 7.63, 7.69, 7.70, 7.303, 7.306, 7.310, 7.311, 7.403, 7.407, 7.408, and 7.410, Product Testing by Applicant or Third Party.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to Tarr-Jane@Msha.Gov. Ms. Tarr can be reached at (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health

Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209-3939. Ms. Tarr can be reached at Tarr-Jane@Msha.Gov (Internet E-mail), (202) 693-9824 (voice), or (202) 693-9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines "permissible" equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met. Additionally, 30 CFR Part 7 provides procedures whereby products may be tested and certified by the applicant or a third party.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (<http://www.msha.gov>) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking to continue the requirements for approving certain products and equipment for use in underground mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Product Testing by Applicant or Third Party.

OMB Number: 1219-0100.

Recordkeeping: 30 CFR 7.4(a) required respondents to maintain records of test results and procedures for a period of at least 3 years. Section 7.6(c) required respondents to maintain records of the initial sale of each unit having an approval marking for at least the expected shelf life of and service life of the product.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 301.

Estimated Time Per Respondent: 1.4 hours.

Total Burden Hours: 421 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$58,429.

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 at Arlington, Virginia, this fourth day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03-9447 Filed 4-16-03; 8:45 am]

BILLING CODE 4510-43-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Generic Customer

Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey Under Generic Clearance.

3. *The form number if applicable:* NRC Form 671.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Voluntary reporting by the public and NRC licensees.

6. *An estimate of the number of responses:* 1,727.

7. *The number of annual respondents:* 1,727.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 386 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/OMB/index/html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 19, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150-0197), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 10th day of April 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03-9440 Filed 4-16-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 40, "Domestic Licensing of Source Material"; NRC Form 244, "Registration Certificate—Use of Depleted Uranium under General License"; and NRC Form 484, "Domestic Monitoring Data Report."

2. *Current OMB approval number:* 3150-0020 and 3150-0031.

3. *How often the collection is required:* Reports required under 10 CFR part 40 are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 5 to 10 years. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. NRC Form 484 is submitted biannually.

4. *Who is required or asked to report:* 10 CFR part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.

NRC Form 244: Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

NRC Form 484: Uranium recovery facility licensees reporting ground-water monitoring data pursuant to 10 CFR 40.65.

5. *The number of annual respondents:* 10 CFR part 40: 271 (99 for NRC licensees and 172 for Agreement State licensees).

NRC Form 484: Included in 10 CFR part 40, above.

NRC Form 244: 60 (20 for NRC licensees and 40 for Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:*

10 CFR part 40: 59,367 total hours (21,886 for NRC Licensees (16,182 hours for reporting and 5,703 hours for recordkeeping) and (37,481 for Agreement State Licensees (28,083 hours for reporting and 9,398 hours for recordkeeping).

NRC Form 484: Included in 10 CFR part 40, above.

NRC Form 244: 60 hours (20 hours for NRC licensees and 40 hours for Agreement State licensees for reporting requirements).

7. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by 10 CFR part 40. NRC Form 484 is used to report certain groundwater monitoring data required by 10 CFR part 40 for uranium recovery licensees. The application, reporting, and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Submit, by June 16, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 E 6, Washington, DC 20555-0001, by telephone at (301) 415-7233, or by Internet electronic mail at infocollects@nrc.gov.

Dated in Rockville, Maryland, this 10th day of April, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03-9441 Filed 4-16-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit No. 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP1 or the licensee) is the holder of Renewed Facility Operating License No. DPR-69, which authorizes operation of Calvert Cliffs Nuclear Power Plant, Unit No. 2 (CCNPP2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Calvert County in Maryland.

2.0 Purpose

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.46 and Appendix K identify requirements for calculating emergency core cooling system (ECCS) performance for reactors containing fuel with zircaloy or ZIRLO cladding, and 10 CFR 50.44 relates to the control of hydrogen gas generated in part from a metal-water reaction between the reactor coolant and reactor fuel having zircaloy or ZIRLO cladding.

Since 10 CFR 50.44, 10 CFR 50.46, and Appendix K specifically relate to the use of zircaloy or ZIRLO cladding, the licensee has requested a temporary exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K that would allow CCNPP2 to operate in Cycles 15 and 16 with a core containing up to eight lead fuel assemblies (LFAs) clad with an advanced zirconium-based alloy (up to four LFAs containing fuel rods

clad with Framatome proprietary zirconium-based M5 alloy, and up to four LFAs containing fuel rods clad with Westinghouse proprietary advanced zirconium-based alloys).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under section 50.12(a)(2), special circumstances include, among other things, when application of the regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 and 10 CFR part 50, Appendix K, is to establish requirements for the calculation of ECCS performance and acceptance criteria for that performance in order to assure that the ECCS functions to transfer heat from the reactor core following a loss-of-coolant-accident (LOCA) such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented, and (2) clad metal-water reaction is limited to negligible amounts. The licensee has performed assessments of plant transients and accidents, including LOCAs, using methodologies approved for application to the Calvert Cliffs plants. Though the methodologies may not have been approved for licensing-basis analyses for some of the LFAs, the licensee provided information that confirmed that the methodologies were adequate for assessing them.

The licensee's analyses indicate that the LFAs will not affect the present design basis analyses for CCNPP2 during Cycles 15 and 16. The licensee attributed this finding in part to positioning of the LFAs in non-limiting locations. The licensee has clarified that it will place the LFAs in locations that represent the normal CCNPP2 operational fuel duty, including in "hot," though non-limiting, locations. The licensee believes this will provide data representative of the fuel operation and burnup for two cycles.

Because the LFAs will be placed in non-limiting locations (Technical Specification 4.2.1 limits placement of LFAs to non-limiting locations in the core), the placement scheme and the similarity of the advanced zirconium-

based alloy cladding used in the LFAs to the Zircaloy-4 clad rods, which are currently in the reactor core, will assure that the behavior of the LFAs will be bounded by the fuel performance and safety analyses performed for the Zircaloy-4 clad rods. No safety limits will be changed or setpoints altered as a result of using the LFAs.

In similar reviews of applications to use advanced fuel, the staff found that fuels with advanced cladding do not introduce a mixed core penalty in licensing safety analyses, provided that the resident fuel and the LFA were of like geometry. The licensee has indicated that the LFAs and fuel currently in use at CCNPP2 are of like geometry. Therefore, the staff concludes that use of the LFAs will not introduce a mixed core penalty into the safety analyses for CCNPP2.

Based on the above, the staff finds that, with the LFAs in use, the ECCS performance calculations assure that the ECCS will function to achieve the goals stated in 10 CFR 50.46 and 10 CFR part 50, Appendix K. Accordingly, the staff finds that application of section 50.46 and Appendix K with respect to use of the LFAs with advanced zirconium-based alloy cladding at CCNPP2 is not necessary to achieve the underlying purpose of these regulations.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a postulated LOCA. The licensee submitted supporting documentation that shows that the use of the Baker-Just equation to determine the metal-water reaction rate is conservative for the Framatome M5™ cladding and the Westinghouse advanced zirconium alloy cladding. Therefore, the amount of hydrogen generated by metal-water reaction in these materials will be within the design basis. As such, the licensee has achieved the underlying purpose of 10 CFR 50.44, and application of that rule with respect to use of the LFAs with advanced zirconium-based alloy cladding at CCNPP2 is not necessary to achieve that purpose.

The staff examined the licensee's rationale to support the exemption request and, as set forth above, has determined that the use of LFAs with advanced zirconium-based alloy cladding in the Unit 2 core for Cycles 15 and 16 would meet the underlying purpose of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K. Application of these regulations in these circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that granting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate.

4.0 Conclusion

For the reasons set forth above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants CCNPPI an exemption from the requirements of 10 CFR part 50, section 50.44, section 50.46, and 10 CFR part 50, Appendix K, with respect to the use of LFAs with advanced zirconium-based alloy cladding at CCNPP2 during cycles 15 and 16.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 77085 and 67 FR 75864).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 11th day of April, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-9442 Filed 4-16-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised

The agenda for the 141st meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled for April 22-23, 2003, 11545 Rockville Pike, Rockville, Maryland, has been revised to include a presentation on the National Academy of Sciences Transportation Study in the Working Group Follow-On Session on Tuesday, April 22, 2003 in the NRC Auditorium as follows:

12:30 p.m.-1 p.m.: National Academy of Sciences Transportation Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the National Academy of Sciences regarding a study the Academy will perform to analyze a broad range of matters including transportation cask testing, selection of routes to the proposed burial site, possible health impacts and public perceptions of risk.

The agenda for April 23, 2003 has been changed to reflect the cancellation of the presentations on DOE/NRC Key Technical Issue (KTI) Agreement Status. The new schedule has been modified as follows:

8:30-8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35-9:30 a.m.: Update on NRC Division of Waste Management Activities (Open)—The Committee will hear presentations by and hold discussions with the Director, Division of Waste Management on recent DWM activities of interest.

9:30-10:30 a.m.: Discussion of Self-Assessment Survey Results (Open)—The Committee will discuss the results of the self-assessment survey.

10:45-12 Noon: ACNW Action Plan (Open)—The Committee members will discuss an update to the ACNW 2002-2003 Action Plan.

1-5 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

5-5:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

All other items pertaining to this meeting remain the same as previously published in the **Federal Register** on Wednesday, April 9, 2003 (67 FR 17414).

For further information, contact Mr. Howard J. Larson, Special Assistant, ACNW, (Telephone: 301-415-6805), between 7:30 a.m. and 4:15 p.m., ET.

Dated: April 10, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03-9437 Filed 4-16-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Additional Draft Guidance for Review of Early Site Permit Applications

The U.S. Nuclear Regulatory Commission (the Commission) has published additional draft guidance for the Commission's review of early site permit (ESP) applications. The ESP process is intended, under Title 10 of the Code of Federal Regulations (10 CFR) part 52, to permit resolution of site-related issues regarding possible future construction and operation of a

nuclear power plant at a site that is the subject of the ESP application. The Commission released a draft version of a review standard for ESPs on December 26, 2002 (68 FR 132). Since the release of that document for interim use and public comment, additional draft guidance has been developed in the areas of quality assurance and accident analysis. The Commission is now releasing this additional draft guidance for interim use and public comment. The draft review standard (including the additional guidance just released) is primarily intended to guide the Commission staff in its review of an ESP application, with a secondary purpose of informing potential applicants for an ESP and other stakeholders of information the staff needs to perform its review. The Commission plans to issue a final version of the review standard by the end of 2003; that version will incorporate the additional guidance developed as discussed herein.

The newly published additional draft guidance is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS #ML030970186). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Any interested party may submit comments on the draft guidance for consideration by the NRC staff. To be certain of consideration, comments on the draft guidance must be received by June 13, 2003. 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 this date. Written comments on the draft guidance should be sent to: Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, Mailstop O-4D9A, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may be hand-delivered to the NRC at 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at esprs@nrc.gov. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room

in Rockville, Maryland or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Scott, Project Manager, New Reactor Licensing Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scott may be contacted at (301) 415-1421 or by e-mail at mls3@nrc.gov.

Dated at Rockville, Maryland, this 11th day of April, 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03-9439 Filed 4-16-03; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A-133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2003 Circular A-133 Compliance Supplement.

SUMMARY: On April 4, 2002 (67 FR 16138), the Office of Management and Budget (OMB) issued a notice of availability of the 2002 Circular A-133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 2002 Circular A-133 Compliance Supplement. The 2003 Supplement adds four additional programs, updates for program changes, and makes technical corrections. A list of changes to the 2003 Supplement can be found at Appendix V of the supplement. Due to its length, the 2003 Supplement is not included in this Notice. See Addresses for information about how to obtain a copy. This Notice also offers interested parties an opportunity to comment on the 2003 Supplement.

DATES: The 2003 Supplement will apply to audits of fiscal years beginning after June 30, 2002 and supersedes the 2002 Supplement. All comments on the 2003 Supplement must be in writing and received by October 31, 2003. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2003 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock number: 41-001-00593-5). The main GPO bookstore is

located at 710 North Capitol Street, NW., Washington, DC 20401, (202) 512-0132. A copy may also be obtained under the Grants Management heading from the OMB home page on the Internet which is located at <http://www.omb.gov> and then select "Grants Management."

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: tramsey@omb.eop.gov. Please include "A-133 Compliance Supplement-2003" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-4915.

Comments may be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, telephone (202) 395-3993.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) received six comment letters on the 2002 Supplement. The comment letters dealt with various technical issues and changes were made where appropriate.

Linda Springer,

Controller.

[FR Doc. 03-9433 Filed 4-16-03; 8:45 am]

BILLING CODE 3110-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Meeting

OPIC's Sunshine Act notice of its public hearing was published in the *Federal Register* (Volume 68, Number 62, Page 15773) on April 1, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public

hearing in conjunction with OPIC's April 24, 2003 Board of Directors meeting scheduled for 2 pm on April 17, 2003 has been cancelled.

CONTACT PERSON FOR INFORMATION:

Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at cdown@opic.gov.

Dated: April 15, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03-9592 Filed 4-15-03; 11:37 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27666]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 11, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 6, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 6, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Vermont Yankee Nuclear Power Corporation

[70-10104]

Vermont Yankee Nuclear Power Corporation ("Vermont"), 185 Old Ferry

Road, Brattleboro, Vermont 05301, an indirect subsidiary of National Grid USA, National Grid Transco Plc and Northeast Utilities, which are registered holding companies under the Act, has filed a declaration with the Commission under section 12(c) of the Act and rules 42, 46 and 54 under the Act.

Vermont, a Vermont corporation, operated a nuclear powered electric generating plant in Vernon, Vermont ("Plant") from 1972 to July 2002, when the Plant was sold to Entergy Nuclear Vermont Yankee LLC ("ENVY"). Eight sponsoring utilities ("Sponsors") own the entire common capital stock of Vermont. The Sponsors have each entered into power contracts with Vermont dated February 1, 1968, as amended, February 1, 1984, and September 21, 2001 (collectively, "Power Contracts") that entitle and obligate them to pay the operating costs of Vermont and to repurchase from Vermont the output of the Plant according to certain entitlement percentages.¹

Vermont, having sold substantially all its assets and anticipating a decreased level of business operations in the future, proposes to issue dividends out of capital and repurchase stock as the final step in the restructuring mandated for these utilities designed to disengage them from nuclear generation. Vermont proposes to declare and pay one or more dividends out of capital in the aggregate amount of up to \$43,000,000 in order to reduce its equity capital to a level more commensurate with its activities. Vermont intends to declare and pay these aggregate dividends in one or more steps with all dividends to be declared and paid by December 31, 2003. In addition, Vermont proposes to offer to repurchase and to repurchase, again out of available cash, the shares of its common stock held by New England Power Company, Connecticut Light and Power Company, Public Service Company of New Hampshire and Western Massachusetts Electric

Company (collectively, "Non-Vermont Sponsors") at their then stated value, estimated at the time the declaration was filed to be \$23.03 per share at the time of repurchase. Vermont intends to carry out the repurchase transaction in one or more steps over the next year, with all repurchases to be completed by December 31, 2003. Vermont Yankee will maintain minimum equity until it ultimately prepares to liquidate and wrap up its affairs after March 21, 2012.

Vermont was organized in 1966 for the purpose of constructing and operating the Plant and selling its electrical output to the Sponsors. With the trend toward restructuring of the utility industry in the 1990s, the Sponsors and Vermont began a search for a purchaser of the Plant in 1997, which culminated in a purchase and sale agreement with ENVY, dated August 15, 2001 ("Purchase Agreement"). The closing under the Purchase Agreement also involved Vermont entering into a power purchase agreement, dated September 6, 2001, with ENVY, which required Vermont to purchase from ENVY for resale at wholesale the output of the Plant through March 21, 2012. Under the Power Contracts each Sponsor agreed to repurchase at cost from Vermont its entitlement percentage of that output and to pay its aliquot share of Vermont's other operating expenses, including any liabilities under the Purchase Agreement. The Power Contracts have been approved as wholesale tariffs by the Federal Energy Regulatory Commission ("FERC").

As of July 31, 2002, Vermont's current capital (including Other Paid-In Capital, Capital Stock Expense, and Retained Earnings) consisted of \$55,911,468 of equity, evidenced by 369,149 shares of common stock, \$100 par value per share, which are held by the eight Sponsors in the proportions described at footnote 1. As a single purpose utility corporation, Vermont's economic life has been, and will continue to be, primarily keyed to the operating licensed life (March 21, 2012) of the Plant.

Balance sheet adjustments must be made so that all assets are appropriately characterized consistent with rate recovery. The unamortized balance of all assets of Vermont is being amortized as regulatory assets as authorized by FERC over the original operating licensed life of the Plant. The recoveries of all investments and assets have been approved by FERC and should be recovered in cost of service rates by March 21, 2012. In the event additional costs of service (operating and/or expense) requirements are needed at

any future period, the Power Contracts impose a non-cancelable obligation on the Sponsors to pay these costs of service expenses.

The record states that Vermont's common equity as of September 30, 2002, was \$57,249,189. This equity capital was appropriate so long as Vermont owned and operated substantial generating assets. However, after the closing of the Purchase Agreement, Vermont has become a pass-through entity for the purchase and resale at wholesale of the output of the Plant. Because less capital funds will be required to amortize any of the remaining regulatory assets or to fund any of those remaining end of life obligations, Vermont believes that appropriate steps should be taken to reduce Vermont's outstanding equity contemporaneously with its write-down of its assets.

To accomplish the reduction of equity, Vermont proposes a process with two components: (1) Vermont will declare and pay one or more dividends, payable out of capital, up to an aggregate of \$116.48 per share (or up to an aggregate of \$43,000,000 for all dividends); and (2) Vermont will offer to repurchase and will repurchase (in one or more steps) the shares of its common stock held by its Non-Vermont Sponsors at their then stated value of \$23.03 per share. The repurchase price would also be paid out of capital and would reduce the stated capital of Vermont to approximately \$4,500,000 (assuming that all shares are repurchased from the Non-Vermont Sponsors and that the maximum aggregate dividends proposed are paid). Vermont intends to maintain approximately this level of equity capital throughout the remainder of its life and then would return any remaining equity to its stockholders upon dissolution.

Vermont believes that the amount of equity capital needed to carry on its business will be less than was historically required because of the decreased role it will play during the balance of the term of its Power Contracts with its Sponsors. Vermont does not intend to engage in any business other than that of a purchaser and reseller at wholesale of the power produced by the Plant. Vermont will be involved with the payment of certain retained liabilities and the collection of certain potential claims under the Purchase Agreement. The two Vermont Sponsors, Central Vermont Public Service Corporation and Green Mountain Power Corporation, have agreed to remain as stockholders of Vermont during this period, either directly or through their respective

¹ The Sponsors, the percentage of stock each holds in Vermont, and their entitlement percentages are as follows: Central Vermont Public Service Corporation, 33.23% of stock, 35% entitlement; Green Mountain Power Corporation, 18.99% of stock, 20% entitlement; New England Power Company, a subsidiary of National Grid USA and National Grid Transco Plc, 23.90% of stock; 22.5% entitlement; Connecticut Light and Power Company, a subsidiary of Northeast Utilities, 10.09% of stock, 9.5% entitlement; Central Maine Power Company, a subsidiary of Energy East Corporation, 4.25% of stock, 4% entitlement; Public Service Company of New Hampshire, a subsidiary of Northeast Utilities, 4.25% of stock, 4% entitlement; Western Massachusetts Electric Company, a subsidiary of Northeast Utilities, 2.65% of stock, 2.5% entitlement; Cambridge Electric Light Company, 2.66% of stock, 2.5% entitlement.

wholly owned subsidiaries. Vermont expects to be able to satisfy its needs for cash with revenues paid to it under the Power Contracts. Accordingly, Vermont believes that the amount of capital that will remain after consummation of the transactions proposed will be sufficient to meet its ongoing business needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9475 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47658; File No. SR-Amex-2003-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to "At the Close" Orders in Nasdaq Securities

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 109, "Stopping Stock," Rule 118, Trading in Nasdaq National Market Securities, Rule 131, Types of Orders, and Rule 156, Representation of Orders, relating to "at the close" orders (1) to specify that these rules apply to Amex trading in Nasdaq National Market System securities ("Nasdaq securities"); (2) to provide for dissemination of order imbalance information to major news vendors by means of a structured communication process; and (3) to temporarily exempt from Rule 109(d) information relating to "pair off" transactions under such rule, pending

implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor (the "Nasdaq UTP Processor") to accommodate printing of such transactions as "stopped stock." The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics*.³

* * * * *

Rule 109 "Stopping Stock"

(a) through (d) No change.

Commentary

.01 No change

.02 *Paragraph (d) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, except that the Exchange shall not disseminate information regarding "pair off" transactions reported pursuant to paragraph (d), pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor to permit dissemination of "pair off" transactions as "stopped stock".*

* * * * *

Trading in Nasdaq National Market Securities

Rule 118

(a) through (j) No change.

Commentary

.01 The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24 (b); *Rule 109 (Commentary .02)*; Rule 115 (Commentary .01); *Rule 131 (Commentary .02)*; *Rule 156 (Commentary .01)*; Rule 170 (Commentary .11); Rule 175; Rule 190 (Commentary .06); and Rule 205 (Commentary .05).

* * * * *

Types of Orders

Rule 131

(a) through (t) No change.

Commentary

.01 No change

³ At the Exchange's request, the Commission made two non-substantive formatting corrections to the Exchange's proposed rule text. Telephone conference among Michael Cavalier, Associate General Counsel, Amex; David Fisch, Managing Director, Rulings, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, SEC; and Ann E. Leddy, Attorney, Division of Market Regulation, SEC (April 8, 2003).

.02 *Paragraph (e) of this rule shall apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

* * * * *

Representation of Orders

Rule 156

(a) through (e) No change.

Commentary

.01 *Paragraph (c) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules relating to execution of market on close ("MOC") and limit on close ("LOC") orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges ("UTP"). The Commission has previously approved rules and procedures governing MOC and LOC orders entered on the Exchange.⁴ The procedures include publication of order imbalances beginning at 3:40 p.m. (or as close to this time as possible) in listed securities of 25,000 shares or more on the consolidated tape (Network B), and a prohibition on entry of MOC or LOC orders after 3:40 p.m. except to offset an at the close order imbalance. After 3:40 p.m., MOC and LOC orders are irrevocable except to correct an error. The Exchange proposes to amend Amex

⁴ See, e.g., Release No. 34-41877 (September 23, 1999), SR-Amex-99-32 (September 14, 1999); Release No. 34-40123 (July 2, 1998), SR-Amex-98-10 (June 24, 1998); Release No. 34-35660 (May 8, 1995), SR-Amex-95-09 (May 2, 1995); Release No. 34-29312 (June 21, 1991), SR-Amex-90-32 (June 15, 1991).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rules 109(d) ("Stopping Stock"), 131(e) ("Types of Orders") and 156(c) ("Representation of Orders"), which apply to handling "at the close" orders, including MOC and LOC orders in Nasdaq securities, as described below.

Currently there is no publication of order imbalances in Nasdaq securities traded pursuant to UTP. Because certain Exchange MOC procedures are predicated on those publications, the Exchange intends to institute a procedure for publishing imbalances of orders entered on the Exchange in Nasdaq UTP securities at 3:40 p.m. Because the Nasdaq UTP Processor (currently operated by the Nasdaq Stock Market, Inc. ("Nasdaq")) for disseminating consolidated quotation and last sale information does not accommodate publication of order imbalances, the Exchange will utilize a structured communication process established with major news vendors (e.g., Bloomberg and Dow Jones) utilizing, among other things, e-mail technology to permit public dissemination of order imbalance information at 3:40 p.m., or as soon thereafter as practicable. In addition, this information will be disseminated on the Amex website. Following an imbalance dissemination, all regular Exchange procedures for executing MOC and LOC orders will apply, subject to temporary modifications to Exchange "stopped stock" reporting procedures, noted below.

Rule 109(d) requires that a member holding both buy and sell MOC orders simultaneously must execute any imbalance against the prevailing Exchange bid or offer at the close, and then must "pair off" remaining buy and sell orders at the price of the immediately preceding sale. Rule 109(d)(1) provides that the "pair off" transaction must be reported to the consolidated last sale reporting system as "stopped stock", to inform the public that limit and LOC orders entered before the close may remain unexecuted. Insofar as it would be impermissible to report "pair off" transactions in Nasdaq securities as "stopped stock" to the consolidated tape for Amex-listed securities (Tape B), and because the Nasdaq UTP Processor does not currently support any sale condition code for reporting "stopped stock" transactions in its UTP Trade Data Feed ("UTDF"), the Exchange, as an interim measure, is proposing to temporarily exempt "pair-off" transactions in Nasdaq securities under Rule 109(d) from reporting on the consolidated tape, pending the Nasdaq UTP Processor's ability to accommodate Amex's need to print these transactions as "stopped

stock". On February 28, 2003, the Amex made a formal Change Request to the Nasdaq UTP Processor to facilitate reporting of "stopped stock" transactions, including "pair off" transactions under Rule 109(d).

According to a memo sent to the UTP Operating Committee by the Nasdaq UTP Processor on February 7, 2003, Nasdaq would consider all enhancements requested by February 28, 2003, and expects that the Nasdaq UTP Processor will implement approved enhancements by September 2003.

Prior to implementation of this change by the Nasdaq UTP Processor, "pair off" transactions will be executed at the closing price on the Amex and will be reported to the Nasdaq UTP Processor regular way. Another trade report consisting of the price of the preceding imbalance and "pair-off" transactions, with no associated volume, will be transmitted to the Processor utilizing the new "M" sale condition modifier on UTDF to identify the Amex's Official Closing Price in that stock. Nasdaq has announced that the "M" sale condition is expected to go into production on April 14, 2003.⁵ An Amex transaction report with a "M" modifier will represent the Official Closing Price for a Nasdaq security traded on the Amex.

The following example illustrates how a "pair off" in a Nasdaq security would be reported:

Assume "at the close" orders in ABCD to buy 35,000 shares and to sell 5,000 shares. At 3:40 p.m., a buy imbalance of 30,000 shares would be disseminated to vendors as described above. At 3:55 p.m., an order to sell 35,000 shares is entered, offsetting the imbalance. At or as close as practicable to 4:00 p.m., with a current bid/ask of \$10.12-\$10.14 (35,000 by 40,000), the sell imbalance of 5,000 shares is executed against the bid with 5,000 shares from the specialist or orders on the specialist's book. At or as close as practicable to 4:00 p.m., the remaining buy and sell orders are stopped against each other and paired off at the bid price (under Rule 109(d)); Amex will report a 5,000 share regular trade for ABCD to the Nasdaq UTP Processor at \$10.12. Amex will immediately report a second trade for ABCD for 35,000 shares at \$10.12. Amex would then send a third report with a "M" modifier to establish \$10.12 as the official closing price for this stock on the Amex.

The Exchange intends to implement the proposed exemption from reporting

"pair off" transactions as "stopped stock" on a pilot basis until the Nasdaq UTP Processor can accommodate the Amex's request to print a transaction "stopped stock" (expected to be by September 2003).

Rule 131(e) defines "at the close order" as a market order which is to be executed at or as near to the close as practicable, as well as a limit order that is entered for execution at the closing price on the Exchange. Proposed Commentary .02 would apply Rule 131(e) to trading in Nasdaq securities. The Exchange also proposes to add Commentary .01 to Rule 156 (Representation of Orders) to make clear that Rule 156(c) applies to at the close orders in Nasdaq securities. Rule 156(c) provides that the acceptance of an "at the close order" by a broker does not make the broker responsible for an execution at the closing price.

Rule 118, Commentary .01, which specifies Exchange rule referencing trading in Nasdaq securities, would also be amended to add references to Rules 109, 131, and 156.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

⁵ See Release No. 34-47517 (March 25, 2003), SR-NASD-2002-158 (March 18, 2003).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-18 and should be submitted by May 8, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ in that it will provide market participants with a source of closing price information for Nasdaq securities in addition to that disseminated by Nasdaq, which will enhance intermarket competition by providing an additional information source for market participants to assess and compare pricing and execution quality among different markets trading Nasdaq securities.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate trading in Nasdaq securities on the Amex in accordance with existing Amex rules governing "at the close" transactions. The Commission believes that the establishment of MOC and LOC procedures for Nasdaq securities by the Exchange should benefit investors, generally, and that the proposal's

temporary exception regarding "pair off" transactions should prevent the Exchange from being unfairly disadvantaged until such time as the Nasdaq UTP Processor can complete the necessary technical enhancements.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁰ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because it will permit the Amex to disseminate its Official Closing Price for Nasdaq securities traded on the Amex utilizing the "M" sale condition at or about the time such condition is utilized by Nasdaq.¹¹ In addition, the proposed rule change regarding the exemption from reporting "pair off" transactions as "stopped stock" will be implemented on a pilot basis, pending the Nasdaq UTP Processor's implementation of necessary systems changes.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Amex-2003-18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9476 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47663; File No. SR-NASD-2003-67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend Operation of NASD's Alternative Display Facility on a Pilot Basis

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 7,

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ Nasdaq has announced that it expects to place the "M" sale condition into production on April 14, 2003. The "M" sale condition will be utilized to disseminate the Nasdaq Official Closing Price on the Nasdaq market. See Release No. 34-47517, *supra* note 5.

¹² See *supra* note 10.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which NASD has prepared. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b-4(f)(6),³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend for nine months the operation of its Alternative Display Facility ("ADF") on a pilot basis. The current ADF pilot program, which the SEC approved on July 24, 2002, is due to expire on April 24, 2003. The pilot program permits members to quote and trade only Nasdaq-listed securities on or through the ADF. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF Facility terminal at which they make a market in a Nasdaq security quotation data from all markets trading Nasdaq securities.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [April 24, 2003] *January 26, 2004*.

* * * * *

4613A. Character of Quotations

(a) through (d) No change.

³ 17 CFR 240.19b-4(f)(6).

⁸ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

(e) Other Quotation Obligations.

(1) No change.

(2) *As required by Rule 11Ac1-2(e) under the Exchange Act [A] a member that uses an ADF terminal or other approved ADF electronic interface [is registered as a market maker in a Nasdaq security] shall be obligated to have available in close proximity to the ADF [NASD's Alternative Display Facility] terminal or interface [at which it makes a market in a Nasdaq security] a quotation service that disseminates the bid price and offer price from all markets trading [then being furnished by or on behalf of other market makers trading and quoting] that Nasdaq security.*

* * * * *

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

a. Pilot Extension. On July 24, 2002, the Commission approved SR-NASD-2002-97,⁴ which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90, which proposes to operate the ADF on a permanent basis. As described in detail in SR-NASD-2001-90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order⁵ and in conjunction with Nasdaq's anticipated registration as a national securities exchange.⁶ In addition, on January 30, 2003, NASD filed proposed rule change SR-NASD-2003-009 to revise the transaction and quotation-related fees applicable to ADF

activity during the pilot program. The rule change proposal became effective upon filing, with an implementation date of February 17, 2003.

As proposed in SR-NASD-2001-90, the ADF would provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because, at the time of SEC approval, several regulatory issues relating to the trading of exchange-listed securities on the ADF had not been resolved.

According to NASD, the ADF has been operating successfully during the pilot period. NASD believes that the SEC, in approving the launch of SuperMontage, stated that the ADF met the conditions set forth in its SuperMontage Approval Order to provide an alternative quotation collection, trade comparison and trade reporting facility. NASD also notes that the issues related to trading exchange-listed securities—and by extension, approval of the operation of ADF on a permanent basis—remain unresolved.

Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities, as set forth in SR-NASD-2002-97 and SR-NASD-2003-09, until January 25, 2004 or until approval of SR-NASD-2001-90.

b. Close Proximity Rule. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF terminals (or other approved ADF electronic interfaces) quotation data from all markets trading Nasdaq securities. NASD believes that the current language in the rule suggests that ADF market participants must have quotation data in close proximity only from other market makers. NASD represents that it always intended for Rule 4613A to ensure that ADF market participants comply with the Vendor Display Rule.⁷ NASD believes that the proposed change reflects more recent guidance from the SEC that market participants must have readily available quotation data from all markets trading Nasdaq securities, not just market makers.⁸

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 or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD neither solicited nor received written comments on this proposed rule change. NASD did solicit written comments on rule change proposals SR-NASD-2001-90 and SR-NASD-2002-28, the underlying rule filings to SR-NASD-2002-97 and SR-2003-009, respectively. NASD responded to the comments received in response to SR-NASD-2001-90 in its Amendment No. 2 to that filing, which was submitted to the SEC on May 24, 2002. NASD responded to the comments received in response to SR-NASD-2002-28 in its Amendment No. 1 to that filing, which was submitted to the SEC on May 14, 2002.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as a "non-controversial" rule change that is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ NASD has represented that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

NASD requested that the Commission waive the written notice of its intent to file the proposed rule change set forth in Rule 19b-4(f)(6)(iii).¹¹ In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii),¹² to prevent the current ADF pilot program from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing to assure the uninterrupted operation of the ADF pilot after April 24, 2003.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

⁴ Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

⁵ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

⁶ Securities Exchange Act Release No. 44396 (June 7, 2001) 66 FR 31952 (June 13, 2001).

⁷ See 17 CFR 240.11Ac1-2(c), Rule 11Ac1-2(c) under the Exchange Act.

⁸ See letter from Robert L. D. Colby, Deputy Director, Division of Market Regulation, SEC, to T. Grant Callery, Executive Vice President and General Counsel, NASD, dated March 18, 2003.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² *Id.*

or otherwise in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of section 15A of the Act¹³ and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to SR-NASD-

2003-67 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9413 Filed 4-16-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47661; File No. SR-NASD-2003-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Fees for the Automated Confirmation Transaction Service ("ACT")

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 24, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On March 27, 2003, Nasdaq amended the proposed rule change.³ The proposed rule change

is described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service ("ACT").⁶ Nasdaq will implement the proposed rule change on April 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

- (a)-(f) No change.
- (g) Automated Confirmation Transaction Service.

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

<i>Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions).</i>	<i>\$0.029/side.</i>
<i>Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")</i>	
<i>Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party:</i>	
<i>0 to 10,000</i>	<i>\$0.029.</i>
<i>10,001 to 50,000</i>	<i>\$0.029 for a number of reports equal to 10,000 times the number of trading days in the month \$0.015 for all remaining reports.</i>
<i>More than 50,000</i>	<i>\$0.029 for a number of times the number of trading days in the month \$0.015 for a number of reports equal to 40,000 times the number of trading days in the month \$0.00 for all remaining reports.</i>
<i>Reporting of all other transactions not subject to comparison through ACT.</i>	<i>\$0.029/side.</i>
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
[Automated Give-Up]	[\$0.029/side].
Late Report—T+N	\$0.288/side.
Browse/query	\$0.288/query.*
Terminal fee	\$57.00/month (ACT only terminals).

¹³ 15 U.S.C. 78o-3

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 26, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine

England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq revised the description of the proposed rule to specify the circumstances under which Nasdaq will aggregate trade reports for corporate entities.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

CTCI fee	\$575.00/month.
WebLink ACT	\$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month).**
[Trade reporting]	[\$0.029/side (applicable only to reportable transaction not subject to trade comparison through ACT)***].
Risk Management Charges	\$0.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm).
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party. \$525/logon/month***[*].
ACT Workstation	

* Each ACT query incurs the \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than \$0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the \$0.288 query charge.

** For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

*** The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Service Representative reports and reports of internalized transactions.]

*** [*] A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.

(h)-(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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. Nasdaq 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated over the telephone and internalized transactions. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is proposing to introduce volume-based discounts for trade reports submitted to ACT. The discounts reflected in this proposed rule change apply to all reports in Nasdaq

National Market and SmallCap Market securities submitted to ACT by a market participant directly or through Nasdaq's Primex system (defined as "Covered Transactions"), but do not apply to reports submitted automatically through Nasdaq's other transaction execution systems.⁷ Thus, the discounts offered by this proposed rule change apply to reports submitted pursuant to "automated give-up" ("AGU") and Qualified Service Representative ("QSR") arrangements,⁸ as well as internalized trades and Primex trades. However, the discounts do not apply to transactions that are subject to trade comparison through ACT, for which Nasdaq will continue to charge \$0.0144 per side for each 100 shares (subject to a minimum charge of \$0.0576 and a maximum charge of \$1.08).

Under the proposal, the per side fee paid by an ACT participant for its trade reports during a particular month would depend upon the volume of media transaction reports for Covered Transactions in which the ACT participant was identified as the reporting party during that month.⁹ If an ACT participant's average daily volume of such media trade reports was 10,000

⁷ Nasdaq has submitted a separate proposed rule change relating to the ACT charges for reporting of SuperMontage transactions. See SR-NASD-2003-56, Rel. No. 34-47621 (April 2, 2003), 68 FR 17418 (April 9, 2003).

⁸ AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual arrangement.

⁹ Volume will be measured with reference to the market participant identifier ("MPID") appearing on trade reports. If a particular corporate entity has multiple MPIDs associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq will aggregate trade reports associated with all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

or less, its fee for all ACT reports for Covered Transactions during the month would be \$0.029 per report. An ACT participant with an average daily volume of between 10,001 and 50,000 media trade reports in Covered Transactions during the month would pay \$0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month but only \$0.015 per report for each additional report. Finally, an ACT participant with an average daily volume of more than 50,000 media trade reports would pay \$0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month and \$0.015 for a number of reports equal to 40,000 times the number of trading days in the month, but all additional reports during the month would be free.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹⁰ in general, and section 15A(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fee reductions reflected in this proposed rule change assure that all participants reporting Covered Transactions through ACT pay a share of the costs associated with operation of the system, but recognize that the marginal costs associated with increases in trade report volume are low. Accordingly, the fee charged for "marginal" reports decreases as a participant's volume increases. Nasdaq believes that this change will make it

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(5).

more economical for market participants to use ACT for reporting their trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 27, 2003, when Amendment No. 1 was filed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2003-51 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9414 Filed 4-16-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47662; File No. SR-NSCC-2003-01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 17, 2003, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add new Rule 59, "Information Services for Investment Products," to NSCC's rules authorizing NSCC to provide services for the transmission and receipt of data and information related to investment and financial products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently provides limited information services capabilities through its Mutual Fund and Insurance Product services. There is significant demand in the financial services industry for NSCC to make additional information services containing a broader range of information available to a broader range of participants. The proposed rule would authorize NSCC to design and offer such information services. The services would benefit the financial services industry by providing a means whereby information could be transferred in an automated and standardized environment using NSCC's connectivity.

Information services for investment products under Rule 59 would not involve money settlement at NSCC or the guarantee of any obligation. Access to Rule 59 information services would be available to a broader range of participants than other NSCC services that entail settlement or counterparty default risk.

Participants eligible to use Rule 59 information services would include any entity that has signed a membership agreement with NSCC in any other capacity or an entity meeting any one of the following criteria which has entered into an agreement as set forth below:

(i) It is a broker or dealer registered under the Act;

(ii) It is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks;

(iii) It is a clearing agency registered with the Commission pursuant to Section 19(a) of the Act;

(iv) It is subject to supervision or regulation pursuant to the provisions of state insurance law and either issues insurance contracts or is licensed to sell insurance products;

(v) It is an investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

(vi) It is an organization or entity that acts as a third party administrator on

¹² 15 U.S.C. 78s(b)(3)(a)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

behalf of defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended;

(vii) It is an Investment Advisor as defined in Section 202(a)(ii) of the Investment Advisors Act of 1940, as amended;

(viii) If it does not qualify under paragraphs (i) through (vii) above, it has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services.

Users of Rule 59 information that are not members or participants of NSCC in any other capacity would be bound by the terms and conditions of a standard NSCC contract applicable to such service, and the rules of NSCC would not apply to them. The contract would state that the user cannot hold itself out as a member of NSCC unless approved for NSCC membership under a different NSCC rule. Such contracts would also include terms regarding limitations of liability, standard of care, and indemnification substantially similar to those contained in NSCC's membership agreement and rules.

NSCC anticipates that the first such information service to be authorized under proposed Rule 59 would be a messaging system used by participants in the separately managed accounts industry.³ It is expected that the Separately Managed Account Service ("SMAS") would be used for the transmission of information between sponsors of separately managed account programs and the investment managers participating in their programs in order to coordinate information such as account opening data and verification of funding amounts.⁴ Currently, this information is generally communicated by a combination of methods such as multiple vendor platforms, faxes, emails, and telephone.

NSCC believes that the proposed rule change would facilitate the transmission of information for investment products in a standardized and automated format, using NSCC's connectivity. Standardization and automation of information on investment products can be expected to reduce processing errors that are typically associated with

manual processes or the use of multiple platforms and methods to transmit information. Accordingly, NSCC believes this filing is consistent with the requirements of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities and other related transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the MMI regarding standardization of information for the separately managed accounts industry. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve the proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently,

comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC-2003-01 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-9477 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47671; File No. SR-NYSE-2002-11]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Notice of Filing And Order Granting Accelerated Approval to Amendment No. 2 Thereto by the New York Stock Exchange, Inc. to Establish a Six-Month Pilot Program Permitting a Floor Broker to Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

April 11, 2003.

On February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to implement a six-month pilot program that would amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Information about the separately managed account industry is available on the website of The Money Management Institute ("MMI"): <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, which is comprised principally of portfolio management firms and sponsors of investment programs.

⁴ NSCC will file a Section 19(b) proposed rule change with the Commission before implementing any new service, such as the separately managed account service, under Rule 59.

Exchange. On December 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on January 28, 2003.⁴ One comment was received on the published proposed rule change, as amended by Amendment No. 1.⁵ On March 24, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. Amendment No. 2 is being approved on an accelerated basis.

I. Description of the Proposal

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Rule 36.20 prohibits the use of portable telephone communications between the Trading Floor and any off-Floor location. According to the Exchange, the only way that voice communication can be conducted today by Floor brokers between the Trading Floor and an off-Floor location is by means of a telephone located at a broker's booth. Communications often involve a customer calling a broker at the booth for "market look" information. A broker may not use a portable phone currently in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange proposes to amend NYSE Rule 36 to permit a Floor broker

to use an Exchange authorized and issued portable telephone on the Floor with the approval of the Exchange. As noted above, the Exchange currently does not permit the use of portable telephones on its Floor. Thus, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as provide "market look" observations as are routinely transmitted from a broker's booth location today. Only portable telephones authorized and issued by the Exchange would be permitted on the Exchange Floor. Any other type of portable telephone would continue to be prohibited.

Under the proposal, both incoming and outgoing calls, and orders on such calls, would be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC").⁷ In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange Rules 342 and 345, among others.⁸ As a result, NYSE

Rule 36 would be amended to specifically state that any Floor broker receiving orders from the public over portable phones must be properly qualified to do a public customer business.

Furthermore, the Exchange originally proposed in Amendment No. 1 that it would not permit portable communications at the point of sale for orders in ETFs, because there was an exception to NYSE Rule 123(e) that permitted orders in ETFs to first be executed and then entered into FESC.⁹ In its original filing, the NYSE stated that technical restraints would be developed to implement this policy, thus preventing the use of portable phones where ETFs currently trade. The NYSE, however, determined that technical restraints could not be developed to prevent the use of portable phones in the Expanded Blue Room of the NYSE where ETFs currently trade. As a result, in Amendment No. 2, the Exchange proposed to eliminate the exception to NYSE Rule 123(e) for ETFs¹⁰ and allow the use of portable phones for orders in ETFs.¹¹ Orders in ETFs would thus be subject to the same FESC requirements as orders in any other security listed on the Exchange. The Exchange states that requiring orders in ETFs to be first entered into FESC before execution or representation on the Floor would place them on an equal footing with orders in other securities with respect to order entry and recording procedures. As a result, the Exchange believes that allowing portable phones for orders in ETFs should be permitted. The Exchange also notes that the same surveillance procedures applicable to trading in all other equities would also apply to ETFs.

Although the Exchange originally stated in Amendment No. 1 that the proposal would be implemented on a six-month pilot basis from the date of Commission approval, and contained a

(November 21, 2001), Information Memo 01-18 (July 11, 2001) (available on www.nyse.com/regulation/regulation.html), and Information Memo 91-25 (July 8, 1991).

⁹ See Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR-NYSE-2001-52) (discussing an exception to FESC that allowed orders in ETFs to be entered within 90 seconds of execution for a one-year pilot period). See also Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR-NYSE-2002-48) (extending the exception until January 5, 2004), and note 7 and accompanying text.

¹⁰ The Exchange stated in Amendment No. 2 that a separate proposed rule change would be filed with the Commission to eliminate the exception in Supplementary Material .23 of NYSE Rule 123(e) for ETF orders. See SR-NYSE-2003-09 which discusses in more detail the rationale for eliminating the exception.

¹¹ See Amendment No. 2, *supra* note .

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchange Floor, and also proposes, among others, a pilot program for six months.

⁴ See Securities Exchange Act Release No. 47221 (January 21, 2003), 68 FR 4261.

⁵ See letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, Commission, dated March 6, 2003 ("Morgan Stanley Letter").

⁶ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 21, 2003 ("Amendment No. 2"). Amendment No. 2 specifies the timing for the notification and implementation of the six-month pilot program as well as for the completion of a study, and eliminates the proposed prohibition against using Exchange authorized and provided portable telephones for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"). See notes 11 through 15, and accompanying text. Amendment No. 2 also extends the statutory time for the Commission to take action on the filing for a period of forty-five days.

⁷ See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR-NYSE-98-25). See also Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR-NYSE-2001-39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed). The Exchange believes that the exceptions to FESC for bona fide arbitrage and orders to offset transactions made in error do not raise unique issues with respect to the use of portable telephones on the Floor. The NYSE believes that the purpose of the FESC requirement is to ensure that orders are entered into an Exchange data base before they are executed, thereby minimizing the possibility that orders are being initiated on the Floor in contravention of NYSE and SEC rules. Members may, however, initiate bona fide arbitrage and error offset orders on the Floor, as expressly permitted by NYSE Rule 112 and SEC Rule 11a-1. The Exchange believes that the use of portable telephones, therefore, does not raise on-Floor trading concerns as to these types of orders because these orders are not normally transmitted by phone. Telephone conversation between Jeff Rosenstock, Senior Special Counsel, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

⁸ For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, see Information Memo 01-41

commitment to complete, within three months of Commission approval, a study of communications on the Exchange Floor pursuant to the recommendation of an Independent Consultant retained by the Exchange,¹² the Exchange now proposes in Amendment No. 2 to provide for Exchange authorized and provided portable phones on the Exchange Floor as a six-month pilot beginning on or about May 1, 2003.¹³ Furthermore, the Exchange has committed to complete the study within three months of implementation of the pilot program, which would be on or about August 1, 2003.¹⁴ The Exchange has also committed to notify the Division, OCIE, and the Exchange's membership within one week prior to the actual implementation date of this proposal.¹⁵

In its filing, the Exchange also noted that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.¹⁶ The Exchange's proposed amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

II. Discussion

After careful review, the Commission finds that the proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the proposal, as amended, would eliminate the requirement that an off-Floor customer must communicate with the Exchange Floor by calling a broker's booth and using the booth clerk as an intermediary to access the trading crowd, which may help to facilitate transactions in securities consistent with section 6(b)(5) of the Act.¹⁹ While the Commission believes that the proposal to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor on a six-month pilot basis could provide certain benefits, as stated by the NYSE in its filing, such as more direct access to the Exchange's trading crowds, and increased speed in the transmittal, and execution, of orders, it believes there are certain concerns.

The prohibition on the use of portable telephones in trading crowds on the NYSE was adopted in 1988.²⁰ In approving the prohibition, the Commission noted that the use of portable telephones in the trading crowd was different from such access at a booth phone. In particular, the Commission stated that the ability of a customer to communicate directly with a broker in the trading crowd could provide a significant time and place advantage to the customer, who invariably would be a large or institutional customer. The Commission also noted certain concerns that could result from such advantage.

While the Commission recognized that the NYSE had reasonable concerns for imposing the portable phone prohibition, the Commission noted that the NYSE's decision to prohibit the use of portable telephones on the Floor was not the only approach that could be consistent with the Act. The Commission further stated that its order did not foreclose an exchange from devising a program that would permit the use of portable telephones.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ The proposal resulting in the adoption of the prohibition was in response to a Commission order setting aside actions by the Exchange denying two of its members permission to install telephone connections to communicate from the Exchange Floor with non-member customers located off-Floor. See Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432. The NYSE's proposal that was ultimately approved by the Commission permitted access to non-member customers at the Floor booth, but prohibited such access through portable phones that could be used in the trading crowd.

Under NYSE rules, a broker would not be permitted to represent and execute an order unless it was inputted into FESC. In addition, the filing has been amended so that only Exchange authorized and issued portable telephones would be permitted on the Floor. The benefit of this requirement is that the Exchange would have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules and address concerns identified in the adoption of the original prohibition. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,²¹ and that orders are being handled in compliance with NYSE rules. The six-month pilot approval should provide the NYSE with an opportunity to review these procedures and address any potential concerns that have arisen during the pilot.

The Commission notes that the NYSE is expected to complete within three months of implementation of the portable phones a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange.²² In addition to this study, the Commission requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers use of an Exchange authorized and issued portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.²³

In summary, the Commission notes that the proposal, by enabling customers to speak directly to a Floor broker in a trading crowd on Exchange authorized and issued portable phones, rather than being routed through the Floor broker booth, may help to expedite orders and make more direct the flow of

²¹ See note 8 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

²² See *supra* note 12.

²³ This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

¹² See *In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

¹³ See Amendment No. 2, *supra* note 6.

¹⁴ See Amendment No. 2, *supra* note 6.

¹⁵ See Amendment No. 2, *supra* note 6. The Commission notes that should the NYSE be unable to implement the filing on or about May 1st, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

¹⁶ See Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR-NYSE-00-31) (discussing restrictions on specialists' communications from the post).

¹⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

information. The six-month pilot should help the Exchange to provide information to the Commission to ensure that these benefits exist, and provide for fair access with adequate monitoring of the orders being taken, and information being provided, over the portable phones.²⁴

Finally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.²⁵ Since the NYSE is also proposing in a separate rule filing to eliminate the exception to NYSE Rule 123(e), which provided that orders in ETFs must be entered into FESC within 90 seconds of execution,²⁶ the Commission believes that good cause exists to approve the portion of Amendment No. 2 that would allow the use of Exchange-provided and authorized portable phones for orders in ETFs on the Floor. As noted above, the prohibition of using portable phones for ETF orders was based on the 90-second delay for inputting ETF orders in FESC. Because this exception to FESC has been eliminated, the Commission believes that portable phones can be used for ETF orders as with other equity securities.²⁷ In addition, the Commission believes that it is beneficial to investors and Exchange members that the NYSE specified, in Amendment No. 2, a general time frame of approximately May 1, 2003 to implement the pilot program and of August 1, 2003 to

²⁴ In addition, as noted above, the Commission received one comment letter in support of the proposed rule change and Amendment No. 1. This commenter stated that the proposal would improve the overall quality of the flow of information and the efficiency of the communication process between the Exchange Floor and off-Floor participants, including both "direct access" investors and "upstairs" trading desks of NYSE member organizations. Furthermore, the commenter considered the use of portable phones to communicate directly to and from the Floor as enabling vigorous competition, innovative trading services, and faster executions on the Floor. See Morgan Stanley Letter, *supra* note 5. The commenter also suggested that the Exchange should aim to implement the rule change as fully contemplated and not make calls on portable phones linked through the booth, as some market participants might desire. In response, the Exchange stated that they were aware of certain market participants who preferred that phone calls between Floor brokers and off-Floor participants be connected through a Floor booth intermediary, and that, while technologically Floor brokers would have the ability on their portable phones to conference in Floor booth intermediaries on calls, such action is not required by this proposal. Telephone conversation between Jeff Rosenstock, Attorney, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ See notes 9 and 10, and accompanying text.

²⁷ During the pilot, the NYSE should address whether additional surveillance would be needed because of the derivative nature of the ETFs.

complete the study of communications on the Exchange Floor. This should help firms and brokers in planning for the upcoming changes. Finally, we believe notice for NYSE members, the Division, and OCIE one week prior to the pilot program's implementation will be beneficial to market participants and the Commission. Based on the above, we believe good cause exists to grant accelerated approval to Amendment No. 2, consistent with sections 19 and 6(b) of the Act.²⁸

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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 NYSE. All submissions should refer to File No. SR-NYSE-2002-11 and should be submitted by May 8, 2003.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁹ that the proposed rule change and Amendment No. 1 (SR-NYSE-2002-11) be, and it hereby is, approved, and that Amendment No. 2 be, and it hereby is, approved on an accelerated basis, as a pilot program for six months beginning on or about May 1, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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²⁸ 15 U.S.C. 78s and 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47672; File No. SR-NYSE-2002-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Corporate Governance

April 11, 2003.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,² notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the NYSE. On April 4, 2003, the NYSE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its Listed Company Manual ("Manual") to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *
301.00 Introduction
* * * * *

This section describes the Exchange's policies and requirements with respect to independent [audit committees] *directors*, [ownership interests of corporate directors and officers.] shareholders' voting rights, and other matters affecting [shareholders' ownership interests and the maintenance of fair and orderly markets

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 3, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety. Telephone call between Annemarie Tierney, Office of General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on April 9, 2003.

in listed securities] corporate governance.

When used in this Section 3, “officer” shall have the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

* * * * *

303.00 Corporate Governance Standards

Pending the implementation of the new corporate governance standards set forth in Section 303A *infra*, in accordance with the transition provisions adopted by the Exchange, the standards contained in this Section 303.00 will continue to apply.

303A

General Application

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Section 303A. Consistent with the NYSE’s traditional approach, as well as the requirements of the Sarbanes-Oxley Act of 2002, certain provisions of Section 303A are applicable to some listed companies but not to others.

Equity Listings

Section 303(A) applies in full to all companies listing common equity securities, with the following exceptions:

Controlled Companies—

A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Sections 303A(1), (4) or (5). A controlled company that chooses to take advantage of any or all of these exemptions must disclose in its annual meeting proxy that choice, that it is a controlled company and the basis for the determination. Controlled companies must comply with the remaining provisions of Section 303A.

Limited Partnerships and Companies in Bankruptcy—

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Sections 303A(1), (4) or (5). However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Section 303A.

Closed-End Funds—

The Exchange considers the significantly expanded standards and requirements provided for in Section 303A to be unnecessary for closed-end management companies given the pervasive federal regulation applicable

to them. However, closed-end management companies must comply with the requirements set out in Sections 303A(6), (7) and (12)(b).

Other Entities—

Section 303A does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities (such as those described in Sections 703.16, 703.19, 703.20 and 703.21).

Foreign Private Issuers—

Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A(6) (including the applicable commentary), (7)(a) and (c), (11) and (12)(b).

Preferred and Debt Listings

Section 303A does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Exchange Act, all companies listing only preferred or debt securities on the NYSE are required to comply with the requirements of Sections 303A(6) (including the applicable commentary), (7)(a) and (c), and (12)(b).

Effective Dates/Transition Periods

Companies that do not already have majority-independent boards will need time to recruit qualified independent directors, and companies with classified boards may need additional time to implement the new standards in a series of director elections. Accordingly, all listed companies will be required to comply with the standards in Sections 303A(1) and (2) no later than eighteen months following publication of SEC approval of these standards in the **Federal Register**. If a company has a classified board and a change would be required for a director who would not normally stand for election within the 18-month period, the company will have an additional year, or a total of 30 months after publication of SEC approval of Section 303A in the **Federal Register**, to effect the change in that director position.

Companies will have the same 18-month and 30-month periods described above to comply with the new qualification standards applicable to audit, nominating and compensation committee members. As a general matter, the existing audit committee requirements provided for in Section 303 continue to apply to NYSE listed

companies pending the transition to the new rules.

Companies listing in conjunction with their initial public offering must comply within 24 months of listing. Companies listing upon transfer from another market have 24 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market’s rule, which period had not yet expired, the company will have at least as long a transition period as would have been available to it on the other market.

While the above time periods are needed to recruit directors, the Exchange believes that listed companies, IPOs and transfers can much more quickly implement the other requirements of Section 303A. The provision for a public reprimand letter set out in Section 303A(13) is effective upon publication of SEC approval of Section 303A in the **Federal Register**. The remaining requirements can also be implemented quickly.

Accordingly, the following standards are effective six months from publication of SEC approval of Section 303A in the **Federal Register**:

- Executive sessions of non-management directors (subsection 3);
- Nomination and compensation committees with requisite charters (subsections 4 and 5);
- Audit committee with requisite charter (subsection 7);
- Corporate governance guidelines and code of business conduct and ethics (subsections 9 and 10);
- Foreign private issuer statement of significant differences from NYSE standards (subsection 11); and
- CEO certification of compliance with listing standards (subsection 12).

Once those six months are expired, we expect all newly listed companies, both IPOs and transfers, to have provided for these requirements by the time of listing on the Exchange.

1. Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

2. In order to tighten the definition of “independent director” for purposes of these standards:

(a) No director qualifies as “independent” unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.

Commentary: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director’s relationship to a listed company. Accordingly, it is best that boards making “independence” determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director’s relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding. Of course in no event can any current employee of the listed company be deemed independent of management.

The basis for a board determination that a relationship is not material must be disclosed in the company’s annual proxy statement or, if the company does not file an annual proxy statement, in the company’s annual report on Form 10-K filed with the SEC. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company (except where there is a presumption of non-independence, as described in the commentary to Section 303A(2)(b)). In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board

must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board’s independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

(i) A director who receives, or whose immediate family member receives, more than \$100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is presumed not to be independent until five years after he or she ceases to receive more than \$100,000 per year in such compensation.

Commentary: A listed company’s board may negate this presumption with respect to a director if the board determines (and no independent director dissents) that, based upon the relevant facts and circumstances, such compensatory relationship is not material. Any affirmative determination of independence made by the board in these circumstances must be specifically explained in the listed company’s proxy statement, or, if the company does not file a proxy statement, in the company’s annual report filed on Form 10-K with the SEC, and cannot be covered by a categorical standard adopted in accordance with the commentary to Section 303A(2)(a). Compensation received by a director for former service as an interim Chairman or CEO does not need to be considered as a factor by a board in determining independence under this presumption. If a person who received more than \$100,000 per year in direct compensation from a listed company dies or becomes incapacitated, the presumption of non-independence applicable to his or her immediate family members will cease immediately upon such death or determination of incapacity.

(ii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not “independent” until five years after the end of either the affiliation or the auditing relationship.

(iii) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company’s present executives serves on that company’s compensation

committee is not “independent” until five years after the end of such service or the employment relationship.

(iv) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of another company (A) that accounts for at least 2% or \$1 million, whichever is greater, of the listed company’s consolidated gross revenues, or (B) for which the listed company accounts for at least 2% or \$1 million, whichever is greater, of such other company’s consolidated gross revenues, in each case is not “independent” until five years after falling below such threshold.

General Commentary to Section 303A(2)(b): An “immediate family member” includes a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.

Transition Rule. During the five years immediately following [insert the effective date of this listing standard], each five year “look back” period referenced in sub-paragraphs (b)(i) through (b)(iv) shall instead be the period since [insert effective date of this listing standard]. For example, if a director received in excess of \$100,000 per year in direct compensation from a listed company during the year prior to [insert effective date of this listing standard], there will be no required presumption that the director is not independent unless such compensatory relationship extended past [insert effective date of this listing standard].

3. To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

Commentary: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. “Non-management” directors are all those who are not company officers (as that term is defined in Rule 16a-1(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive

sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees. In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly and confidentially with the presiding director or with the non-management directors as a group. That method can follow the same process established for communications to the audit committee required by Section 303A(7)(c)(ii).

4. (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) the committee's purpose—which, at minimum, must be to: identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and develop and recommend to the board a set of corporate governance principles applicable to the corporation;

(ii) the committee's goals and responsibilities—which must reflect, at minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management; and

(iii) an annual performance evaluation of the committee.

Commentary: A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and

management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms. Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter. To avoid any confusion, note that the audit committee functions specified in Section 303A(7) may not be allocated to a different committee, other than as noted in the General Commentary to Section 303A(7).

5. (a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) the committee's purpose—which, at minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive compensation for inclusion in the company's proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10-K with the SEC, in accordance with applicable rules and regulations;

(ii) the committee's duties and responsibilities—which, at minimum, must be to:

(A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and have sole authority to determine the CEO's compensation level based on this evaluation; and

(B) make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and

(iii) an annual performance evaluation of the compensation committee.

Commentary: In determining the long-term incentive component of CEO

compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws (i.e., Rule 162(m)).

The compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter. To avoid any confusion, note that the audit committee functions specified in Section 303A(7) may not be allocated to a different committee, other than as noted in the General Commentary to Section 303A(7).

6. Add to the "independence" requirement for audit committee membership the requirements of Rule 10A-3(b)(1) under the Exchange Act, subject to the exemptions provided for in Rule 10A-3(c).

Commentary Applicable to All Companies: While it is not the audit committee's responsibility to certify the company's financial statements or to guarantee the auditor's report, the committee stands at the crucial intersection of management, independent auditors, internal auditors and the board of directors. The Exchange supports additional directors' fees to compensate audit committee members for the significant time and effort they expend to fulfill their duties as audit committee members, but does not believe that any member of the audit committee should receive any compensation other than such director's fees from the company. If a director satisfies the definition of "independent

director" set out in Section 303A(2), then his or her receipt of a pension or other form of deferred compensation from the company for prior service (provided such compensation is not contingent in any way on continued service) will not preclude him or her from satisfying the requirement that director's fees are the only form of compensation he or she receives from the company.

An audit committee member may receive his or her fee in cash and/or company stock or options or other in-kind consideration ordinarily available to directors, as well as all of the regular benefits that other directors receive. Because of the significantly greater commitment of audit committee members, they may receive reasonable compensation greater than that paid to the other directors (as may other directors for other committee work). Disallowed compensation for an audit committee member includes fees paid directly or indirectly for services as a consultant or a legal or financial advisor, regardless of the amount. Disallowed compensation also includes compensation paid to such a director's firm for such consulting or advisory services even if the director is not the actual service provider. Disallowed compensation is not intended to include ordinary compensation paid in another customer or supplier or other business relationship that the board has already determined to be immaterial for purposes of its basic director independence analysis. To avoid any confusion, note that this requirement pertains only to audit committee qualification and not to the independence determinations that the board must make for other directors.

Commentary Applicable to All Companies Other than Foreign Private Issuers: Each member of the committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. A board may presume that a person who satisfies the definition of audit committee financial expert set out in Item 401(e) of Regulation S-K has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to

committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committee of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC.

7. (a) Each company is required to have a minimum three person audit committee composed entirely of independent directors that meet the requirements of Section 303A(6).

(b) The audit committee must have a written charter that addresses:

(i) the committee's purpose—which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the company's internal audit function and independent auditors; and

(B) prepare the report required by the SEC's proxy rules to be included in the company's annual proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10-K with the SEC;

(ii) the duties and responsibilities of the audit committee set out in Section 303A (7)(c) and (d); and

(iii) an annual performance evaluation of the audit committee.

(c) As required by Rule 10A-3(b)(2), (3), (4) and (5) of the Securities Exchange Act of 1934, and subject to the exemptions provided for in Rule 10A-3(c), the audit committee must:

(i) directly appoint, retain, compensate, evaluate and terminate the company's independent auditors;

Commentary: In connection with this requirement, the audit committee must have the sole authority to approve all audit engagement fees and terms, as well as all significant non-audit engagements with the independent auditors. In addition, the independent auditor must report directly to the audit committee. This requirement does not preclude the committee from obtaining

the input of management, but these responsibilities may not be delegated to management. The audit committee must be directly responsible for oversight of the independent auditors, including resolution of disagreements between management and the independent auditor and pre-approval of all non-audit services.

(ii) establish procedures for the receipt, retention and treatment of complaints from listed company employees on accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submissions by listed company employees of concerns regarding questionable accounting or auditing matters;

(iii) obtain advice and assistance from outside legal, accounting or other advisors as the audit committee deems necessary to carry out its duties; and

Commentary: In the course of fulfilling its duties, the audit committee may wish to consult with independent counsel and other advisors. The audit committee must be empowered to retain and compensate these advisors without seeking board approval.

(iv) receive appropriate funding, as determined by the audit committee, from the listed company for payment of compensation to the outside legal, accounting or other advisors employed by the audit committee.

(d) In addition to the duties set out in Section 303(A)(7)(c), the duties of the audit committee must be, at a minimum, to:

(i) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

Commentary: After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible

for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(ii) discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(iii) discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Commentary: The audit committee's responsibility to discuss earnings releases as well as financial information and earnings guidance may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(iv) discuss policies with respect to risk assessment and risk management;

Commentary: While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(v) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Commentary: To perform its oversight functions most effectively, the audit

committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(vi) review with the independent auditor any audit problems or difficulties and management's response;

Commentary: The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(vii) set clear hiring policies for employees or former employees of the independent auditors; and

Commentary: Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(viii) report regularly to the board of directors.

Commentary: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

General Commentary to Section 303A(7)(d): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

General Commentary to Section 303A(7): To avoid any confusion, note that the audit committee functions specified in Section 303A(7) are the sole responsibility of the audit committee and may not be allocated to a different committee.

(e) Each listed company must have an internal audit function.

Commentary: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. A company may choose to outsource this function to a firm other than its independent auditor.

8. Reserved.

9. Listed companies must adopt and disclose corporate governance guidelines.

Commentary: No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters

of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual report must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.

The following subjects must be addressed in the corporate governance guidelines:

- **Director qualification standards.** These standards should, at minimum, reflect the independence requirements set forth in Sections 303A(1) and (2). Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.

- **Director responsibilities.** These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

- **Director access to management and, as necessary and appropriate, independent advisors.**

- **Director compensation.** Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.

- **Director orientation and continuing education.**

- **Management succession.** Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

- **Annual performance evaluation of the board.** The board should conduct a

self-evaluation at least annually to determine whether it and its committees are functioning effectively.

10. Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Commentary: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

- **Conflicts of interest.** A "conflict of interest" occurs when an individual's private interest interferes in any way—or even appears to interfere—with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees

of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

- **Corporate opportunities.**

Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.

- **Confidentiality.** Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

- **Fair dealing.** Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

- **Protection and proper use of company assets.** All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.

- **Compliance with laws, rules and regulations (including insider trading laws).** The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

- **Encouraging the reporting of any illegal or unethical behavior.** The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a

particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

11. Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards.

Commentary: Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under NYSE listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis. Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States in accordance with Sections 103.00 and 203.01 of the Listed Company Manual (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

12. (a) Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the company of NYSE corporate governance listing standards.

Commentary: The CEO's annual certification to the NYSE that, as of the date of certification, he or she is unaware of any violation by the company of NYSE corporate governance listing standards will focus the CEO and senior management on the company's compliance with the listing standards. Both this certification to the NYSE, and any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public

disclosure, must be disclosed in the listed company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the company's annual report on Form 10-K filed with the SEC.

(b) Each listed company CEO must promptly notify the NYSE after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Section 303(A).

13. The NYSE may issue a public reprimand letter to any listed company that violates a NYSE listing standard.

Commentary: Suspending trading in or delisting a company can be harmful to the very shareholders that the NYSE listing standards seek to protect; the NYSE must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the NYSE to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the NYSE may issue a public reprimand letter to a company that it determines has violated a NYSE listing standard. For companies that repeatedly or flagrantly violate NYSE listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in Chapter 8 of the Listed Company Manual. The processes and procedures provided for in Chapter 8 govern the treatment of companies falling below those standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE represents that it has long pioneered advances in corporate governance. The NYSE has required companies to comply with listing

standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of the U.S. capital markets has demanded enhanced governance standards or disclosure. Now, in the aftermath of the "meltdown" of significant companies due to failures of diligence, ethics and controls, the NYSE believes it has the opportunity—and the responsibility—once again to raise corporate governance and disclosure standards.

On February 13, 2002, then-Commission Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee ("Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies.

The Committee believed that the Exchange could best fulfill this goal by building upon the strength of the NYSE and its listed companies in the areas of corporate governance and disclosure. This approach recognizes that new prohibitions and mandates, whether adopted by the NYSE, the Commission, or Congress, cannot guarantee that directors, officers and employees will always give primacy to the ethical pursuit of shareholders' best interests. The system depends upon the competence and integrity of corporate directors, as it is their responsibility to diligently oversee management while adhering to unimpeachable ethical standards. The Exchange now seeks to strengthen checks and balances and give diligent directors better tools to empower them and encourage excellence. The Exchange states that, in seeking to empower and encourage the many good and honest people that serve NYSE-listed companies and their shareholders as directors, officers and employees, it seeks to avoid recommendations that would undermine their energy, autonomy and responsibility.

The NYSE represents that the proposed new corporate governance listing requirements are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The NYSE believes the resulting proposals will also allow shareholders to more easily and efficiently monitor the performance of companies and directors in order to reduce instances of lax and unethical behavior.

The NYSE represents that, in preparing the recommendations it made to the NYSE Board of Directors ("NYSE Board"), the Committee had the benefit of the testimony of 17 witnesses and written submissions from 21 organizations or interested individuals. The Committee also examined the excellent governance practices that many NYSE-listed companies have long followed. In addition, the Committee reviewed extensive commentary recommending improvement in corporate governance and disclosure, statements by the President of the United States and members of his Cabinet, as well as pending Commission proposals and legislation introduced in Congress.

On June 6, 2002, the Committee submitted its report and initial recommendations to the NYSE Board.⁴ The NYSE states that President Bush, then-Commission Chairman Harvey Pitt, members of Congress, CEOs of listed companies, institutional investors and state pension funds, organizations such as the Business Roundtable and the Council of Institutional Investors, and leading academics and commentators expressed strong support for the Committee's initiatives. The Committee also received insightful and practical suggestions for the improvement of its recommendations from experts within the NYSE, listed companies, institutional investors, outside organizations and interested individuals. In addition to many face-to-face meetings and telephone calls, the Exchange received over 300 comment letters.

Many of the commentators argued for, or sought, guidance from the Exchange at a level of detail inconsistent with the role that the Committee was asked to fulfill. However, where appropriate the Committee reflected cogent comments in clarifications and modifications to its recommendations.

Following approval of the NYSE Board of Directors on August 1, 2002, on August 16, 2002, the NYSE filed proposed rule changes to its corporate governance standards with the Commission (the NYSE Corporate Governance Proposals) which reflect the findings of the Committee. The proposals for new corporate governance listing standards for companies listed on the Exchange would be codified in a new Section 303A of the Manual.⁵

⁴ Report of the NYSE Corporate Accountability and Listing Standards Committee, June 6, 2002.

⁵ In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The Exchange is proposing to adopt the recommendations as standards in substantially the form they were made

Subsequent to the original filing of the NYSE Corporate Governance Proposals, the Commission requested that the NYSE file separately proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and the proposed amendment to NYSE Rule 452 (which would prohibit member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder). The Exchange made this separate filing with the Commission on October 7, 2002.⁶

Significant Amendments From Original Proposals

In the NYSE Corporate Governance Proposals filed in August 2002, the Exchange proposed to continue its longstanding practice of permitting listed foreign private issuers to follow home country practice in lieu of the standards specified in Section 303A, subject only to the new requirement in proposed Section 303A(11) that such companies must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. However, as a result of the Sarbanes-Oxley Act of 2002⁷ ("Sarbanes-Oxley Act") and Rule 10A-3 ("Rule 10A-3") under the Act,⁸ the Exchange must propose standards that require that all listed companies have an independent audit committee and satisfy certain other requirements. For this reason, among others, the Exchange proposes to add a section entitled "General Application" to Section 303A to clarify how the

by the Committee and adopted by the NYSE Board. Accordingly, the format used states a basic principle, with the additional explanation and clarifications included as "commentary". The NYSE advises readers that the words "must" and "should" have been chosen with care when used. The use of the word "must" indicates a standard or practice with which companies would be required to comply. The use of the word "should" indicates a standard or practice that the Exchange believes is appropriate for most if not all companies, but failure to employ or comply with such standard or practice would not constitute a violation of NYSE standards.

While many of the requirements set forth in this new rule are relatively specific, the Exchange notes that it is articulating a philosophy and approach to corporate governance that companies would be expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards would be expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

⁶ See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (SR-NYSE-2002-46).

⁷ Pub. L. 107-204, 116 Stat. 745 (2002).

⁸ See Securities Exchange Act Release No. 47654 (April 9, 2003).

proposed standards would apply to different kinds of listed entities.

The NYSE also proposes to include a subsection entitled "Effective Date/Transition Period" in the General Application section of Section 303A. The subsection amends certain of the effective dates originally proposed. NYSE notes, however, that at least certain of those effective dates will require further amendment. Certain of the requirements of proposed Section 303A(6), (7) and (12) reflect the requirements of the Sarbanes-Oxley Act and Rule 10A-3. The Commission's final rules implementing these provisions specify dates by which companies must comply with these requirements.⁹ NYSE represents that, of course, listed companies will be required to apply these particular standards in accordance with the transition periods adopted by the Commission, and the rules proposed herein will be amended as necessary to reflect those periods.

Proposed Section 303A(2) Regarding Director Independence

The Exchange has made a number of changes to its originally proposed definition of independence for board membership as a result of comments from the Commission, although not to the general rule that charges the board of directors to affirmatively determine independence.

In addition, the Exchange wishes to point out a matter that arises as a result of the enactment of the Sarbanes-Oxley Act and the Commission's implementing rules thereunder.

Immediate Family

Certain close family relationships preclude independence under the NYSE's proposed rule. The definition of "immediate family" is unchanged from that proposed in the NYSE's original filing, which in turn is the same as that employed in the NYSE's current rule regarding the independent audit committee.¹⁰

When the Commission proposed its rules implementing Section 301 of the Sarbanes-Oxley Act, it proposed to use a more limited concept of family. The Exchange defines "immediate family" as including "a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than

⁹ Companies must comply with these provisions by the first annual meeting held after January 15, 2004, but in no event later than October 31, 2004. Foreign private issuers and small business issuers will have until July 31, 2005 to comply.

¹⁰ Section 303.02(A) of the Manual.

employees) who shares such person's home." The Commission's proposal includes only a person's spouse, minor children or stepchildren or children or stepchildren sharing the director's home.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others¹²

Overview

Widespread Support for the Recommendations. The Exchange indicates that the vast majority of commentators, including listed companies, institutional investors, and other interested organizations and individuals enthusiastically embraced the Committee's recommendations for new corporate governance and listing standards for the NYSE.

Concerns of Smaller Companies. While most large companies, law firms and institutions expressed general support for the proposals, commentators who characterized themselves as smaller businesses voiced concern. All of these companies complained that the recommendations seem to have been structured for a large-company model, without taking into account the disproportionate impact the proposed rules would have on smaller companies. In particular, they argued that the Committee's recommendations for separate nominating and compensation committees, together with its requirement of majority-independent boards, combined to effectively require that smaller companies enlarge their

relatively small boards. These constituents were particularly concerned with the increased costs that compliance with the recommendations would entail. They argued that this would cause the diversion of shareholder value to unrelated third parties and the misdirection of board and management time and effort from productive to bureaucratic activities.

Difficulty of Obtaining Independent Directors. Several large companies expressed concern that the new rules would make it more difficult for companies to find quality independent directors because of the increased responsibilities and time commitment that the rules would require of independent directors (especially audit committee members), as well as a perceived increase in such directors' exposure to liability.

Majority-Independent Boards

Many commentators applauded the recommendation that listed companies be required to maintain majority-independent boards. However, numerous constituents, large and small, raised concerns that the requirement would have a variety of adverse consequences.

(a) Controlled Companies

Most prominently, more than half of the commenting companies noted that the majority-independent board requirement would create insuperable difficulties for companies controlled by a shareholder or parent company. They argued that the rule would be inequitable as applied to them in that it would deprive a majority holder of its shareholder rights; unnecessary in that the Committee's other recommendations (in particular the independent committee and disclosure requirements) would adequately protect minority shareholders; and undesirable in that it would reduce access to capital markets by discouraging spin-offs, by inducing some currently public companies to go private rather than lose control of their subsidiary, and by discouraging those who manage buyout funds and venture capital funds from using initial public offerings and NYSE listings as a means for achieving liquidity and raising capital. One company argued that the majority-independent board requirement would vitiate the ability of a parent to effectively manage its subsidiary, in the process denying to shareholders of the parent the benefits associated with its controlling stake in the subsidiary and requiring them instead to transfer control of the subsidiary to third parties.

Similarly, commentators suggested that companies that are majority-owned by officers and directors should be exempt from this recommendation. One such company argued that where corporate insiders own a majority of the stock of a company, the interests of outside minority shareholders can be adequately protected by the proposed requirement of an independent compensation committee. Family-owned companies also expressed concern with the majority-independence requirement because the proposal would limit the families' involvement with the board.

The provision in subsection 1 of Section 303A exempting controlled companies from the requirements to have a majority independent board and independent nominating and compensation committees is intended to address these concerns.

(b) Shareholder Agreements and Multiple Classes of Stock

Companies with multiple classes of securities, some of which have a right of representation on the board, argued that they should not have to meet the majority-independence requirement because doing so would be in direct conflict with their equity structure and the shareholder rights embedded therein.

Companies with multiple classes of stock representing different constituencies also had difficulty with this recommendation. One company that recently gave organized labor the right to appoint a director to the board as part of a collective bargaining agreement requested that the NYSE allow grandfathering of such arrangements. This company noted that compliance with this recommendation would effect a retroactive change in the bargains that brought about these arrangements and might trigger stockholder approval requirements.

The Exchange clarified in subsection 4 of Section 303A that the selection and nomination of such directors need not be subject to the nominating committee process.

Tighter "Independent Director" Definition

Most commentators were in favor of tightening the definition of "independence," with only a quarter advocating the continued use of existing standards. Certain institutional investors praised with particular emphasis the five-year look-back on compensation committee interlocks. However, commentators have raised several general questions, described below, as well as numerous specific

¹¹ 15 U.S.C. 78f(b)(5).

¹² For a discussion of comments received with respect to NYSE's proposal regarding shareholder approval of equity-compensation plans which was filed as a separate proposal, see Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (SR-NYSE-2002-46).

questions with respect to materiality determinations.

(a) Share Ownership

Many commentators expressed a desire for additional clarification of the interaction between share ownership and independence.

Several commentators opposed viewing any degree of share ownership as a *per se* bar to "independence" (absent such other factors as an employment relationship or other financial or personal tie to the company). They argued that directors who own or represent institutions that own very significant economic stakes in the listed companies are often effective guardians of shareholders' interests not only as members of the full board but also of compensation and nominating committees, while directors whose only stake in the membership on the board is the director's fee may be unduly loyal to management. Several venture capitalists raised a similar concern that they would run afoul of the new independence definition, even though venture capitalists, acting as fiduciaries to funds with significant shareholdings, typically have all the qualities that the independent director definition is intended to ensure.

The question of the impact of ownership on independence was particularly vexing to companies with listed subsidiaries. They were concerned that a director who is deemed independent with respect to a parent company may not be considered independent with respect to the parent-controlled subsidiary.

The Exchange has clarified in subsection 2 of Section 303A that, since the concern is independence from management, ownership of even a significant amount of stock, by itself, is not necessarily a bar to an independence finding.

(b) Safe Harbors for Independence Determinations

Several financial institutions specifically applauded the committee's recommendation that non-materiality determinations be made on a case-by-case basis and publicly disclosed and justified. However, a number of companies objected to the affirmative determination requirement, requesting that the NYSE specify a safe harbor for materiality. These companies cited the competing demands on the board's time and attention; the likelihood that the "no material relationship" requirement would unduly shrink the pool of qualified directorship candidates; and the possibility that the fact-specific inquiry required would expose directors

to additional scrutiny and potential liability, which they may be unwilling to assume without additional compensation and/or protection.

Many commentators would like to be able to fulfill their affirmative determination requirement through the establishment of their own safe harbors. For example, one commentator attached a detailed safe harbor proposal covering various types of credit transactions. In addition, a vast majority of commenting banks and financial institutions asked for clarification regarding the treatment of loans to directors. In light of the existing regulatory framework that controls relationships between a bank and its directors and affiliated entities, banks desired to establish categorically that arm's-length loans to directors would not negate independence.

Numerous companies and organizations argued that if there are no material relationships, the NYSE should allow the statement of reasons for the board's determination of independence to be omitted from the proxy statement, and suggested that the rules should not require details of each relationship regardless of size.

The Exchange has clarified in subsection 2 of Section 303A that categorical standards are permissible.

(c) Five-Year Cooling-Off Period

More than half of the companies commenting on this issue protested that five years is too long, advocating a two-to-three year period instead. Five companies, reflecting their individual circumstances, requested an exemption for interim CEOs who have served for less than one year. One commentator objected to subjecting all former employees to the cooling-off period, recommending that the prohibition be limited to former executive officers only.

Several commentators agreed with the five-year period for former employees, but found the period too long with respect to compensation committee interlocking directorates. Notably, one company thought that the five-year look-back on interlocking directorates would strain parent-subsidiary relations. Likewise, one parent of a controlled public subsidiary expressed its belief that its executives should be able to sit on the subsidiary's compensation committee to ensure that subsidiary's compensation policies are compatible with those of its parent. In addition, a few companies asked whether the inquiry would end by examining the present and past relationships at companies where directors are currently employed, or if one would be required to search back

for possible interlocks at companies that may have since been acquired or dissolved "pointing out that with the immediate family overlay to the rule, the latter inquiry could become extremely cumbersome.

Several financial institutions (along with several smaller companies) took issue with the blanket exclusion of family members for five years. One company argued that when a family member's relationship has terminated, there should be independence. Another commentator recommended that relatives of deceased or disabled former officers be classified as independent as long as they themselves have no financial involvement other than ownership in the company.

The Exchange has clarified several of these issues with specified provisions in subsection 2(b) of Section 303A.

Non-Management Executive Sessions

The great majority of the commentators objected to the executive session requirement, to the requirement to designate and disclose a presiding director for such sessions, or to both. They argued that the sessions (a) were unnecessary because the mandated audit, compensation and nominating committees would provide sufficient checks; (b) would bifurcate the board into two tiers, turning management directors into second-class directors; and (c) would deprive directors of guidance by management. In addition, they argued that mandating such sessions could result in mechanical, pro forma meetings.

The majority of commentators argued that the presiding director requirement would have a divisive effect. In addition, they argued that the requirement would deprive the board of needed flexibility; they would like the NYSE to allow any independent director to preside over a given executive session. Some commentators also complained that the presiding director requirement amounts to the NYSE's mandating separation of the roles of Chairman and CEO. (Conversely, one non-U.S. company urged the NYSE to require the designation of a "lead director", or to mandate separation of these roles.) One organization suggested that the NYSE should instead require that the corporate governance guidelines specify procedures for the selection of a chair for each executive session. Even commentators who did not vigorously object to the recommendation that a presiding director be designated objected to the requirement that such designation be publicly disclosed.

The Exchange has clarified in subsection 3 of Section 303A that no

designation of a "lead director" is intended, and that companies would have some flexibility in how they provide for conduct of the executive sessions.

General Comments on the Committee Requirements

More than half of all commentators thought that boards should have the flexibility to divide responsibilities among committees differently than as contemplated in the Report. In addition, a number of commentators were concerned that the recommendations have a tendency to blur the line between the roles of the board and management, involving the board too deeply in the day-to-day operations of listed companies.

A substantial number of commentators argued that the board as a whole should be allowed to retain its major oversight responsibilities, such as decisions on nominating director candidates, adopting governance guidelines, adopting incentive plans, and hiring outside consultants.

One company suggested that, as with the majority-independent director requirement, there should be a 24-month transition period for the requirements that audit, compensation and nominating committees be comprised entirely of independent directors.

The Exchange has clarified in subsection 4 of Section 303A that the nomination/corporate governance and compensation committee responsibilities could be allocated to other or different committees, as long as they have published charters.

Independent Nomination/Corporate Governance Committee

Approximately one-fifth of the commenting companies thought that nominating committees should not have to consist solely of independent directors, some arguing that a majority of non-management directors would be sufficient, some requesting that at least one insider be allowed on the nominating committee. Some commentators suggested that a nominating committee is not necessary.

Independent Compensation Committee

There was opposition to this recommendation from several companies. One company argued that the full board should set the salary of the CEO. Similarly, several commentators commented that although the procedure for determining CEO compensation could originate from the compensation committee, the results of the compensation committee's work

should be presented to the entire board, with ultimate decision-making responsibility residing in the board as a whole. Another company objected to the committee's exclusive role in evaluation of CEO and senior executive compensation on the ground that management should be free to explore new compensation arrangements with consultants.

Audit Committee Member Qualification

There was a broad call from attorneys, associations and companies alike for clarification on the question of what constitutes "directors' fees." Questions arose in particular with respect to pension and other deferred compensation, long-term incentive awards, and compensation in the form of company products, use of company facilities and participation in plans available generally to the listed company's employees.

Several companies and law firms objected to the recommendation that audit committee members' fees be limited solely to directors' fees, arguing that this would reduce a company's access to its directors' expertise and suggesting instead a more liberal restriction, such as an annual cap on consulting fees.

The Exchange has clarified this issue in commentary to subsection 6 of Section 303A.

Though one institutional investor specifically applauded the 20% ownership ceiling for voting participation in the audit committee, approximately ten commentators objected on the ground that this would disqualify certain types of large shareholders, such as venture capital investors, who may be excellent audit committee members.

The requirement that the chair of the audit committee have accounting or related financial management expertise drew opposition from a number of commentators who felt that it was enough for one member of the committee to have such expertise. Several companies protested that the requirement would unduly limit the number of candidates available to chair the audit committee and unnecessarily dictate which member should be chair.

As noted, the Exchange did not make proposals in these two areas in view of provisions in the recently adopted Sarbanes-Oxley legislation.

Audit Committee Charter

The majority of commentators were concerned about the capacity of the audit committee to handle the list of responsibilities assigned to it by the recommendation. There were also

numerous requests for clarification as to whether the recommendation mandates review of all 10-Qs, press releases, and disclosures to analysts on a case-by-case basis, or whether the audit committee's task is rather to set policy with regard to the form of the financials in those releases. Commentators emphasized that the former alternative would be overly burdensome to the audit committee, would tie management's hands to the point where it would not be able to respond to analyst calls without first obtaining approval from the audit committee and would ultimately chill the distribution of information to the public.

The Exchange has clarified this issue in its commentary to subsection 7(b)(ii)(D) of Section 303A.

About a quarter of the commentators objected to the recommendation that sole authority to retain and terminate independent auditors be granted to the audit committee, suggesting that the entire board should be able to act on the recommendation of the audit committee and arguing that this would not pose any governance problems in light of the majority-independence requirement.

Some commentators rejected wholesale the committee's enumeration of minimum duties and responsibilities for the audit committee, arguing, for example, that the board should have the flexibility to allocate responsibility for the oversight of compliance with legal and regulatory requirements as it deems appropriate, and that the audit committee should not be obligated to assist board oversight of such compliance. Several commentators objected to the recommendation's requirement that the audit committee discuss policies with respect to risk assessment and management. For example, one company has a risk committee devoted solely to this purpose and would like the requirement to accommodate such arrangements.

The Exchange has clarified this issue in commentary to subsection 7(b)(ii)(F) of Section 303A.

Some commentators requested that the audit committee be allowed to delegate to a member or subcommittee some of the proposed responsibilities, particularly the review of guidance given to analysts and earnings releases, on the ground that without such delegation the roster of duties would be too burdensome.

A few commentators pointed out that it was unclear whether and to what extent there would be an internal audit requirement.

The Exchange has clarified this matter in subsection 7(c) of Section 303A.

Required Adoption and Disclosure of Corporate Governance Guidelines

A number of commentators argued that companies should have broader discretion in drafting their governance guidelines.

Required Adoption and Disclosure of a Code of Business Conduct and Ethics

Many of those who commented on this recommendation urged that only material waivers of the business ethics policy be required to be disclosed.

Disclosure by Foreign Private Issuers

Two commentators urged tougher treatment of foreign companies, with one suggesting that exemptions from listing requirements for foreign private issuers should be the exception rather than the rule.

CEO Certification

More than half of the commenting companies and organizations opposed this recommendation. The overwhelming majority of comments protested that the requirement would duplicate the recent SEC rules requiring CEO certification for periodic reports. They opposed the expansion of the certification requirement to all statements made by the company to investors and urged the NYSE to defer final action on this subject until the SEC issues a final rule, or to coordinate its action on this issue with the SEC, so as to avoid different standards by different regulatory bodies. Some commentators suggested language enabling the CEO to rely on the CFO, external auditors, internal auditors, the audit committee, inside and outside counsel and other consultants in making his or her certification.

A few commentators expressed concern that the recommendation raised potential for pernicious private litigation and urged the NYSE to make clear that the certification requirement, if adopted, creates no private cause of action.

The Exchange has decided not to require its own CEO certification of financials in light of the certifications required by the Sarbanes-Oxley legislation and SEC rules.

Public Reprimand Letter From NYSE

Several companies stressed the importance of providing offenders with due process through notice and an opportunity to cure prior to any public reprimand.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal 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 NYSE. All submissions should refer to File No. SR-NYSE-2002-33 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9473 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47667; File No. SR-NYSE-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Elimination of the Exception to Rule 123(e) for Exchange-Traded Funds

April 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to eliminate the exception to NYSE Rule 123(e), which provided that orders in Exchange-Traded Funds ("ETFs") must be entered into an electronic data base (front end systemic capture, or "FESC") on the Floor within 90 seconds of execution. This amendment originally became effective on a pilot basis for one year.³ Thereafter the pilot was extended for an additional year, and is set to expire on January 5, 2004.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR-NYSE-2001-52), adopting Supplementary Material .23 of NYSE Rule 123(e).

⁴ See Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR-NYSE-2002-48).

¹³ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into an electronic database (front end systemic capture, or "FESC") before they can be represented in the Exchange's auction market.

On December 20, 2001, the Exchange filed a proposed rule change (a one-year pilot) to amend Rule 123(e) to provide that orders in ETFs must be entered into FESC within 90 seconds of execution.⁵ The pilot was subsequently extended for an additional year and is set to expire on January 5, 2004.⁶ The NYSE submitted the proposed rule change to make the pilot effective on the premise that ETF products are derivatively priced, and trade very rapidly in response to changes in the underlying value of fund components and prices of options and futures contracts on the funds. In addition, the proposed rule change was in response to market participants who thought that the FESC requirement might possibly be a disincentive to sending order flow to the Exchange as it may have been perceived as unduly slowing down the trading process and interfering with trading strategies dependent upon speed of execution. Market participants noted that the Exchange is competing for order flow with other market centers that do not have any FESC-type requirements. In the Exchange's experience, however, that rule change did not have a material impact on the Exchange's market share in ETF products. Thus, the Exchange is proposing to remove the exception from NYSE Rule 123(e) at this time.⁷ In addition, removal of the exception will aid in the Exchange's ability to surveil for on-Floor trading in ETF products if the Commission approves the Exchange's proposal to allow portable phones on the Floor.⁸

⁵ See note 3, *supra*.

⁶ See note 4, *supra*.

⁷ Telephone conversation between Don Siemer, Director, Market Surveillance, NYSE, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on April 9, 2003.

⁸ See File No. SR-NYSE-2002-11. In NYSE-2002-11 the Exchange proposes to authorize the use of and provide portable phones on the Exchange Floor on a six-month pilot basis. Originally under the proposed rule change, the Exchange proposed not to permit portable communications at the point of sale for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as ETFs, since under an exception to NYSE Rule 123(e) orders in ETFs can first be executed and then entered into an electronic data base (FESC). To implement this facet of the proposal, the Exchange proposed creating technical

The Exchange believes that requiring orders in ETFs to be first entered into FESC before execution or representation on the Floor will place them on an equal footing with orders in other securities with respect to order entry and recording procedures. The Exchange notes that the same surveillance procedures applicable to trading in all other equities will also apply to ETFs.

By requiring orders to be first entered into FESC before execution or representation on the Floor, the Exchange can track more accurately, via systemic records, the time an order is received on the Floor. Therefore, the Exchange's ability to surveil for anomalous trading situations—such as on-Floor trading and the creation of inaccurate records, frontrunning of orders and improper execution of customers' orders—would be enhanced.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5)⁹ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the

restraints to block the use of portable phones in the Expanded Blue Room, where ETFs trade. However, due to an inability to develop technical restraints to prevent the use of portable phones where ETFs currently trade, the Exchange amended the filing, in Amendment No. 2 to NYSE-2002-11, to allow the use of portable phones for orders in ETFs in conjunction with this proposal to eliminate the NYSE Rule 123 ETF FESC entry exception.

⁹ 15 U.S.C. 78f(b)(5).

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 or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ 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.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b-4(f)(6)(iii). Waiver of this period will allow the Exchange to discontinue the exception to FESC under NYSE Rule 123(e) for ETFs. The Exchange believes this will enhance its ability to surveil for anomalous trading situations such as on-Floor trading and the creation of inaccurate records, frontrunning of orders and improper execution of customers' orders. In addition, this will aid the Exchange's ability to surveil the market if the Commission approves the Exchange's proposal to allow Exchange-provided and authorized portable phones on the Floor. The Exchange believes that this is in the public interest.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective as of April 9, 2003.¹² The Commission believes that the elimination of the ETF FESC entry exception to NYSE Rule 123 will enhance the Exchange's ability to meet its surveillance obligations under the Exchange Act and the SEC Order relating to NYSE's floor broker regulatory program.¹³ The waiver of the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹³ See In the Matter of New York Stock Exchange, Inc., SEC Release No. 34-41574, June 29, 1999;

30-day operative delay will permit the NYSE to implement this change immediately, which should benefit the public, investor protection and improve the NYSE's surveillance capabilities for ETFs.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-NYSE-2003-09 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-9474 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is given that

Administrative Proceeding File No. 3-9925 ("SEC Order").

¹⁴ The Commission emphasizes that when a self-regulatory organization ("SRO") determines that the rationale for an exception to an important regulatory initiative such as FESC order entry is no longer applicable, that SRO is expected to submit a proposed rule change to reflect the change in circumstances as soon as practicable.

¹⁵ 17 CFR 200.30-3(a)(12).

Subchapter S2R, the Office of Central Operations, is being amended. The new material and changes are as follows:

Section S2R.10 The Office of Central Operations—(Organization):

C. The Immediate Office of the Associate Commissioner, Office of Central Operations (S2R).

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC).

Retitle:

a. The "Center for Systems and Logistics Support (S2RC1)" to the "Center for Information Technology (S2RC1)"

d. The "Center for Material Resources Support (S2RC4)" to the "Center for Material Resources (S2RC4)"

Section S2R.20 *The Office of Central Operations*—(Functions):

C. The Immediate Office of the Associate Commissioner, OCO (S2R) provides internal operations and management support and assistance to the Associate Commissioner and all OCO components.

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC) is responsible for the direction of six centers which perform systems, management, program, material resources, personnel management services and security and integrity support functions for OCO.

Retitle:

a. The "Center for Systems and Logistics Support (S2RC1)" to the "Center for Information Technology (S2RC1)".

Delete: Number 2.

Re-number: Numbers 3, 4 and 5 to 2, 3 and 4.

Delete: Number 6.

Delete: From Number 10, "health and safety matters, laborer services, transportation, projects concerning the maintenance and performance of capitalized equipment and other property inventories, and provides input to budget submittals for equipment, furniture and supplies"

Re-number: Numbers 7, 8, 9 and 10 to 5, 6, 7 and 8.

b. The Center for Management Support (S2RC2):

1. Provides administrative support to the Associate Commissioner, OCO; and the OCO Assistant Associate Commissioners in such areas as:

Amend as follows:

Delete: "—Performance Management and Recognition." "—Budget Development and Management."

Add: "—Equal Employment Opportunity."

Retitle:

d. The "Center for Material Resources Support (S2RC4)" to the "Center for Material Resources (S2RC4)":

Add:

8. Serves as SSA Liaison with the Department of the Treasury to ensure timely benefit payments.

9. Procures items within the limits of the delegated authorities afforded OCO, essential to the operation.

10. Coordinates health and safety matters, laborer services, transportation, projects concerning the maintenance and performance of capitalized equipments and submittals for equipment, furniture and supplies.

11. Coordinates OCO Budget Development and Management.

e. The Center for Human Resources (S2RC5):

Add: 13. Performance Management and Recognition.

Dated: April 2, 2003.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 03-9443 Filed 4-16-03; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Grant Agreement Between Palm Beach County and the Federal Aviation Administration for the Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 8.5 acres) at the West Palm Beach International Airport, West Palm Beach, FL from the conditions, reservations, and restrictions as contained in a grant agreement between the FAA and Palm Beach County, dated September 29, 1993, and September 27, 1994. The release of property will allow Palm Beach County to dispose of the property for other than aeronautical purposes. The property is located on the North side of Belvedere Road eastward from the South end of Country Club Drive. The parcel is currently designated as non-aeronautical, revenue generation property. The property will be disposed of for construction of a commercial shopping center.

The fair market value of the property has been determined by appraisal to be

\$1,670,000. The airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: May 19, 2003.

ADDRESSES: Documents are available for review at the Airport Manager's office, Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406 and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03-9510 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Ann Hoffer, Room 612, Federal Aviation Administration, Standards and Information Division, APF-3, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hoffer at the above address, on (202) 267-3856, or by e-mail at: ann.hoffer@faa.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120-0559, Aviation Research Grants Program. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, profit and not for profit organizations for security research. The current estimated annual reporting burden is 1,400 hours.

2. 2120-0657, Type Certification Procedures for Changed Products. 14 CFR part 21 with certain exceptions requires that all certification applications for aviation product changes comply with the airworthiness standards outlined in the latest regulations in determining the certification basis for the design changes. This rule requires applicants to comply with the latest regulations in effect on the date of application for amended Type Certificates (TCs) or supplemental TCs for aeronautical products. The current estimated annual reporting burden is 18,815 hours.

3. 2120-0659, Noise Certification Standards for Jet Airplanes and Subsonic Transport Category Large Airplanes. The FAA requires operators of jet and subsonic transport category large airplanes to submit a noise certification compliance report. The noise compliance report is used by the FAA to determine that the aircraft is in compliance with 14 CFR part 36. The current estimated annual reporting burden is 1,350 hours.

4. 2120-0660, Flight Operational Quality Assurance (FOQA) Program. FOQA is a voluntary program for the

routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. The program codifies protection from punitive enforcement action based on FOQA information, and requires participating air carriers to provide aggregate FOQA data to the FAA. The current estimated annual reporting burden is 360 hours.

5. 2120-0661, Competition Plans, Passenger Facility Charges. This information is needed to implement a passenger facility charge as required by section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. The affected public includes public agencies controlling medium or large hub airports at which one or two air carriers control more than 50 percent of the passenger boardings. The current estimated annual reporting burden is 5,945 hours.

6. 2120-0662, Laser operations, Airspace Requests, Miscellaneous Procedures. The FAA requires this information in the interest of aviation safety to protect aircraft operations from the potential hazardous effect of laser emissions. The FAA reviews the information collected for its impact on aviation near the laser activity. On completion of the review of the information the FAA issues a letter of determination to the respondent about their request. The current estimated annual reporting burden is 2,200 hours.

Issued in Washington, DC, on April 10, 2003.

Ann P. Hoffer,

Office of Cost and Performance Management, Special Projects Officer, APF-3.

[FR Doc. 03-9511 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #03-08-C-00-STL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

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 Lambert-St. Louis 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 May 19, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: City of St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329-2641. 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 the Lambert-St. Louis 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 April 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. Louis 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 July 17, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: \$4.50.

Proposed charge effective date: December, 2016.

Proposed charge expiration date: March, 2017.

Total estimated PFC revenue: \$14,489,955.

Brief description of proposed project(s): Airport.

Maintenance Facility, Concourse C/D Connector, and Concourse FIS (Federal Inspection Station) Elevators and Stairs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on April 10, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03-9509 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cameron & Willacy Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed 2nd Causeway to South Padre Island, Cameron & Willacy Counties, Texas.

FOR FURTHER INFORMATION CONTACT: John Mack, District Engineer, Federal Highway Administration, 300 East 8th Street, Austin, Texas, Telephone: (512) 536-5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to provide a 2nd Causeway to South Padre Island.

The purpose of the study is to address the transportation, environmental and safety issues of a 2nd access to South Padre Island. A 2nd causeway will enhance the health, safety, security, and the well being of island residents and visitors. The need is heightened in the event of hurricane evacuations, incidents involving the bridge, and during high peak travel periods such as Spring Break and the summer vacation season. The need will be further compounded by the need for future repairs to the existing causeway. The EIS will include construction as well as non-construction alternatives for providing access from the mainland to the island.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest

in this proposal. A series of public meetings will be held in the area throughout the development of the EIS. In addition, a public hearing will be held. Public notice will be given with the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. The preliminary interagency coordination meeting was held February 26, 2003.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 2, 2003.

John R. Mack,

District Engineer, Austin, Texas.

[FR Doc. 03-9466 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (U.S. DOT).

ACTION: Notice of availability of funds (NOFA) inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The U.S. DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) Joint Program Office (JPO) announces the availability of funds to provide credit assistance in the form of secured loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Funding for this program is limited, and the TIFIA JPO will lead U.S. DOT multi-modal teams in evaluating applications for credit assistance based on project merits and satisfaction of the TIFIA statutory criteria. This notice announces the availability of funds and outlines the process that applicants must follow when applying for TIFIA credit assistance.

DATES: Project sponsors may apply for TIFIA assistance at any time if their projects have met the program's threshold requirements. See further discussion under the caption "Application and Selection Process" in this notice.

ADDRESSES: Both letters of interest and completed applications should be submitted to the attention of Mr. Duane Callender, TIFIA Joint Program Office, U.S. Department of Transportation, Room 4301, HABF-50, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: TIFIA Joint Program Office staff: Mr. Duane Callender, (202) 366-9644; Ms. Theresa Stoll, (202) 366-9649; and Mr. Mark Sullivan, (202) 366-5785. TIFIA Joint Program Office staff can be contacted at the above address. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1-800-877-8339. Additional information, including the current edition of the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site at <http://tifa.fhwa.dot.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's Home page at: <http://www.archives.gov> and the Government Printing Office's Web page at <http://www.access.gpo.gov/nara>.

Background

The Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA regulations (49 CFR part 80), as well as the TIFIA Program Guide (above), provide specific guidance on the program requirements. The TIFIA Joint Program Office (TIFIA JPO), within the FHWA, has responsibility for coordinating program implementation.

Since funding for this program is limited, the U.S. DOT will evaluate and select projects based on their merits and satisfaction of the TIFIA statutory criteria. For each selected project the

U.S. DOT will issue a term sheet outlining the basic conditions of the credit assistance. Subsequently, the U.S. DOT will negotiate a definitive credit agreement with each selected project sponsor.

Types of Credit Assistance Available

The U.S. DOT may provide credit assistance in the form of secured loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

The TIFIA establishes annual funding ceilings for both total credit assistance (*i.e.*, the total principal amount that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy costs (*i.e.*, the amount of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy costs is provided in the form of budget authority from the Highway Trust Fund (other than the Mass Transit Account).

Total Federal credit assistance authorized for the TIFIA program in FY 2003 is \$2.6 billion. This amount will lapse on September 30, 2003, if unused. For FY 2003 the Congress redirected \$180 million in budget authority originally authorized for TIFIA credit assistance to other programs administered by the FHWA. Accounting for these sums, the TIFIA program has approximately \$72 million in remaining budget authority available to fund subsidy costs in FY 2003. The Congress also has directed the U.S. DOT to use a portion of the available TIFIA budget authority to fund an extension of FHWA's lines of credit with the Transportation Corridor Agencies (TCA) for the San Joaquin Hills and Foothill Eastern toll roads in Orange County, California. Therefore, the ultimate budget authority available for TIFIA in FY 2003 is subject to the cost of extending the TCA line of credit. Any budget authority not obligated in the fiscal year for which it is initially authorized remains available for obligation in subsequent years. In addition, the TIFIA JPO may obligate up to \$2 million each year for expenses, such as the services of external financial and legal advisors, associated with program implementation. Credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. See the definition of "project" in 23 U.S.C. 181(9). For a description of eligible projects, see 49 CFR 80.3.

Threshold Requirements

Projects seeking TIFIA credit assistance must meet certain threshold requirements. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit, with its application, a preliminary rating opinion letter from at least one nationally recognized credit rating agency, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must be current, must address the creditworthiness of both the senior debt obligations funding the project (*i.e.*, those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument, and must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

The TIFIA JPO will use the preliminary rating opinion letter to assess the default risk on the requested TIFIA instrument. Therefore, the letter should provide a preliminary assessment of the financial strength of either the overall project or the requested TIFIA instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Once selected for TIFIA credit assistance, each project must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of its TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the TIFIA Program Guide. The most current version of the TIFIA Program Guide and application materials can be obtained from the TIFIA Web site.

Application and Selection Process

The TIFIA JPO will accept, at any time, letters of interest from potential applicants. Subsequently, for projects that meet all threshold requirements, the TIFIA JPO will invite the project sponsor to apply. Using this application process, potential applicants can match their TIFIA submissions with their project development timetable. Potential TIFIA applicants must follow the process outlined below to be considered for credit assistance:

1. *Letter of Interest.* A potential applicant for TIFIA credit assistance must first submit a detailed letter of interest to the TIFIA JPO. This letter should include a brief project description (including the project's purpose, design features, and estimated capital cost), information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested), a description of the proposed project participants, and an assessment of the benefit the project sponsor seeks to achieve through use of a TIFIA credit instrument. The letter also should summarize the status of the project's environmental review (*i.e.*, whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or, at a minimum, whether a draft Environmental Impact Statement has been circulated). The letter of interest should not exceed ten pages. The TIFIA JPO will lead a review of this preliminary submission to ensure that the project meets the basic program requirements. The TIFIA JPO will then designate an evaluation team for the project (drawing from the U.S. DOT's various offices and operating administrations, as necessary). The U.S. DOT evaluation team will contact the project sponsor within approximately two to four weeks to review the readiness of the project.

2. *Application.* The project sponsor may not submit an application until it has received preliminary confirmation of eligibility from the TIFIA JPO. The project sponsor may then submit its formal application including all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application form) to the TIFIA JPO. The TIFIA JPO and the U.S. DOT evaluation teams will not review incomplete applications or applications for projects that do not fully satisfy the TIFIA program requirements.

The most current version of the application form can be obtained from the TIFIA Web site.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the submitted application for compliance with the TIFIA program requirements will be invited to make a project presentation to the TIFIA JPO and the U.S. DOT evaluation team. The TIFIA JPO will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based upon the application, the project presentation and any supplemental submission of information, the TIFIA JPO and the U.S. DOT evaluation teams will score each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; private participation, 20 percent; environmental benefits, 20 percent; creditworthiness, 12.5 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; and reduced Federal grant assistance, 5 percent.

The U.S. DOT will not select any project before an environmental Record of Decision (if required, or the equivalent final agency decision) has been issued for that project.

5. *Fees.* Unless otherwise notified in a subsequent NOFA published in the **Federal Register**, the TIFIA JPO will require each applicant to pay a non-refundable application fee of \$30,000. This fee is based upon historical costs associated with the U.S. DOT's evaluation of TIFIA applications. Checks should be made payable to the Federal Highway Administration. The project sponsor must submit this payment with the application. No fee is required for a letter of interest. Applicants may not include application fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

In addition, consistent with 23 U.S.C. 183(b)(7), 183(e)(2), 184(b)(9) and with 49 CFR 80.17, the TIFIA JPO will charge each borrower a credit processing fee equal to a portion of the costs incurred by the TIFIA JPO in negotiating the credit agreement. Each project term sheet will require the borrower to pay at closing, or, in the event no credit agreement is consummated, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of financial advisors and outside legal counsel through execution of the credit

agreement(s) and satisfaction of all funding requirements of those agreements. The TIFIA JPO anticipates this fee will typically range from \$100,000 to \$300,000, depending on the complexity of the financial structure and the length of negotiations. The borrower may not include the credit processing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

The TIFIA JPO will continue to charge borrowers a fee of not less than \$10,000 per year, which may be adjusted annually, for loan servicing activities associated with each executed TIFIA credit instrument. The borrower may not include the loan servicing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.48(nn)).

Issued on: April 2, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–9500 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493-6390, or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493-6051.

(Authority: 23 U.S.C. 181-189; 49 CFR 1.49).

Issued on: April 4, 2003.

Allan Rutter,
Administrator.

[FR Doc. 03-9501 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Draft Environmental Impact Statement on the Erie Canal Harbor Project (Formerly the Inner Harbor Development Project)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Niagara Frontier Transportation Authority (NFTA) intend to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Erie Canal Harbor Project (formerly referred to as the Inner Harbor Development Project), in accordance with the National Environmental Policy Act (NEPA). The original Notice of Intent to prepare a DEIS for the Project was issued on November 10, 1997; the final EIS (FEIS) was issued in February 1999; and FTA issued the Record of Decision (ROD) on June 22, 1999. The project is being administered by the New York State Urban Development Corporation doing business as the Empire State Development Corporation (ESDC).

The participation of the general public, interested parties, and agencies is encouraged and will be solicited. A Public Scoping Meeting will be held to discuss the information to be included in the SDEIS, as outlined below.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Mr. Thomas Blanchard, Director of Planning and Development, Empire State Development—Western New York by May 28, 2003. *Scoping Meeting:* A public scoping meeting will be held on Tuesday, May 13, 2003, at 6 p.m. at the address identified below.

ADDRESSES: *Written comments* on the project scope should be sent to Mr. Blanchard at 420 Main Street, Suite 717, Buffalo, New York 14202. The scoping

meeting will be held at the Buffalo Historical Society Auditorium, 25 Nottingham Court, Buffalo, NY 14216.

FOR FURTHER INFORMATION CONTACT: Nancy Danzig, Community Planner, FTA Region II. Telephone (212) 668-2180.

SUPPLEMENTARY INFORMATION: The Project's 1999 Final EIS evaluated a Proposed Action involving the reconfiguration of a portion of the Buffalo River bulkhead and redevelopment of a site within the City's Waterfront Development Project Urban Renewal Area into a new harbor with intermodal transportation components at the foot of Main Street. In addition, the Proposed Action involves the construction of a series of landside improvements to facilitate and enhance public access to the waterfront, connect existing pedestrian and bicycle path systems, and provide opportunities for private development.

In this SDEIS, ESDC will evaluate alternatives for revisions to a portion of the Proposed Action to better interpret archaeological resources encountered on the Project site related to the site's location at the historic terminus of the Erie Canal at the Commercial Slip. Planned construction at the western portion of the Project site as included in the Proposed Action, entailing completion of the naval basin and relocation of the three naval vessels, are currently under construction and anticipated to be completed in the fall of 2003.

Alternatives for revisions to the Proposed Action will be formulated in conjunction with a series of public design workshops and meetings with heritage interpretation groups to be held in the summer of 2003. Although still to be formulated, the alternatives will include consideration of realignment or reconfiguration of the Hamburg Drain to allow for a rewatering of the Commercial Slip along its historic right-of-way; methods to interpret the former location of the Central Wharf; reuse or interpretation of former streets that crossed the Project site; revised methods of using building foundations of former structures on the site as interpretive elements; and redesign and/or reprogramming of the Naval and Military Park's museum building and associated refinements to the configuration of future development parcels associated with these other site elements. All alternatives to be considered will meet the intermodal objectives and include programmatic components of the Proposed Action in the Project's 1999 Final EIS.

The SDEIS will present the benefits and costs, environmental impacts, and proposed mitigation measures associated with the alternatives for revisions to the Proposed Action. Following completion and public review of the SDEIS, anticipated in early 2004, a Final EIS would be prepared.

Issued on: April 11, 2003.

Letitia Thompson,

Regional Administrator.

[FR Doc. 03-9499 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Marx, Office of Policy Development, (202) 366-1675, or Ms. Paula Schwach, Office of the Chief Counsel, (816) 329-3935.

(Authority: 23 U.S.C. 181-189; 49 CFR 1.51).

Issued on April 10, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03-9502 Filed 4-16-03; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY**Revocation of Designation of Ukraine as Primary Money Laundering Concern**

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Revocation of designation.

SUMMARY: This notice revokes the Department of the Treasury's December 20, 2002, designation of Ukraine as a primary money laundering concern pursuant to section 5318A of title 31, United States Code, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. 107-56).

DATES: The revocation of the designation is effective April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel (FinCEN), (703) 905-3590; Executive Office for Terrorist Financing and Financial Crimes, (202) 622-0400; Office of the General Counsel (Treasury), (202) 622-1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On December 20, 2002, Treasury designated Ukraine as a primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act. In a notice published in the *Federal Register* on December 26, 2002,¹ the various factors supporting the designation were outlined. Of particular importance to the decision to designate was the fact that while Ukraine had recently enacted anti-money laundering legislation, it was deficient in several material respects.² As noted in the designation, among other things, Ukraine's system for reporting suspicious transactions remained so constrained as to be virtually ineffective, and the ability of its financial intelligence unit to share information with law enforcement and function appropriately was in doubt. Having analyzed the legislation, the Financial Action Task Force (FATF) likewise concluded that the new legislation was inadequate and called on FATF members to take appropriate counter-measures against Ukraine. In the designation, Treasury specifically warned Ukraine that unless it took steps

¹ 67 FR 78859 (December 26, 2002). In that same Notice, Treasury also designated Nauru as a primary money laundering concern. Published elsewhere in this issue of the *Federal Register* is FinCEN's notice of proposed rulemaking seeking to impose counter-measures against Nauru.

² On November 28, 2002, Ukraine's Supreme Council (Parliament) passed a Law on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and the President of Ukraine signed the Law on December 7.

to address the concerns giving rise to its designation, Treasury anticipated imposing one or more special measures that would require U.S. financial institutions to obtain nominal and beneficial ownership information on certain accounts and transactions involving Ukraine.

Since Treasury's designation of Ukraine under section 5318A, Ukraine has taken steps to address the deficiencies. First, Ukraine amended its anti-money laundering law clearly to allow the Ukrainian financial intelligence unit to share information with law enforcement and to lower the suspicious transaction reporting thresholds. Second, the Ukrainian criminal code was amended to criminalize money laundering, the failure to file suspicious transaction reports, and tipping off the subjects of such reports. Finally, the Ukrainian banking and financial services laws were amended to require the full disclosure of beneficial ownership at account opening for all legal entities and natural persons. These new provisions are scheduled to come into force as of June 7, 2003.

As a result of these further legislative enhancements, along with the pledge of aggressive implementation, on February 14, 2003, the FATF rescinded its call for counter-measures against Ukraine.

In light of the further legislative enhancements, the commitment of Ukraine to further efforts to implement its anti-money laundering legislation, and the FATF's decision to rescind the call for counter-measures, Treasury has decided to revoke the designation of Ukraine as a primary money laundering concern under section 5318A.

Significantly, Treasury's revocation of the primary money laundering concern designation should not be construed as an indication that financial transactions involving Ukraine do not continue to present a heightened risk of money laundering. To the contrary, Ukraine's recent legislative enactments are not yet in force and much work remains. Ukraine is still on the FATF's Non-Cooperative Countries and Territories (NCCT) list due to its inadequate anti-money laundering regime. The FATF will require additional progress and effective implementation of the anti-money laundering legislation before considering removing Ukraine from the NCCT list.

Moreover, U.S. financial institutions are reminded that the revocation of the designation does not affect existing guidance issued by FinCEN or obligations arising under the Bank Secrecy Act with respect to accounts and transactions involving Ukraine. For

example, the April 2002 FinCEN advisory on transactions involving Ukraine remains in effect, and, due to Ukraine's status as an NCCT jurisdiction, U.S. financial institutions are or will be required by 31 U.S.C. 5318(i), as added by section 312 of the USA PATRIOT Act, to conduct enhanced scrutiny on any correspondent accounts maintained for a foreign bank operating under a license issued by Ukraine.³

Revocation of the Designation of Ukraine as a Primary Money Laundering Concern

For the foregoing reasons, the designation of the country of Ukraine as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, is hereby revoked.

Dated: April 10, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03-9411 Filed 4-16-03; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 3903**

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

³ Section 5318(i) requires U.S. financial institutions to conduct enhanced scrutiny when opening or maintaining a correspondent account for a foreign bank operating, among other things, under a banking license issued by a foreign country designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative concurs. Jurisdictions placed on the FATF NCCT list fall into this category.

By its own terms, section 5318(i) became effective on July 23, 2002. On May 30, 2002, FinCEN issued a proposed rule implementing the various provisions of section 5318(i). 67 FR 37736 (May 30, 2002). On July 23, 2002, FinCEN issued an interim rule that temporarily deferred application of section 5318(i) to certain financial institutions, and provided guidance to those subject to the provision pending FinCEN's issuance of a final rule. 67 FR 48348 (July 23, 2002). FinCEN expects that the final rule implementing section 5318(i) will be issued shortly. In the meantime, only U.S. depository institutions must comply with the enhanced scrutiny provisions in the manner set forth in the interim guidance.

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 Form 3903, Moving Expenses.

DATES: Written comments should be received on or before June 16, 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 form and instructions should be directed to Larnice Mack, at (202) 622-3179, or Larnice.Mack@irs.gov, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Moving Expenses.

OMB Number: 1545-0062.

Form Number: Form 3903.

Abstract: Internal Revenue Code section 217 requires itemization of various allowable moving expenses. Form 3903 is used to compute the moving expense deduction and is filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 678,678.

Estimated Time Per Respondent: 9 hrs. 8 min.

Estimated Total Annual Burden Hours: 773,693.

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: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-9398 Filed 4-16-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI-182-78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI-182-78, Transfers of Securities Under Certain Agreements (Section 1.1058-1(b)).

DATES: Written comments should be received on or before June 16, 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 Allan Hopkins, (202) 622-6665, or through the Internet

(Allan.M.Hopkins@irs.gov) Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transfers of Securities Under Certain Agreements.

OMB Number: 1545-0770.

Regulation Project Number: FI-182-78.

Abstract: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss on the exchange of the securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 11,742.

Estimated Time Per Respondent: 50 min.

Estimated Total Annual Burden Hours: 9,781.

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: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-9516 Filed 4-16-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 982

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 Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and section 1082 Basis Adjustment).

DATES: Written comments should be received on or before June 16, 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 form and instructions should be directed to Larnice Mack, at (202) 622-3179, or Larnice.Mack@irs.gov, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

OMB Number: 1545-0046.

Form Number: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is

used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 9 hrs. 37 min.

Estimated Total Annual Burden Hours: 10,290.

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: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-9517 Filed 4-16-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2003

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 2003 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 2003 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 2003 inflation adjustment factor and reference prices apply to calendar year 2003 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2003 is 1.2048.

Reference Prices: The reference prices for calendar year 2003 are 4.85¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass and poultry waste.

Because the 2003 reference prices for electricity produced from wind, closed-loop biomass, and poultry waste energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 2003.

Credit Amount: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 2003 under section 45(a) is 1.8¢ per kilowatt hour on the sale of electricity produced from wind, closed-loop biomass, and poultry waste energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Ave., NW., Washington,

DC 20224, (202) 622-3040 (not a toll-free call).

Heather C. Maloy,

Associate Chief Counsel, (Passthroughs & Special Industries).

[FR Doc. 03-9397 Filed 4-16-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Software Developers Conference

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Software Developers Conference notification.

SUMMARY: The Software Developers Conference will be held on June 5-6, 2003. The conference will be held in the Hyatt Regency Hotel, Crystal City, Arlington, VA. A summary of the agenda along with the planned discussion topics is listed below.

Summarized Agenda for June 5, 2003

8 a.m. Conference Begins;
12 p.m. Break for Lunch;
1 p.m. Conference Resumes;
4:30 p.m. Conference Adjourns.

The planned discussion topics are as follows: Form 1040 e-file Update; Business e-file Returns Update; Privacy/Security; Fraud Prevention; Free File Update.

Summarized Agenda for June 6, 2003

8 a.m. Conference Begins;
12 p.m. Break for Lunch;
1 p.m. Conference Resumes;
4:30 p.m. Conference Adjourns.

The planned discussion topics are as follows: IRS e-file of the Future; Breakout Group Discussions.

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a Software Developers Conference on Thursday and Friday, June 5 and 6, 2003. This conference will be held in a room that

accommodates approximately 200 people, including IRS officials.

ADDRESSES: The meeting will be held in the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Registration for the Software Developers Conference may be accessed at <http://www.paintl.com>. Registration should be received by May 14, 2003.

If you need additional information you may contact Aaron R. Welch at 202-283-0298 or aaron.r.welch@irs.gov (e-mail).

SUPPLEMENTARY INFORMATION: The IRS Software Developers Conference provides information and dialogue on issues of interest to IRS e-file software developers.

Dated: April 11, 2003.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 03-9518 Filed 4-16-03; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

**Thursday,
April 17, 2003**

Part II

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Hydrochloric
Acid Production; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2002-0057; FRL-7460-1]

RIN 2060-AH75

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The EPA has identified hydrochloric acid production facilities as major sources of hazardous air pollutant (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring

all such major sources to meet HAP emission standards and implement work practice standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action is hydrochloric acid. This HAP is associated with a variety of adverse health effects including chronic health disorders (for example, effects on the central nervous system, blood, and heart) and acute health disorders (for example, irritation of eyes, throat, and mucous membranes and damage to the liver and kidneys).

EFFECTIVE DATE: The final rule is effective April 17, 2003.

ADDRESSES: *Docket.* All information considered by the EPA in developing the final rule, including public comments on the proposed rule and other information developed by the EPA in addressing those comments since proposal, is located in Public Docket No. OAR-2002-0057 at the following address: Air and Radiation Docket and

Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The docket is located at the above address in Room B102, and may be inspected from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final rule, contact Mr. William Maxwell, Combustion Group, Emission Standards Division (C439-01), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541-5430; fax number (919) 541-5450; electronic mail address: maxwell.bill@epa.gov.

SUPPLEMENTARY INFORMATION:
Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC ^a	NAICS ^b	Regulated Entities
Industry	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

^aStandard Industrial Classification.

^bNorth American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR-2002-0057. 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 Air and Radiation 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 Air Docket is (202) 566-1742.

Electronic Access. You may access the **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic copy of the final rule will also be available on the worldwide web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>.

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 above. Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 16, 2003. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information in this preamble is organized as follows:

- I. Background
 - A. What Is the Source of Authority for Development of NESHAP?
 - B. What Criteria Are Used in the Development of NESHAP?
 - C. How Did the Public Participate in Developing the Final Rule?
- II. Summary of the Final Rule

- A. Who Is Subject to the Final Rule?
 - B. What Are the Primary Sources of Emissions, and What Are the Emissions?
 - C. What Is the Affected Source?
 - D. What Are the Emission Limitations and Work Practice Standards?
 - E. What Are the Performance Testing, Initial Compliance, and Continuous Compliance Requirements?
 - F. What Are the Notification, Recordkeeping, and Reporting Requirements?
- III. Significant Comments and Changes Since Proposal
- A. What Sources Are Subject to MACT?
 - B. How Did the EPA Determine MACT?
 - C. What Are the Performance Testing and Other Compliance Provisions?
- IV. Summary of the Environmental, Energy, Cost, and Economic Impacts
- A. What Are the Air Quality Impacts?
 - B. What Are the Non-Air Health, Environmental, and Energy Impacts?
 - C. What Are the Cost and Economic Impacts?
- V. Administrative Requirements
- 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. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576).¹ On September 18, 2001, we combined these two source categories for regulatory purposes under the production of inorganic chemicals group and renamed the source category as HCl production (66 FR 48174). The next revision to the source category list will reflect this change. Major sources of HAP are those that have the potential to emit greater than 9 megagrams per year (Mg/yr) (10

tons per year (tpy)) of any one HAP or 23 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (or the best-performing five sources for which the Administrator has or could reasonably obtain emissions information for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Final Rule?

Prior to proposal, we met with industry representatives once to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors, environmental groups, and the general public, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on September 18, 2001 (66 FR 48174). The preamble to the proposed rule discussed the availability of technical support documents, which

described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received 22 public comment letters on the proposed rule. The commenters represent the following affiliations: HCl producers, industrial trade associations, and one group of citizens. In the post-proposal period, we met with industry representatives to discuss their concerns. Meeting records are found in Docket ID No. OAR-2002-0057. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

II. Summary of the Final Rule

A. Who Is Subject to the Final Rule?

The final rule covers HCl production located at plant sites that are major sources of HAP emissions. The HCl production facility is the basic unit defined in the final rule. Specifically, the final rule defines an HCl production facility as the collection of unit operations and equipment associated with the production of liquid HCl product. Therefore, a plant site could have several separate and distinct HCl production facilities. However, as discussed more in subsection C of this section, the affected source includes all HCl production facilities at the same site.

There are several characteristics that define an HCl production facility and make the facility subject to the final rule that require explanation. First, the facility must produce a liquid HCl product with a concentration of 30 weight percent or greater during its normal operations. Facilities that produce only low concentration acid, and facilities that produce low concentration acid and only occasionally produce 30 weight percent acid, are not subject. Second, the liquid HCl must be produced by absorbing gaseous HCl into either water or an aqueous HCl solution. Production of an anhydrous HCl product is not covered by the final rule. Also, production of a liquid HCl product by a chemical reaction that occurs in the liquid phase, or any other process that does not involve the absorption of gaseous HCl into water or aqueous HCl, is not covered.

There are numerous types of processes that produce a gaseous stream containing HCl that is the starting point for an HCl facility (including fume silica production). However, the final rule is blind to the type of process that generates the HCl, as an HCl production facility begins at the point where the

¹ Later listing notices (e.g., 66 FR 8220) refer to the source category as "fumed" silica.

stream containing HCl enters the absorber. Accordingly, it does not matter if the gaseous stream containing HCl is a by-product or even a waste-product. If the gaseous stream is used to produce 30 weight percent or greater liquid HCl product, it is a facility that is subject to the final rule.

The final rule clearly defines the boundaries of an HCl production facility. As noted above, an HCl production facility begins at the point where a gaseous stream containing HCl enters the absorber. The HCl production facility includes all HCl storage tanks that contain a liquid HCl product that is produced in the HCl production unit. The HCl production facility also includes all HCl transfer operations that load the HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, and for which loading liquid HCl is the predominant use. The predominant use of a transfer rack is the material that is loaded by the transfer rack in the greatest amount. The HCl production facility also includes the piping and other equipment in HCl service used to transfer the liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations. The HCl production facility ends at the point where the liquid HCl product produced in the HCl production unit is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the plant site, or at the point the HCl product leaves the plant site via pipeline.

Please note that what happens to the liquid HCl product after it is produced is not relevant in determining the applicability of the final rule. While there are emission limitations for storage tanks and transfer operations, these operations do not have to be present for an HCl production facility to be subject to the final rule. Whether the HCl produced is used onsite, piped offsite, or loaded into railcars, tank trucks, ships, or barges has no bearing on whether the HCl production facility is subject.

The final rule does exclude HCl production facilities under certain circumstances. First, an HCl production facility is not subject to the final rule if all of the gaseous streams containing HCl and chlorine (Cl₂) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process prior to being discharged to the atmosphere. Also, an HCl production facility is not subject to the final rule if it produces HCl through the direct synthesis of Cl₂ and hydrogen and is part of a chlor-alkali plant; or if it is a research and development facility.

In addition, the final rule excludes certain HCl production facilities that are part of other source categories where the emissions are subject to one of the following federal standards: Pulp and Paper Industry NESHAP (40 CFR part 63, subpart S), Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants NESHAP (40 CFR part 63, subpart CCC), Pesticide Active Ingredient Production NESHAP (40 CFR part 63, subpart MMM), Hazardous Waste Combustors NESHAP (40 CFR part 63, subpart EEE), Hazardous Waste Treatment, Storage, and Disposal Facilities (40 CFR part 264, subpart O—Incinerators, section 264.343(b)), and Hazardous Waste Management Facilities (40 CFR part 266, subpart H—Boilers and Industrial Furnaces, section 266.107).

Regulatory overlap between the final rule and the Hazardous Organic NESHAP (HON) is slightly more complicated. In general, the HON only covers emissions of organic HAP, which obviously excludes HCl and Cl₂. The exception to this is if a halogenated stream (which is defined as a stream with a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour or greater) is routed to an incinerator or other combustion device to control the organic HAP, the halogens leaving the incinerator are required to be reduced by 99 percent. Therefore, if in a HON unit, a chlorinated organic compound is sent to an incinerator and the outlet stream (which would contain HCl) is then routed through an absorber to produce liquid HCl, the resulting HCl emissions from the absorber would be subject to 40 CFR 63.113(c) of the HON, which requires a 99 percent reduction in HCl emissions. These HCl production units are exempted from the HCl Production NESHAP, since the emissions are subject to the HON.

However, HCl gas is often produced as a by-product of an organic chemical in a unit that is subject to the HON. In this situation, the HCl emissions are not covered by the HON because they are not formed in an incinerator burning a halogenated stream. If this vent stream containing HCl is routed to an absorber and liquid HCl is produced, then it is an HCl production facility and is subject to the final rule if it meets the other applicability requirements. Therefore, in this situation the result could be that the same equipment, and even the same emission stream, is subject to two MACT standards (the organic HAP subject to the HON and the HCl and Cl₂ subject to the HCl NESHAP). In other words, where a liquid HCl product is produced as a by-product in a HON

unit, the HCl Production NESHAP reaches into the HON unit to require control of the HCl and Cl₂ emissions.

B. What Are the Primary Sources of Emissions, and What Are the Emissions?

The primary HAP known to be released from HCl production is HCl. Chlorine may also be emitted from HCl production. These potential emission sources include process vents, storage tanks, transfer operations, equipment leaks, and wastewater.

1. Types of Emission Sources

Most HCl production processes begin with a gaseous stream containing HCl. The stream can be a by-product stream from another process, an outlet stream from a combustion device that is treating chlorinated organic compounds, or a stream from a direct synthesis reaction furnace where hydrogen and Cl₂ are burned. No matter the origin of the stream containing HCl, the process from that point forward is basically the same. The gaseous stream containing HCl is routed to an HCl recovery absorption column, where the HCl is absorbed into either water or dilute HCl. The liquid leaving this column contains concentrated HCl.

The gaseous stream leaving the absorption column contains HCl that was not absorbed into the liquid in the tower and any Cl₂ present in the inlet stream. This outlet stream may be routed (or recycled) to another process, in which case it is no longer part of the HCl production affected source. However, if the outlet stream is directly discharged to the atmosphere or if it is routed through other recovery/control devices before being discharged to the atmosphere, it is considered an HCl process vent from an HCl production facility.

If the liquid HCl leaving the absorption tower is routed to an HCl storage tank, there is the potential for HCl emissions from the tank. The storage tanks are typically atmospheric storage tanks, and working loss emissions will occur as the tank is filled and emptied. While less significant, there are also breathing losses from atmospheric temperature and pressure changes. There is also the potential for emissions when HCl is loaded from a storage tank to a tank truck, rail car, ship, or barge. Plants often reduce HCl emissions from HCl storage tanks and HCl transfer operations by using a scrubber.

Another potential source of HCl emissions is fugitive losses from equipment leaks. Owners and operators of HCl production processes presumably have an incentive to identify and repair

equipment leaks of HCl and Cl₂ because of their highly corrosive nature. The leaks can be easily identified, as the presence of ambient moisture (humidity) results in rapid corrosion on or around leaking equipment components.

The bottoms from scrubbers used to reduce HCl and Cl₂ emissions from HCl process vents, HCl storage vessels, and HCl transfer operations are typically routed to wastewater treatment systems. In most cases, the HCl or Cl₂ has been chemically converted in the scrubber to sodium hypochlorite (bleach). Any residual Cl₂ or HCl would be quite small. We estimate that wastewater emissions represent less than 1 percent of total emissions from the source category. Therefore, we believe that wastewater streams do not represent a significant potential source of emissions.

2. Estimated Emissions

We have calculated the nationwide baseline emissions for each of the HCl production facility emission sources. Hydrochloric acid process vents emit a total of 2,240 Mg/yr (2,470 tpy) of combined HCl (1,600 Mg/yr; 1,770 tpy) and Cl₂ (640 Mg/yr; 700 tpy) emissions. Hydrochloric acid storage tanks emit 230 Mg/yr (260 tpy) of HCl, HCl transfer operations emit 27 Mg/yr (30 tpy) of HCl, leaking equipment emits 410 Mg/yr (450 tpy) of HCl, and wastewater emits 9 Mg/yr (10 tpy) HCl. Total baseline HAP emissions from the industry are 2,910 Mg/yr (3,220 tpy).

C. What Is the Affected Source?

The final rule defines the affected source as the group of one or more HCl production facilities at a plant site that are subject to the final rule, and all associated wastewater operations. The affected source contains emission streams from the following: HCl process vents, HCl storage tanks, HCl transfer operations, leaks from equipment in HCl/Cl₂ service, and HCl wastewater operations. However, there are no emission limitations or other requirements for HCl wastewater operations in the final rule.

D. What Are the Emission Limitations and Work Practice Standards?

Existing affected sources must reduce HCl and Cl₂ emissions from each HCl process vent by 99 percent or to outlet concentrations of 20 parts per million by volume (ppmv) HCl and 100 ppmv Cl₂, determined using EPA Test Method 26A of 40 CFR part 60, appendix A. New sources must reduce HCl and Cl₂ emissions from each HCl process vent by 99.4 and 99.8 percent, respectively,

or to outlet concentrations of 12 ppmv HCl and 20 ppmv Cl₂. The final rule also requires that owners or operators establish site-specific operating limits for each control device, based on monitored parameters and levels established during the performance test. For example, if you use a caustic scrubber to meet the emission limits, you must maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. You also must maintain the daily average scrubber effluent pH within the operating range value established during the performance test.

For each storage tank and transfer operation at an existing affected source, HCl emissions must be reduced by 99 percent or to an outlet concentration of 120 ppmv; the operating limits are the same as for process vents. There are no Cl₂ emissions from these sources. For each storage tank at a new affected source, HCl emissions must be reduced by 99.9 percent or to an outlet concentration of 12 ppmv. For each transfer operation at a new affected source, HCl emissions must be reduced by 99 percent or to an outlet concentration of 120 ppmv. Emission streams from the following types of storage tanks and transfer operations are exempt from these emission limitations: (1) Storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater, and (2) transfer operations that never load liquid HCl product with a concentration of 30 weight percent or greater.

For leaking equipment, the final rule includes a work practice standard. We require you to prepare, and at all times operate according to, an equipment leak detection and repair (LDAR) plan that describes in detail the measures that will be put in place to control leaking equipment emissions at the facility. You are required to submit the LDAR plan to the Administrator. You are also required to certify in your Notification of Compliance Status that you have developed and implemented the LDAR plan and submitted the plan to the Administrator.

There are no emission limitations or work practice standards for HCl wastewater operations.

E. What Are the Performance Testing, Initial Compliance, and Continuous Compliance Requirements?

For HCl process vents at new and existing affected sources, you are required to demonstrate initial compliance by conducting a performance test that demonstrates that the emission limitations are being met.

You are required to conduct subsequent performance tests on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit.

You must also establish site-specific operating limits based on control device parameters. These operating limits will be established for each parameter based on monitoring conducted during the performance test. Specifically for water or caustic scrubbers, which we believe will be the most commonly used control device, the final rule requires that you establish operating limits for pH of the scrubber effluent and the scrubber liquid inlet flow rate. For any other type of control device, you are required to establish the operating limits based on a site-specific monitoring plan that identifies appropriate parameters. Continuous compliance will be demonstrated by these monitored parameters staying within the operating limits.

For HCl storage tanks and HCl transfer operations at new and existing affected sources, you are required to demonstrate initial compliance by conducting a performance test that demonstrates that the emission limitations are being met. Alternatively, in lieu of conducting initial or subsequent performance tests for HCl storage tanks and HCl transfer operations that are not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream, you may conduct a design evaluation which demonstrates that the control technology being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge. The schedule for subsequent performance tests and the operating limits for new and existing HCl storage tanks and HCl transfer operations are the same as those for HCl process vents.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires owners or operators of affected sources to submit the following notifications and reports:

- Initial Notification.
- Notification of Intent to Conduct a Performance Test.
- Notification of Compliance Status (NOCS).
- Compliance Reports.
- Startup, Shutdown, and Malfunction (SSM) Reports.

The final rule requires that each owner or operator maintain records of reported

information and other information necessary to document compliance (for example, records related to malfunctions, records that show continuous compliance with emission limits) for 5 years.

For the Initial Notification, the final rule requires that each owner or operator notify us that his or her facility is subject to the HCl Production NESHAP and that he or she provide specified basic information about their facility. For new or reconstructed sources, this notification (or an application for construction or reconstruction) would be required to be submitted no later than 120 calendar days after the facility becomes subject to this subpart. For existing sources that are operating at this time, the Initial Notification would be due August 15, 2003.

For the Notification of Intent report, the final rule requires that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

For each new or existing HCl process vent, HCl storage tank, and HCl transfer operation at an affected source, the final rule requires a performance test to demonstrate compliance with the HCl concentration limit. This test must be conducted within 180 days of the compliance date for new and existing sources. The final rule requires that the NOCS report be submitted within 60 days of completion of the performance test. A certified notification of compliance that states the compliance status of the facility, along with supporting information (e.g., performance test methods and results, description of air pollution control equipment, and operating parameter values and ranges), must be submitted as part of the NOCS.

For the Compliance Report, the final rule requires that facilities subject to control requirements under the final rule report on continued compliance with the emission limits and operating limits semi-annually. Specifically, the compliance report must contain the following information:

- Company name and address.
- Statement certifying the truth, accuracy, and completeness of the content of the report.
- Date of report and beginning and ending dates of the reporting period.
- Information on actions taken for any startups, shutdowns, or malfunctions that were consistent with your SSM plan.
- If there are no deviations from any emission limitations that apply to you, a statement that there were no

deviations from the emission limitations during the reporting period.

- If there were no periods during which the continuous monitoring system (CMS) was out-of-control, as specified in the monitoring plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.

You will demonstrate initial compliance with the work practice standards for leaking equipment by certifying that you have developed and implemented a LDAR plan and submitted the plan to the Administrator. Your semiannual compliance report will verify your continued use of the plan and contain information on instances where you deviated from the plan and the corrective actions taken.

Finally, you must submit an immediate SSM report if you have taken an action that is not consistent with the facility's SSM plan. This report must describe actions taken for the event and contain the information in 40 CFR 63.10(d)(5)(ii).

III. Significant Comments and Changes Since Proposal

This section includes discussion of significant comments on the proposed rule, particularly where we have made changes to address those comments in the final rule. These changes may be separated into three basic categories: applicability, the MACT determination, and performance testing and compliance. This section is organized according to these three topic areas. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Hydrochloric Acid Production Industry: Summary of Public Comments and Responses" in Docket ID No. OAR-2002-0057. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources are Subject to MACT?

The proposed rule indicated that HCl production facilities at major sources were subject to the final rule. An HCl production facility was defined as the "collection of equipment used to produce, store, and transfer for shipping liquid HCl product at a concentration of 10 percent by weight or greater."

There were numerous comments provided on these applicability provisions. First, several commenters were confused by the apparent contradiction between the definition of an HCl production facility in the proposed rule and the description in the

preamble. The proposed rule language stated that a facility must produce, store, AND transfer HCl in order to be considered an HCl production facility, while the preamble indicated that production of HCl is the only required element for a collection of equipment to be considered an HCl production facility. A few commenters argued that all three elements should be necessary for a process to be an HCl production facility, but most only requested clarification. Our intent was that described in the proposed preamble—that is, a facility only needs to produce liquid HCl product to be considered an HCl production facility. The language in the final rule is clear that processes that produce liquid HCl product are HCl production facilities and subject to the final rule (provided that criteria related to the concentration of HCl in the liquid product and the level of production are met), whether or not they store and transfer the liquid HCl.

As discussed at length in the proposed preamble, it was our intent to separate commercial-level HCl production, which we believe should be subject to the final rule, from incidental production, which we do not believe should be subject. Several comments were received that helped us make this distinction. First, numerous commenters requested that the EPA raise the minimum HCl concentration for an HCl production facility from 10 weight percent to a level that better represents commercial production of HCl. The commenters stated that liquid HCl is commonly produced for commerce at 20° to 22° Baume (Bé) acid strength (31.45 to 35.2 weight percent). However, one commenter's HCl production facility occasionally produces liquid HCl product less than 20 weight percent. Additionally, the commenters made the argument that emissions resulting from a 10 percent HCl product were less, even without controls, than the proposed emission limitations. Specifically, they pointed out that the equilibrium HCl vapor concentration for a 10 weight percent HCl liquid (10.7 ppmv at 25°C) is lower than the proposed emission limitation for process vents, storage tanks, and transfer operations (12 ppmv).

Upon consideration of these comments and the supporting information, we changed the minimum HCl concentration to 30 weight percent. The final rule states that an HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater is subject to the final rule. That means that this unit is subject at all times, even those times when a liquid HCl product of a

lower concentration is being produced. Therefore, the final rule will cover facilities like the one pointed out by the commenter that occasionally produce liquid HCl product at concentrations less than 30 percent, even when those lower concentration products are being produced.

However, we wanted to ensure that facilities that primarily produce lower concentration liquid HCl products not be subject to the final rule. Therefore, we added a statement in 40 CFR 63.8985(a) that the final rule does not cover HCl production facilities that only occasionally produce liquid HCl products at a concentration of 30 weight percent or greater. We did not, however, include a specific definition of what constitutes occasional production. If a facility produces liquid HCl with a concentration of 30 weight percent or greater during its normal operations, this would not be considered occasional production.

Commenters also suggested facility-wide exemptions based on *de minimis* annual emissions. Commenters provided several exemption levels based on emissions, from 1.8 kilograms per hour to 10 Mg per year. Other commenters believed that an exemption based on production was the appropriate method to eliminate burdensome compliance requirements for facilities with very low HAP emissions. The recommended exemption production levels ranged from 1 Mg per year to 1 gigagram per year.

We believe that, with the 30 weight percent criteria, the final rule should not cover incidental production of HCl. Consequently, we have not added either an emissions-based exemption or a production-based exemption to the final rule.

Commenters also requested that the we clearly delineate where the HCl production facility ends and HCl consumption begins so as not to include equipment unrelated to the production of HCl. While the proposed rule was not specific as to the beginning of an HCl production facility, the proposed preamble did indicate that an HCl production facility begins at the point where the gaseous stream containing HCl enters the absorber. The commenters agreed with this concept and asked that we directly incorporate it into the final rule, which we did.

Most of the problems cited by commenters related to the end of the HCl production facility were remote storage tanks that are dedicated to another process or to wastewater treatment. There was also concern expressed about whether off-site HCl

storage tanks storing HCl produced in a subject unit would be subject to the final rule. One suggestion was that the HCl production facility include only those tanks and transfer operations on the site that are directly connected to the production unit. Another suggestion was to only include the first storage tank after the absorber production unit and the first transfer rack. Other commenters pointed out that the proposed rule would also cover HCl storage tanks and transfer operations that handled purchased HCl that was not even produced in the on-site HCl production facility.

In general, we agree with the commenters on this topic. We believe it is practical that only the primary storage tanks and transfer operations that are storing and loading HCl produced at the site should be subject to the final rule. However, we did not totally agree with either of the suggestions provided by the commenters. In the final rule, we specify that the HCl production facility includes the production unit and all storage tanks that contain liquid HCl product that is produced in the HCl production unit, along with all transfer operations that load HCl product produced in the HCl production unit. Further, it also specifies that the piping and other equipment used to transfer liquid HCl product from the HCl production unit to the storage tanks and/or transfer operations is included in the HCl production facility. The final rule clarifies that the HCl production facility ends at the point that the liquid HCl product produced in the HCl production unit either leaves the plant site via a tank truck, rail car, ship, barge, or pipeline, or enters another process on the plant site. However, we recognized that this still was not totally clear regarding remote storage tanks, so we specifically added exemptions for HCl storage tanks that are dedicated feedstock tanks for other processes and storage tanks which store HCl dedicated for use in wastewater treatment.

Commenters also pointed out that the proposed preamble was clear that the type of process covered by the final rule was one that routes a gaseous stream that contains HCl to an absorber. They asked that this language, which was not included in the proposed rule, be added to the final rule. The commenters acknowledged that there are other methods of producing liquid HCl product, but believe that they should not be covered by the final rule because they were not considered in the final rule development. We agreed and made changes in accordance. These changes include the addition of a definition of HCl production unit that only includes

an absorber or other vessel in which a liquid HCl product is manufactured by absorbing gaseous HCl into either water or an aqueous HCl solution and the change cited above related to the beginning of an HCl production facility.

Commenters requested that facilities that produce liquid HCl only for on-site usage be exempted. We certainly support the recycling and re-use of potential waste materials, including HCl. Further, we are aware that much of the HCl produced is used by other processes on the plant site. However, we do not see a distinction between these processes and other processes where the HCl product is truly sold. We believe an exemption for on-site use would unfairly favor large integrated facilities. Consider two similar HCl processes with similar equipment, similar production capacities, and similar emissions potential. We do not believe that distinguishing between these processes based on where the HCl is consumed is warranted.

Even with the extensive discussions in the proposed preamble related to how the applicability is blind to the type of process that generates the anhydrous HCl stream that forms the feed stream for the HCl production facility, some commenters still called for exemptions for processes where HCl is not the primary product. The primary product concept is not relevant to the final rule, as the only processes that are subject to the final rule are those that intentionally manufacture liquid HCl product. There are a variety of types of processes that generate HCl-containing gas streams that provide the feed to the HCl production unit, and we recognized that this gaseous HCl is often a by-product. However, at the point an owner or operator takes this stream and manufactures a commercial level (*i.e.*, 30 weight percent or greater) liquid HCl product, we maintain that HCl is the intended product for that unit. Therefore, the process that creates the anhydrous HCl stream feeding the HCl production facility is not relevant in most situations.

The only time that the up-stream process is relevant is when it is subject to a Federal regulation that also regulates the HCl and Cl₂ emissions from the downstream HCl production facility. At proposal, we identified several of these situations and specifically exempted the HCl production facilities subject to these other standards. While all commenters applauded this concept, they did not feel that we had gone far enough with these exemptions. Some commenters cited other specific regulations that should be listed, while others requested

that we broaden the exemption to include facilities subject to any other NESHAP, whether it is already promulgated or yet to be promulgated, along with any facility that is subject to any federally enforceable permit that requires 95 percent reduction or greater.

Just like the commenters, we are interested in avoiding overlapping situations where a process that produces HCl might be subject to more than one Federal regulation. Based on the comments received, we have added exemptions for processes subject to the Pharmaceutical MACT (40 CFR 63, subpart GGG) and 40 CFR 63.994 of subpart SS. We have also expanded the exemption to include any process required by another rule to comply with 40 CFR 63.113(c) of the HON. In addition, according to our proposed decision not to regulate Cl₂ and HCl emissions from chlorine production (67 FR 44713; July 3, 2002), we consider direct synthesis HCl production units directly associated with chlor-alkali facilities to be part of the chlor-alkali facilities. Therefore, an exemption has been added in the final rule to exempt direct synthesis HCl production processes that are part of chlor-alkali facilities; this exemption does not extend to HCl production facilities that are co-located with chlor-alkali facilities but are not direct synthesis units directly associated with chlor-alkali facilities. So, we exempted all the specific situations raised by commenters. However, we cannot include a generic exemption for any other NESHAP or any federally enforceable permit. The statutory requirements in CAA section 112(d) are prescriptive regarding the level of control required by MACT standards, and we could not be assured that these other requirements would meet the minimum requirements for this source category. We will consider such situations on a case by case (*i.e.*, on a source-specific) basis under a request for an alternative non-opacity emission standard submitted in accordance with 40 CFR 63.6(g).

As part of our consideration of overlapping requirements, we reviewed the situation with the HON. The proposed rule exempted HCl production units located after an incinerator of a HON unit where the HCl and Cl₂ emissions are subject to 40 CFR 63.113(c). However, we did not exempt situations where gaseous HCl is produced as a by-product in a HON unit and then routed to an absorber to produce liquid HCl. In these by-product situations, the HCl and Cl₂ emissions are not covered by the HON. While we agree that the situation where the same

equipment and the same emission stream could be subject to both the HON and the HCl Production NESHAP is not ideal, we believe that these inorganic emissions should be addressed under the final rule in the same manner that comparable non-HON units are addressed. Therefore, the final rule continues to reach into the HON to cover those inorganic emissions from liquid HCl production.

Several commenters requested that the EPA exempt storage tanks that are smaller than a certain capacity. The commenters pointed out that the potential emissions from small storage tanks are low while the control costs are very high. Commenters suggestions for a minimum capacity ranged from 15,000 to 20,000 gallons. One commenter further requested an exemption for all portable storage containers (*e.g.*, drums, tank trucks, railcars). Another commenter suggested that tank capacity and HCl vapor pressure be used together to determine which storage tanks should be exempt.

We understand the commenters' concern about the cost of controlling emissions from small storage tanks. However, we believe that small storage tanks are not likely to be covered by the final rule given the other changes that we have made which were based on comments received. We have exempted storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater. We have also defined the HCl production facility such that storage tanks that store HCl for use in wastewater treatment or as feedstock for another process are not part of the HCl production facility. Therefore, we have not added an exemption for small storage tanks.

B. How Did the EPA Determine MACT?

1. Data Used To Determine MACT

Many commenters stated that the EPA did not use data that was truly representative of the sources in the source category when determining the MACT emission limitations. The commenters believed that the database used to prepare the proposed rule contained facilities that potentially would not be subject to the final rule and did not contain many facilities that potentially would be subject to the final rule. This criticism included the estimate of the number of facilities potentially subject to the final rule, but was more focused on the data used to establish MACT.

Commenters stated the number of sources subject to the final rule would likely be much greater than the 64 plant sites that we identified as potentially

subject at proposal. One commenter estimated that the number of plant sites could be as high as 300.

The commenters were especially concerned with the representativeness of the data set used to establish the MACT emission limits. They maintained that the lack of representativeness of the source category resulted in proposed emission limitations that were not adequately justified for the HCl production source category, and that the use of more representative data could change the MACT determination. A few of the commenters specifically requested that we gather data from a more representative group of potentially affected facilities and re-calculate the MACT floor. One commenter even went so far as to state that we should withdraw the proposed rule and re-propose it after properly surveying the industry and re-calculating the MACT floor based on accurate data.

First, we will briefly review the process used to obtain the information for the HCl production source category, followed by responses to the specific issues raised by the commenters.

In creating our list of sources in the HCl production source category, we consulted reliable and well-respected sources of information on the chemical industry. We removed plant sites from the original list that we believed would be subject to other MACT standards or Federal regulations. There were also a few plants that we were aware of through contacts with State agencies that were not on the original list, so they were added. That resulted in the 64 plants identified at proposal. We recognized the special difficulty in identifying all HCl production facilities, since HCl is often produced from by-product streams only for internal uses, and considered that our list may not have been comprehensive. Therefore, during a meeting held on February 28, 2001 with the primary trade organization for the HCl production industry, we specifically requested assistance in improving our initial list of potentially subject plant sites. However, no additional information resulted from this request for assistance.

While commenters claim that there could be potentially two or three times more plant sites subject to the HCl Production NESHAP than we originally estimated, there was little actual information provided to support this claim. Where commenters provided specific plant names and locations, we adjusted the list of plant sites. We also identified a few inconsistencies and overlaps from our original list. The result was that the revised list of

potentially subject facilities contains 65 plant sites.

As was documented in several items in the docket, our information gathering approach for this source category was to obtain available information from State/local agencies in States where HCl production facilities are located. That resulted in data for 24 HCl production facilities at 19 plant sites in 5 States. In addition, we had information from site visits to 6 additional HCl production facilities at 5 more plant sites, meaning that the MACT database relied upon for the proposed rule contained information representing 30 HCl production facilities at 24 plant sites in 9 States. We believe that this was a reasonable approach to obtain information for this industry.

Some commenters requested that we distribute a questionnaire under our CAA section 114 authority to accurately reflect the source category. However, the commenters did not provide a list of plants to whom this questionnaire should be sent to ensure that the data were more representative than the data set we obtained from State agency files. Some commenters, however, did offer to provide additional information for their HCl production facilities, which could have resulted in data for a few additional processes. However, we concluded that the original data set was adequate to determine MACT and did not feel it was necessary to burden the industry with a data collection request.

Commenters also complained that many of the plants considered in the MACT floor analysis were actually plants that are not in the source category. These commenters are correct, in part, in that we did utilize data from two plants that we had removed from the original list because we presumed that these HCl production processes were, or would be, subject to another MACT standard. To eliminate this inconsistency, we have removed these two facilities from the MACT analysis. We also adjusted the data set based on all specific comments received. Therefore, the revised MACT floor analysis is based on facilities that, to the best of our knowledge, are in the source category. For example, we have removed from the MACT floor analysis all HCl production facilities that produce HCl via direct synthesis at chlor-alkali facilities, and we have kept in the MACT floor those HCl production facilities that are co-located with chlor-alkali facilities but are not part of a chlor-alkali facility and produce HCl through some other process.

We would point out that while we did not agree with the commenters regarding the representativeness and

adequacy of our MACT database, and we did not undertake an additional data gathering effort after proposal, we did revise our MACT analysis to address many of the other issues raised by commenters regarding the determination of the emission limitations. These are discussed in the next sections.

2. MACT Floor Determination

There were a few issues raised related to the MACT floor analysis. First, commenters believed that the floor should have been based on the top 12 percent of the facilities instead of the top 5 facilities, since there are more than 30 facilities in the category. Commenters also believed that the floor should have been calculated based on the mean and not the median. In addition, commenters objected to how we handled control efficiencies reported as >99 percent (in the floor analysis, units that reported >99 percent efficiency were excluded from the floor calculation and the remaining facilities in the top 5 of the reporting facilities were used to determine the floor) and they pointed out that we were inconsistent in this approach (we did consider these >99 reported efficiencies for the floor for transfer operations).

As noted above, we currently estimate that there are 65 facilities in the source category. Therefore, if data were available for all facilities, the MACT floor would be based on the best-performing 12 percent, or 8 facilities. In our re-analysis of the MACT floor, we considered the control achieved by the best-performing eight facilities in our database. We disagree with the opinion regarding use of the average rather than the median. As was stated in the preamble for the proposed rule, we have determined that average means any measure of central tendency, whether it be the arithmetic mean, median, or mode, or some other measure based on the central tendency of a data set. We continue to believe that this determination, which we originally published over 8 years ago (59 FR 29196; June 6, 1994), is sound. For the MACT determination for this source category, which was in the format of a percent emission reduction, we determined that selection of the median value was most appropriate. This ensured that a control efficiency actually being achieved was selected, rather than the mean of values, which would not likely have represented the actual performance of an actual control device.

The commenters were correct in that we were inconsistent in how we considered facilities that reported

control efficiencies as >99 percent. For process vents and storage tanks, we did not include data points reported as >99 percent when calculating the MACT floor for the proposed rule, whereas for transfer operations we did include data points reported as >99 percent when calculating the MACT floor because we had only three data points, two of which reported >99 percent. In evaluating this issue, we determined that it was inappropriate to have not considered some of the most effective controls in the source category for process vents and storage tanks simply because their efficiencies were reported as greater than a particular number. Therefore, in our re-analysis of the MACT floor, we assigned a numerical value of 99 percent emission reduction to each control device that reported an efficiency of >99 percent or ≥99 percent. The data points reported as >99 percent or ≥99 percent were obtained from permit applications, and we had no data that indicated more specific control efficiencies in these cases. We believe that rounding these data points down to 99 percent represents the closest actual control efficiency that we are sure these sources could meet consistently.

Due to the comments raised regarding the MACT floor approach and the data used, it was necessary to re-evaluate the MACT floor. As a reminder, the MACT floor addressed HCl emissions from process vents, storage tanks, and transfer operations, and Cl₂ emissions from process vents. Further, the proposed format of the MACT floor for all emission sources was a percent reduction. We determined the MACT floor for existing sources as the median value of the top eight facilities in the data set for each type of emission source.

The revised MACT floors for existing sources are 99 percent emission reduction for HCl emissions from process vents and transfer operations, 99 percent for Cl₂ emissions from process vents, and 98.5 percent for HCl emissions from storage tanks. For consistency, we believe it is appropriate to round the storage tank value to 99 percent. The revised MACT floors for new sources are 99.4 percent emission reduction for HCl emissions from process vents, 99.8 percent emission reduction for Cl₂ emissions from process vents, 99.9 percent emission reduction for HCl emissions from storage tanks, and 99 percent emission reduction for HCl emissions from transfer operations. These new source MACT floors are based on the level of control achieved by the best-controlled source in the category.

3. Emission Limitations and Work Practice Standards

The proposed emission limitations were in the format of an outlet concentration. As outlined in the proposed preamble, we selected this format primarily due to concerns in distinguishing an HCl control device from an HCl production process. There were numerous comments received regarding this format and the data used to establish the emission limit. These proposed limits were developed by applying the MACT floor percent reduction efficiencies to the highest uncontrolled concentrations in the data set. Specifically, these highest uncontrolled concentrations were 2,044 ppmv for HCl and 9,650 ppmv for Cl₂. Commenters stated that we established the concentration equivalents to the MACT floor based on data that do not accurately reflect the variability of sources in the source category. The commenters noted that facilities in the source category often have emission points (with only one exception, all examples raised by the commenters were for storage tanks and transfer operations) that emit much higher concentrations of HCl and Cl₂ or emit at much higher air flow rates than the facilities included in our database. The commenters stated that emission points with high concentrations would need removal efficiencies greater than the MACT floor levels in order to meet the proposed concentration limits, which we proposed as being equivalent to the MACT floor percent removal efficiencies. Therefore, the commenters maintained that the proposed emission limits were far beyond the MACT floor and not justified.

Alternatively, one commenter stated that the proposed emission limits were not as stringent as they should be. The commenter stated that the MACT floor control efficiencies are appropriate, but that they were inappropriately converted to equivalent concentration limits. The commenter stated that we chose as equivalent to the MACT floor control efficiency the highest concentration from the range of concentrations that are already being achieved and noted that recent court decisions reiterate that we must set the MACT floor at the average already being achieved by the best performing 12 percent of the sources, not at a level at which all sources can easily meet. The commenter urged us to establish emission limits that are appropriately stringent based on the MACT floor control efficiencies. Commenters offered three basic suggestions on how to deal with this perceived problem. Several

commenters requested that we collect and examine inlet concentration data from a variety of additional process vents, storage tanks, and transfer operations, and develop emission limits that are more appropriate to the actual inlet concentrations observed in the source category.

In the absence of more data, commenters encouraged us to establish a tiered control efficiency based on flow rate. That would avoid the situation in which already well-controlled scrubbers with high air flow rates incur a high additional cost to achieve the proposed concentration limit. The final suggestion by several commenters was that we allow compliance with either a control efficiency or an emission limit, whichever is less stringent. The commenters stated that such an alternative would relieve the situation where control devices have high removal efficiencies but cannot meet the proposed concentration limits because they have high inlet concentrations.

First, we reject the commenter's opinion that additional data are needed to establish these concentration equivalents. As discussed above, we believe that our data gathering approach was sound and are not convinced that additional data gathering would necessarily result in data that better characterizes the industry.

However, we recognize that none of the data used to establish the concentration equivalents were from storage tanks or transfer operations. We agree that uncontrolled concentrations from storage tanks and transfer operations are likely to be much higher than those for the process vents in our data set because HCl remains in storage tanks and transfer operations long enough for the concentration in the vapor to reach equilibrium with the concentration in the liquid, whereas HCl passes through HCl production units quickly. We would expect that, in many cases, the vapor space in storage tanks and transfer operations will be saturated. As discussed above, we have revised the HCl production facility definition to include production of liquid HCl at a concentration of 30 weight percent or greater. At saturation, the HCl vapor concentration above a 30 weight percent HCl liquid would be around 12,000 ppmv. Applying the existing source MACT floor reduction efficiencies (99 percent for storage tanks and for transfer operations) to this concentration results in an outlet concentration of 120 ppmv. Applying the new source MACT floor reduction efficiencies (99.9 percent for storage vessels and 99 percent for transfer operations) to this concentration results

in an outlet concentration of 12 ppmv for storage tanks and 120 ppmv for transfer operations. These are the emission limitations for storage tanks and transfer operations in the final rule.

With one exception, the comments did not indicate that the uncontrolled concentrations used to determine the emission limitations for process vents (2,044 ppmv for HCl and 9,650 ppmv for Cl₂) were inappropriate. Therefore, we applied the revised existing source MACT floor control efficiencies (99 percent for both HCl and Cl₂ emissions from process vents) to these concentrations to obtain 20 ppmv HCl and approximately 100 ppmv Cl₂. Applying the new source MACT floor reduction efficiencies (99.4 percent for HCl emissions from process vents and 99.8 percent for Cl₂ emissions from process vents) to this concentration results in outlet concentrations of 12 ppmv HCl and 20 ppmv Cl₂ (rounded up from 19 ppmv). These are the emission limitations for process vents in the final rule. We believe instances cited by one commenter regarding inlet Cl₂ concentrations in process vents would be addressed by the alternative format in the final rule, which is discussed below.

We disagree with the commenter who believed that the emission limitations were not as stringent as they should be. The percent reduction limits represent the average control level of the best-controlled sources, in accordance with CAA section 112(d)(3). The alternative concentration limits were determined using the appropriate percent reduction limits (which were based on the average of the best-controlled sources) and the available data on control device inlet concentrations. In determining the concentration limits, we made assumptions about these inlet concentrations for each type of emission source (for example, we chose the highest concentration) to consider the variability that will be encountered by the best-performing sources. We strongly disagree that all sources can easily meet these limits, and we believe that significant control measures will be required for facilities to meet the limits.

We do not believe that a tiered control efficiency based on flow rate is appropriate based on the available information, and we did not incorporate such a concept into the final rule. We do recognize, nevertheless, that situations could exist where sources could achieve the MACT floor reduction efficiency but fail to meet the applicable outlet concentration emission limitations. Further, the commenters alleviated our concerns at proposal regarding a percent reduction emission

limit. We were concerned that it would be difficult to determine how and where to measure a control efficiency but commenters alleviated this concern by stating that the HCl production unit is distinguishable from the control device, which makes it clear where to measure the control device inlet and outlet in order to calculate a control efficiency over the control device. Therefore, we have incorporated the third suggestion of the commenters (compliance with either a control efficiency or a concentration limit) into the final rule. Owners or operators will have the option of complying with a percent reduction efficiency instead of the outlet concentration limitation. For storage tanks and transfer operations, the percent reduction and concentration limit are equivalent assuming that a 30 weight percent liquid HCl product is stored in the tanks or used in the transfer operations. For process vents, the percent reduction and concentration limits are equivalent assuming process vent outlet concentrations of approximately 2,000 ppmv HCl and 10,000 ppmv Cl₂. These outlet concentrations were assumed in order to take into account the variability of outlet concentrations from HCl process vents. The percent reduction will be measured across the control device, or series of control devices, that follow the absorber production unit, storage tank, or transfer rack. We have added definitions of HCl production unit and control device to ensure that there is no confusion regarding where the percent reduction must be measured.

Comments were received on whether transfer operations and wastewater operations should have emission limitations. We were asked to reconsider the need to set emission limitations for transfer operations because emissions from transfer operations contribute less than one percent of the total emissions from HCl production facilities and because most transfer operations at HCl production facilities are already controlled. There was complete agreement, however, that our decision not to establish emission limits or work practice standards for wastewater treatment operations was appropriate.

We are obligated to set emission limitations at least as stringent as the MACT floor, which we are required to establish based on the average emission limitation achieved by the best-performing existing sources, regardless of the percentage of total emissions attributable to the specific equipment or process. This principle was applied for both transfer operations and wastewater. For transfer operations, the available

information is consistent with the commenter's statement that "most transfer operations are already controlled." Therefore, we are required to establish limits requiring control based on the best performing sources. We did not identify any controls for emissions from wastewater, or any process modifications or other pollution prevention type measures that reduce HCl emissions from wastewater. For the reasons discussed in the preamble to the proposed rule, we determined that the new and existing source MACT floors for wastewater were no emissions reductions (66 FR 48181-48182; September 18, 2001). Therefore, the final rule does not require any controls or other measures even though wastewater operations are part of the affected source.

Similarly, in developing the proposed rule, we determined that the MACT floor for leaking equipment is a general plan to detect and repair leaks of HCl because most HCl production facilities are already performing LDAR activities. The response received on these proposed requirements varied.

Several commenters agreed with our basic proposed approach to require the development and implementation of a site-specific plan, rather than to include more formal requirements in the final rule. However, there was great concern regarding the proposed requirement to submit the plan to a permitting authority for review and approval. The commenters stated that they are not aware of any NESHAP that requires LDAR plans to be submitted for approval, and that requiring these plans to be submitted for approval effectively makes them part of a facility's title V operating permit and, consequently, implementation of the initial plan and any changes to the plan would require a formal permit amendment. They claimed that this would be very time consuming and an unnecessary burden. The commenters noted that the proposed rule did not address how the plan is to be approved, and requested that, if the requirement to submit the plan is not eliminated, the EPA provide criteria for permitting authorities to use in reviewing LDAR plans. The commenters asserted that eliminating the requirement to submit LDAR plans alleviates the burdens associated with title V permits and also allows informal or routine maintenance programs to constitute the LDAR plan.

One commenter proposed that we include very simplified requirements in the final rule (e.g., if you detect a leak, repair it within 15 days). Others argued that the EPA should eliminate any and

all references to an LDAR plan from the final rule.

First, in light of the fact that most, if not all, HCl production facilities already have programs to reduce emissions from equipment leaks at HCl production facilities, we cannot eliminate the requirement to establish a floor and control emissions from equipment leaks. We also believe it is important that LDAR plans be submitted to the Administrator to facilitate enforcement of the final rule and public access to non-confidential plan requirements, and the final rule retains the proposed requirement for submittal. However, in response to the commenters' concerns, we have eliminated the proposed requirement that LDAR plans be affirmatively approved. Instead, we have clarified that any deficiencies in LDAR plans must be promptly corrected upon request by the Administrator, in order to allow the Administrator to review and approve LDAR plans if the Administrator so chooses.

Moreover, we do not intend that the contents of a LDAR plan itself must be included in a facility's title V permit. Rather, like other requirements of the final rule, the requirements to develop, implement, and submit a LDAR plan to control emissions from equipment leaks—but not the contents of the plan—are applicable requirements under title V and must be reflected in a facility's title V operating permit. We have clarified that you may incorporate by reference into your LDAR plan existing manuals that describe LDAR activities required under other federally enforceable rules, provided that copies of all manuals that are incorporated by reference are submitted to the Administrator. We are also requiring that a current copy of the plan be maintained on site, and that previous versions be maintained on site for a period of 5 years after any revision of the plan.

C. What Are the Performance Testing and Other Compliance Provisions?

Several changes were made in the final rule related to the performance testing and other compliance provisions. First, commenters objected to the proposed annual performance testing requirement. They stated that the initial performance test is sufficient to demonstrate initial compliance and establish operating parameter ranges and that monitoring of those parameters is sufficient to demonstrate continuous compliance. The commenters further stated that performance tests are expensive and provide no additional environmental benefit, and that the cost of annual performance tests was not

accounted for in the cost impact analysis. We agree with the commenters that it is reasonable to perform subsequent performance tests less frequently than annually and have decided to change the requirement for subsequent performance testing from annually to every 5 years or each time a facility's title V permit is renewed, whichever is more frequent.

There was also objection to the proposed requirement that performance testing be conducted and the NOCS submitted before the compliance date, especially since the General Provisions set deadlines for these activities after the compliance date. We have changed the final rule to conform with the General Provisions. The final rule requires the performance test to be completed within 180 days after the compliance date. The final rule does not change the requirement to submit the NOCS within 60 days after completion of the performance test, because this requirement was already consistent with the General Provisions.

Commenters also said that the performance test requirements in the proposed rule are not appropriate for storage tanks and transfer operations, primarily because storage tanks and transfer operations are batch operations that do not operate for long enough time periods to conduct three one-hour sampling runs, which were required by the proposed rule. Further, they cited the relatively high expense of such testing, when compared with the small emissions from those sources. Upon review of these comments and the additional information provided, we decided to allow design evaluations as an alternate means of demonstrating both initial and subsequent compliance for storage tanks and transfer operations that are independently controlled (*e.g.*, not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream). The final rule requires that the design evaluation include documentation demonstrating that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

For process vents, there were proposed limits for both HCl and Cl₂ emissions. Therefore, there were testing requirements for both pollutants. Several commenters disagreed with the proposed requirement that all affected HCl production facilities must conduct performance tests for Cl₂ from process vents. They maintained that we did not have adequate support to require testing

for Cl₂ and that only facilities that burn Cl₂ to produce HCl would have Cl₂ emissions.

First, the docket for the final rule does include numerous supporting references for our assertion that Cl can be emitted from HCl production process vents. Of the 21 facilities for which we had emissions data for HCl production process vents, 16 reported emissions of Cl₂. In fact, 15 of these 16 facilities do not produce HCl in a direct synthesis process. However, we acknowledge that there are a variety of processes that produce HCl, not all of which have the potential to emit Cl₂. Therefore, we have added a provision to the final rule allowing facilities to use process knowledge and previous performance test results to demonstrate that Cl₂ is not likely to be present in a process vent emission stream. That provision allows facilities to be exempted from the requirement to test process vents for Cl₂ provided that the appropriate documentation is submitted with the site-specific test plan.

In response to a request that facilities be allowed to use existing performance test data to demonstrate initial compliance in lieu of conducting an initial performance test, we included an allowance in the final rule allowing facilities to use existing performance test data to demonstrate initial compliance for the emission point on which the test was conducted provided that a three conditions are met. These are: (1) The performance test was conducted within the previous 5-year period; (2) the performance test was conducted using the same test methods required by the final rule; and (3) no modifications have been made to the process or emission point since the previous performance test was conducted or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

Several commenters disagreed with the proposed requirement to submit the site-specific monitoring plan for approval, primarily because, the commenters alleged, requiring submission of the plan would result in the details of the plan being included in a facility's title V permit and, the commenters further alleged, would cause a delay in implementation and modification of the plan because of the lengthy time period typical for approval of elements of a title V permit. It was never our intent that the substantive provisions of a site-specific monitoring plan would become part of a facility's title V operating permit. We have changed the final rule to require the

site-specific monitoring plan to be developed, implemented, and submitted to the Administrator, but not subject to the Administrator's approval. We also have clarified that any deficiencies in site-specific monitoring plans must be promptly corrected upon request of the Administrator, in order to allow the Administrator to review and approve site-specific monitoring plans if the Administrator chooses to do so. A facility's title V permit must contain the final rule's requirement to develop and implement the plan, which is an applicable requirement under title V, but need not incorporate the substantive provisions of the plan itself, even if the Administrator requests the plan to be submitted. We have also added a requirement that a current copy of the plan be maintained on site, and that previous versions be maintained on site for a period of 5 years after the revision of the plan.

Several commenters stated that the detailed operation, inspection, and maintenance requirements for monitoring devices are unnecessary because the final rule requires facilities to develop their own site-specific monitoring plans and requested that we delete the detailed requirements. We had intended for facilities that monitor pH and liquid flow rate to simply incorporate into their site-specific monitoring plans the specific procedures that we included in the proposed rule rather than develop their own procedures. We included specific procedures in the proposed rule because no performance specification had yet been promulgated for pH or liquid flow monitoring devices. However, we are currently developing performance specifications for continuous monitoring systems that must be followed by owners and operators of all sources subject to standards under 40 CFR part 63. Therefore, we have decided to remove the detailed requirements from 40 CFR 63.9025(b) and (c) of the final rule and wait for the rule that would propose performance specifications for all of 40 CFR part 63. We decided it would be premature to promulgate performance specifications for the final rule when the specifications that would ultimately be promulgated for all of 40 CFR part 63 may be different as a result of possible public comments received on that rulemaking. We did add language in the final rule to require that "all monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment

would reasonably be expected to monitor accurately.” Therefore, owners and operators will be required by the final rule to follow written performance specifications, but not necessarily the ones that we proposed. In addition, the requirement to develop a site-specific monitoring plan, which must include performance specifications, is retained in the final rule as the mechanism for formalizing the performance specifications.

IV. Summary of the Environmental, Energy, Cost, and Economic Impacts

A. What Are the Air Quality Impacts?

Nationwide baseline emissions are approximately 2,270 Mg/yr (2,520 tpy) of HCl and 640 Mg/yr (700 tpy) of Cl₂. The total annual emissions reductions resulting from the final rule are estimated to be approximately 1,050 Mg/yr (1,155 tpy) of HCl and 390 Mg/yr (430 tpy) of Cl₂.

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health, environmental, or energy impacts associated with the final standards for HCl production plants. The final rule will result in the generation of additional wastewater from scrubbers. We have calculated this amount to be approximately 103,000 gallons per year per process vent scrubber and 500 gallons per year per storage tank/transfer operation scrubber. We estimate that there are 16 facilities that will install new process vent scrubbers and 32 facilities that will install new storage tank or transfer operation scrubbers.

C. What Are the Cost and Economic Impacts?

The total estimated capital cost of the final rule for HCl production is approximately \$23.2 million in the fifth year for new and existing sources. The total estimated annual cost of the final rule is around \$8.1 million in the fifth year for new and existing sources, which includes the annualized costs of control and monitoring equipment, other operation and maintenance, and the annual labor to comply with the reporting and recordkeeping requirements of the final rule once the sources are in compliance.

The economic impact analysis, which is a comparison of compliance costs for the affected parent firms with their revenues, shows that the estimated costs associated with the final rule are no more than 1.0 percent of the revenues for any of the 32 affected firms. It is likely that the expected reduction in

affected HCl output is no more than 0.01 percent or less from that industry. It should be noted that these results are based on the application of costs from a subset of the affected facilities to the remaining facilities. This is necessary due to incomplete facility-level cost data. Therefore, it is likely that there is no adverse impact expected to HCl producers as a result of implementation of the final rule.

V. Administrative Requirements

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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2032.2), and a copy may be obtained from Susan Auby by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the internet at

<http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The final information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 150,156 labor hours, and the annual average burden is 50,052 labor hours. The labor cost over the 3-year period is \$6,950,959, or \$2,316,986 per year. The annualized capital cost for monitoring equipment is \$25,869. Annual operation and maintenance costs are \$664,622 over 3 years, averaging \$221,541 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certification reports, notifications, and recordkeeping.

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 purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has a maximum of 1,000 employees according to Small Business Administration (SBA) size standards (NAICS 325181, Alkalies and Chlorine Manufacturing, and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing); (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.

After considering the economic impact of today's final rule on small entities, I certify that the final rule will not have a significant impact on a substantial number of small entities. In accordance with the RFA, as amended by the SBREFA, 5 U.S.C. 601, *et seq.*, we conducted an assessment of the final rule on small businesses within the industries affected by the final rule. Based on SBA size definitions for the affected industries and reported sales and employment data, we identified 4 affected small businesses out of 32 affected parent businesses (or 13 percent of the total number). In order to estimate impacts to affected small businesses, we conducted a screening analysis that consists of estimates of the annual compliance costs these businesses are expected to occur as compared to their revenues. Since the data are such that costs can only be estimated for a subset of the affected facilities, the available data were used to determine the costs to the facilities outside of this subset. The results of this screening analysis show that all but one of the small businesses are expected to have annual compliance costs of 1 percent or less. For more information, consult the docket for this project.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 final rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be approximately \$6.2 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is

not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255; August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to HCl producers and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risks

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

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

The final rule involves technical standards. We are citing the following methods in the final rule: EPA Methods

1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, and 26A of 40 CFR part 60, appendix A. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, and 2G. The search and review results have been documented and are placed in Docket ID No. OAR-2002-0057 for the final rule.

This search for emission measurement procedures identified eight voluntary consensus standards potentially applicable to the final rule. The EPA determined that six of these eight standards were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, the final rule does not adopt these standards today. The reasons for this determination for the six methods are discussed below.

The standard ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the final rule. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S-type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464-96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the final rule primarily because applicability specifications are not clearly defined (e.g., range of gas composition, temperature limits). Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The European standard EN 1911-1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and Cl₂ gas, if present, without the ability to distinguish between the two. The EPA Methods 26

and 26A use an acidified absorbing solution to first separate HCl and Cl₂ gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for Cl₂ gas would be expected to vary as the pH of the water changed during sampling.

Three of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the final rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154-00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, and 4; ASTM 3796-90 (1998), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; and ASTM E337-84 (1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4.

The following two of the eight voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2).

Section 63.9020 to subpart NNNNN lists the EPA testing methods included in the final rule. Under 40 CFR 63.8 of subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

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 final rule must submit a rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final 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 final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 17, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: February 28, 2003.

Christine Todd Whitman,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart NNNNN to read as follows:

Subpart NNNNN—National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

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Table 7 to Subpart NNNNN of Part 63—Applicability of General Provisions to Subpart NNNNN

What This Subpart Covers**63.8980 What is the purpose of this subpart?**

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) and work practice standards for hazardous air pollutants (HAP) emitted from hydrochloric acid (HCl) production. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.8985 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only produce occasionally liquid HCl product at a concentration of 30 weight percent or greater.

(1) An HCl production facility is the collection of unit operations and equipment associated with the production of liquid HCl product. The HCl production facility begins at the point where a gaseous stream containing HCl enters the HCl production unit. The HCl production facility includes all HCl storage tanks that contain liquid HCl product that is produced in the HCl production unit, with the exceptions noted in paragraph (a)(2) of this section. The HCl production facility also includes all HCl transfer operations that

load HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, along with the piping and other equipment in HCl service used to transfer liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations. The HCl production facility ends at the point that the liquid HCl product produced in the HCl production unit is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the plant site, or at the point the HCl product leaves the plant site via pipeline.

(2) Storage tanks that are dedicated feedstock tanks for another process and storage tanks that store HCl dedicated for use in wastewater treatment are not considered part of an HCl production facility.

(3) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) An HCl production facility is not subject to this subpart if it is also subject to NESHAP under one of the subparts listed in paragraphs (b)(1) through (5) of this section.

(1) 40 CFR part 63, subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.

(2) 40 CFR part 63, subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(3) 40 CFR part 63, subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(4) 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(5) 40 CFR part 63, subpart GGG, National Emission Standards for Pharmaceuticals Production.

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to one of the requirements listed in paragraphs (c)(1) through (3) of this section.

(1) Section 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical

Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(2) Section 264.343(b), Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (subpart O, Incinerators).

(3) Section 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) An HCl production facility is not subject to this subpart if it produces HCl through the direct synthesis of hydrogen and chlorine and is part of a chlor-alkali facility.

(e) An HCl production facility is not subject to this subpart if it is a research and development facility.

(f) An HCl production facility is not subject to this subpart if all of the gaseous streams containing HCl and chlorine (Cl₂) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process prior to being discharged to the atmosphere.

§ 63.8990 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at an HCl production facility.

(b) The affected source is the group of one or more HCl production facilities at a plant site that are subject to this subpart, and all associated wastewater operations, which contain the collection of emission streams listed in paragraphs (b)(1) through (5) of this section.

(1) Each emission stream from an HCl process vent.

(2) Each emission stream from an HCl storage tank.

(3) Each emission stream from an HCl transfer operation.

(4) Each emission stream resulting from leaks from equipment in HCl/Cl₂ service.

(5) Each emission stream from HCl wastewater operations. There are no emission limitations or other requirements in this subpart that apply to HCl wastewater operations.

(c) An affected source is a new affected source if you commenced construction of the affected source after September 18, 2001 and you met the applicability criteria of § 63.8985 at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8995 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with

this subpart according to paragraphs (a)(1) or (2) of this section.

(1) If you start up your affected source before April 17, 2003, you must comply with the emission limitations and work practice standards in this subpart no later than April 17, 2003.

(2) If you start up your affected source after April 17, 2003, you must comply with the emission limitations and work practice standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards no later than 3 years after April 17, 2003.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the provisions in paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the source must be in compliance with this subpart no later than the date 3 years after the area source becomes a major source.

(d) You must meet the notification requirements in § 63.9045 according to the schedule in § 63.9045 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9000 What emission limitations and work practice standards must I meet?

(a) With the exceptions noted in paragraph (c) of this section, you must meet the applicable emission limit and work practice standard in Table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

(b) With the exceptions noted in paragraph (c) of this section, you must meet the applicable operating limit in Table 2 to this subpart for each emission stream listed under § 63.8990(b)(1) through (3) that is part of your affected source.

(c) The emission streams listed in paragraphs (c)(1) through (3) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

(1) Emission streams from HCl storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater.

(2) Emission streams from HCl transfer operations that never load

liquid HCl product with a concentration of 30 weight percent or greater.

(3) Emission streams from HCl wastewater operations.

General Compliance Requirements

§ 63.9005 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(d) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. For each monitoring system required in this section, you must develop, implement, and submit to the Administrator a site-specific monitoring plan that addresses the installation requirements in paragraphs (d)(1) through (3) of this section, the ongoing procedures in paragraphs (d)(4) through (6) of this section, and the requirements in § 63.9025, as applicable. You must submit the plan with your Notification of Compliance Status. Upon request of the Administrator, you must promptly correct any deficiencies in a site-specific monitoring plan and submit the revised plan.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(4) Ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9025.

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1) and (2)(i).

Testing and Initial Compliance Requirements

§ 63.9010 By what date must I conduct performance tests?

(a) If you have a new or reconstructed affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8995(a) and according to the provisions in § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your existing affected source in § 63.8995(b) and according to the provisions in § 63.7(a)(2).

(c) If you commenced construction or reconstruction between September 18, 2001 and April 17, 2003, you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than 180 calendar days after April 17, 2003 or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9015 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit.

(b) You must report the results of subsequent performance tests within 60 days after the completion of the test. This report should also verify that the operating limits for your affected source have not changed or provide documentation of revised operating limits established as specified in Table 2 to this subpart. The reports for all subsequent performance tests should include all applicable information required in § 63.9050.

§ 63.9020 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you as directed in paragraphs (a)(1) through (4) of this section, except as noted in paragraphs (b) and (c) of this section.

(1) You must develop a site-specific test plan according to § 63.7(c)(2) and

conduct each performance test according to the site-specific test plan.

(2) You must conduct each performance test under representative conditions according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 3.

(3) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(4) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(b) If you are complying with a percent reduction emission limitation, you must determine the percent reduction in accordance with paragraphs (b)(1) and (2) of this section.

$$E_i = K_2(C_i M_i)Q_i \quad \text{Equation 1}$$

$$E_o = K_2(C_o M_o)Q_o \quad \text{Equation 2}$$

(1) Calculate the mass rate of either HCl or chlorine using Equations 1 and 2 of this section:

where:

C_i , C_o = Concentration of HCl or Cl_2 in the gas stream at the inlet and outlet of the control device(s), respectively, dry basis, parts per million by volume.

E_i , E_o = Mass rate of HCl or Cl_2 at the inlet and outlet of the control device(s), respectively, dry basis, kilogram per hour.

M_i , M_o = Molecular weight of HCl or Cl_2 at the inlet and outlet of the control device(s), respectively, gram/gram-mole.

Q_i , Q_o = Flow rate of gas stream at the inlet and outlet of the control device(s), respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million)¹ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(2) Calculate the percent reduction of HCl or Cl_2 using Equation 3 of this section:

$$R = \frac{E_i - E_o}{E_i} (100) \quad \text{Equation 3}$$

where:

R = Control efficiency of control device(s).

E_i = Mass rate of HCl or Cl_2 to the inlet to the control device(s), kilograms per hour.

E_o = Mass rate of HCl or Cl_2 at the outlet of the control device(s), kilograms per hour.

(c) You may prepare a design evaluation in lieu of conducting a performance test for HCl storage tanks and HCl transfer operations that are not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream. The design evaluation shall include documentation demonstrating that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

(1) If you use a caustic scrubber control device or a water scrubber control device, the design evaluation shall address the vent stream composition, constituent concentrations, liquid-to-vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent concentration level and shall include the additional information in paragraphs (c)(1)(i) and (ii) of this section for trays and a packed column scrubber.

(i) Type and total number of theoretical and actual trays.

(ii) Type and total surface area of packing for entire column and for individual packed sections, if the column contains more than one packed section.

(2) If you use any other control device, the design evaluation shall address the composition and HAP concentration of the vent stream immediately preceding the control device, as well as other parameters necessary to demonstrate that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

(d) You are not required to conduct a performance test for an emission point for which a performance test was conducted within the previous 5-year period, using the same test methods specified in this section and for which either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The operating limits reported under the previous performance test shall be sufficient to meet the monitoring requirements in this subpart.

(e) You must establish all operating limits with which you will demonstrate

continuous compliance with the applicable emission limits in Table 1 to this subpart as described in paragraphs (e)(1) through (3) of this section.

(1) If you use a caustic scrubber control device or water scrubber control device and you conduct a performance test, you must establish operating limits according to paragraphs (e)(1)(i) and (ii) of this section. If a series of control devices are used, you must establish separate operating limits for each device.

(i) You must establish the minimum value as the operating limit for scrubber inlet liquid or recirculating liquid flow rate, as appropriate. The minimum value shall be based on the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, values measured during the performance test.

(ii) You must establish the minimum and maximum values as the operating limits for scrubber effluent pH. The minimum and maximum values shall be based on the scrubber effluent pH values measured during the performance test.

(2) If you use any other control device and you conduct a performance test, you must establish operating limits according to your site-specific test plan submitted in accordance with § 63.7(c)(2)(i). The operating limits shall be based on the operating parameter values measured during the performance test. If a series of control devices are used, you must establish separate operating limits for each device.

(3) If you do not conduct a performance test for a HCl storage tank or HCl transfer operation, you must use engineering assessments and/or manufacturer's recommendations to establish the operating limits specified in paragraphs (e)(1)(i) and (ii), or (e)(2), of this section.

(4) As needed in applicability determinations, you must use ASTM E224 to determine the HCl concentration in liquid products.

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.9020(d) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

(1) You must operate your CMS and collect data at all times the process is operating.

(2) You must collect data from at least four equally spaced periods each hour.

(3) For at least 75 percent of the operating hours in a 24-hour period, you

must have valid data (as defined in your site-specific monitoring plan) for at least 4 equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average value using all valid data or, where data are collected from an automated CMS, using at least one measured value per minute if measured more frequently than once per minute.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(4) of this section for the 24-hour period.

(6) You must record the results for each inspection, calibration, and validation check as specified in your site-specific monitoring plan.

(b) For scrubber control devices, you may request approval, in accordance with § 63.8(f), to monitor parameters other than those specified in § 63.9020(e). In accordance with § 63.8(f), you must submit a monitoring plan to the Administrator and the plan must meet the requirements in paragraphs (a) and (b)(1) through (3) of this section. You must conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(c) For any other control device, you must ensure that the CMS is operated according to a monitoring plan submitted to the Administrator as required by § 63.8(f). The monitoring plan must meet the requirements in paragraphs (a) and (c)(1) through (3) of this section. You must conduct monitoring in accordance with the plan submitted to the Administrator, as amended, unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

§ 63.9030 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limit and work practice standard that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.9020 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9045(e).

Continuous Compliance Requirements

§ 63.9035 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) If you use a caustic scrubber or a water scrubber/absorber to meet the emission limits in Table 1 to this subpart, you must keep the records specified in paragraphs (b)(1) and (2) of this section to support your compliance demonstration.

(1) Records of daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate.

(2) Records of the daily average scrubber effluent pH.

(c) If you use any other control device to meet the emission limits in Table 1 to this subpart, you must keep records of the operating parameter values identified in your monitoring plan in § 63.9025(c) to support your compliance demonstration.

(d) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, or malfunction when the affected source is operating. A monitoring malfunction includes, but is not limited to, any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(e) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may

such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit and work practice standard in Table 1 to this subpart that applies to you according to Table 4 to this subpart.

(b) You must demonstrate continuous compliance with each operating limit in Table 2 of this subpart that applies to you according to Tables 4 and 5 to this subpart.

(c) You must report each instance in which you did not meet an emission limit, work practice standard or operating limit in Table 1 or 2 to this subpart, respectively, that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9050.

(d) During periods of startup, shutdown, or malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9045 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4) and (6), and 63.9 (b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 17, 2003, you must submit an Initial Notification not later than 120 calendar days after April 17, 2003.

(c) As specified in § 63.9(b)(4), if you start up your new or reconstructed affected source on or after April 17, 2003, you must submit the application for construction or reconstruction

required by § 63.9(b)(1)(iii) in lieu of the initial notification.

(d) You must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) When you conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(f) You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) The Notification of Compliance Status must also include the information in paragraphs (g)(1) through (2) of this section that applies to you.

(1) Each operating parameter value averaged over the full period of the performance test (for example, average pH).

(2) Each operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Table 1 to this subpart.

§ 63.9050 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8995 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8995.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8995.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31,

whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6 (a)(3)(iii)(A) or 71.6 (a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the following information in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(7) Verification that you continue to use the equipment LDAR plan and information that explains any periods when the procedures in the plan were not followed and the corrective actions were not taken.

(d) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(1) through (6) of this section and the following information in paragraphs (d)(1) through (9) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A description of any changes in CMS, processes, or controls since the last reporting period.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report.

However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) For each startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan you must submit an immediate startup, shutdown and malfunction report. Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (f)(1) and (2) of this section.

(1) An initial report containing a description of the actions taken for the event must be submitted by fax or

telephone within 2 working days after starting actions inconsistent with the plan.

(2) A follow-up report containing the information listed in § 63.10(d)(5)(ii) must be submitted within 7 working days after the end of the event unless you have made alternative reporting arrangements with the permitting authority.

§ 63.9055 What records must I keep?

(a) You must keep a copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, as required in § 63.10(b)(2)(xiv).

(b) You must also keep the following records specified in paragraphs (b)(1) through (5) of this section.

(1) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) Records of operating parameter values that are consistent with your monitoring plan.

(4) Records of the date and time that each deviation started and stopped and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Copies of the current versions of the site-specific monitoring plan and the equipment LDAR plan. You also must submit copies of these plans and any revisions or updates to the Administrator for comment only (not for approval).

§ 63.9060 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site, or readily accessible from on site through a computer or other means, for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years. Records may be maintained in hard copy or computer-readable format including, but not limited to, on paper, microfilm, hard disk drive, floppy disk, compact disk, magnetic tape, or microfiche.

(d) You must keep each previous (*i.e.*, superseded) version of the site-specific

monitoring plan and the LDAR plan for a period of 5 years after revision of the plan. If, at any time after adoption of a site-specific monitoring plan or an LDAR plan, your affected source ceases operation or is otherwise no longer subject to the provisions of this subpart, you must retain a copy of the most recent plan for 5 years from the date your source ceases operation or is no longer subject to this subpart.

Other Requirements and Information

§ 63.9065 What parts of the General Provisions apply to me?

(a) Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9070 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, as well as U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to requirements in §§ 63.8980, 63.8985, 63.8990, 63.8995, and 63.9000.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9075 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act in 40 CFR 63.2 and in this section as follows:

Caustic scrubber control device means any add-on device that mixes an aqueous stream or slurry containing a caustic substance with the exhaust gases from an HCl process vent, HCl storage

tank, or HCl transfer operation to control emissions of HCl and/or Cl₂.

Chlor-alkali facility means a facility where chlorine and sodium or potassium hydroxide are produced as co-products and hydrogen is produced as a by-product in an electrolytic process using either mercury cells, diaphragm cells, or membrane cells.

Continuous monitoring system, for purposes of the final rule, means liquid flow monitoring devices that meet the performance specifications given in § 63.9025(a); or pH monitoring devices that meet the performance specifications given in § 63.9025(a); or other control devices as mentioned in 63.9025(a) and (b) or § 63.9025(a) and (c).

Control device means an add-on device used to reduce HCl and/or Cl₂ emissions from an HCl process vent, HCl storage tank, or HCl transfer operation at an HCl production facility. An HCl production unit is not a control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Emission stream means a gaseous stream from an HCl process vent, an HCl storage tank, an HCl transfer operation, leaking equipment in HCl service, or HCl wastewater operations that is discharged to the atmosphere. Gaseous streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are routed to another

process or recycled for reaction or other use (*i.e.*, for pH control) of the HCl and/or Cl₂ are not emission streams. Gaseous streams from HCl transfer operations that are vapor balanced to an HCl storage tank subject to this subpart are not emission streams.

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

HCl process vent means the point of discharge to the atmosphere, or point of entry into a control device, of a gaseous stream that originates from an HCl production unit. The following points of discharge are not HCl process vents:

(1) A leak from equipment in HCl service subject to this subpart.

(2) An exit from a control device used to comply with this subpart.

(3) An HCl storage tank vent or HCl transfer operation vent subject to this subpart.

(4) A HCl wastewater operation vent subject to this subpart.

(5) A point of discharge from a relief valve.

(6) A point of discharge from an analyzer.

HCl production facility is defined in § 63.8985(a)(i).

HCl production unit means an absorber or other vessel in which a liquid HCl product is manufactured by absorbing gaseous HCl into either water or an aqueous HCl solution.

HCl storage tank means a tank or other vessel that is used to store liquid HCl product. Tanks or vessels permanently attached to motor vehicles (such as trucks, railcars, barges, or ships) are not HCl storage tanks.

HCl transfer operation means the loading, into a tank truck, railcar, ship, or barge, of liquid HCl from a transfer (or loading) rack (as defined in this section) for which the predominant use is liquid HCl. The predominant use of a transfer (or loading) rack is the material that is loaded by the transfer (or loading) rack in the greatest amount.

HCl wastewater operation means an operation that handles and processes

water containing HCl that is discarded from an HCl production facility.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under close supervision of technically trained personnel, and the operations are not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2 of this chapter.

Transfer (or loading) rack means the collection of loading arms and loading hoses, at a single loading rack, that are used to fill tank trucks, railcars, ships, and/or barges. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves.

Vapor balanced means connected to a piping system that is designed to collect vapors displaced from tank trucks, rail cars, ships, or barges during loading, and to route the collected vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header.

Vent means the point of discharge to the atmosphere or to a control device from either an HCl process vent, an HCl storage tank, or an HCl transfer operation.

Water scrubber control device means any add-on device that mixes an aqueous stream not containing a caustic substance with the exhaust gases from an HCl process vent, HCl storage tank, or HCl transfer operation to control emissions of HCl and/or Cl₂.

Tables to Subpart NNNNN of Part 63

As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each. . .	You must meet the following emission limit and work practice standard.
1. Emission stream from an HCl process vent at an existing source.	a. Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 20 ppm by volume or less; and

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

For each . . .	You must meet the following emission limit and work practice standard.
	b. Reduce Cl ₂ emissions by 99 percent or greater or to an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl/Cl ₂ service at existing sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator <i>for comment only</i> with your notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source.	a. Reduce HCl emissions by 99.4 percent or greater or to an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl ₂ emissions by 99.8 percent or greater or to an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source.	Reduce HCl emissions by 99.9 percent or greater or to an outlet concentration of 12 ppm by volume or less.
7. Emission stream from an HCl transfer operation at a new source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.

As stated in § 63.9000(b), you must comply with the following operating limits for each emission stream that is part of an affected source that is vented to a control device:

TABLE 2 TO SUBPART NNNNN OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Caustic scrubber or water scrubber/absorber	a. Maintain the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and b. Maintain the daily average scrubber effluent pH within the operating limits; or c. Instead of a. and b., maintain your operating parameter(s) within the operating limits established according to your monitoring plan established under § 63.8(f).
2. Other type of control device to which HCl emissions are ducted.	Maintain your operating parameter(s) within the limits established during the performance test and according to your monitoring plan.

As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A in appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere.

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCl PRODUCTION AFFECTED SOURCES—Continued

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
2. Determine velocity and volumetric flow rate ..	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas ...	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl ₂ concentration from HCl process vents.	a. Method 26A in Appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl ₂ concentration from an HCl process vent provided that a demonstration that Cl ₂ is not likely to be present in the stream is submitted as part of the site-specific test plan required by § 63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgement, or previous test results.
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with § 63.9020(e)(1) or (2).		

As stated in § 63.9030, you must comply with the following requirements to demonstrate initial compliance with the applicable emission limits for each affected source vented to a control device and each work practice standard:

TABLE 4 TO SUBPART NNNNN OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
1. HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test.	a. In Table 1 to this subpart	i. The average percent reduction of HCl and Cl ₂ (if applicable), measured over the period of the performance test conducted according to Table 3 of this subpart and determined in accordance with § 63.9020(b), is greater than or equal to the applicable percent reduction emission limitation specified in Table 1 of this subpart; or ii. The average HCl and Cl ₂ (if applicable) concentration, measured over the period of the performance test conducted according to Table 3 of this subpart, is less than or equal to the applicable concentration emission limitation specified in Table 1 of this subpart.
2. HCl storage tank and HCl transfer operation for which you are preparing a design evaluation in lieu of conducting a performance test.	a. In Table 1 to this subpart	i. The percent reduction of HCl, demonstrated by a design evaluation prepared in accordance with § 63.9020(c), is greater than or equal to the applicable percent reduction emission limitation specified in Table 1 of this subpart; or ii. The HCl concentration, demonstrated by a design evaluation prepared in accordance with § 63.9020(c), is less than or equal to the applicable concentration emission limitation specified in Table 1 of this subpart.
3. Leaking equipment	a. In Table 1 to this subpart	i. You certify in your Notification of Compliance Status that you have developed and implemented your LDAR plan and submitted it to the Administrator for comment only .

As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source vented to a control device and each work practice standard:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/absorber.	a. In Tables 1 and 2 to this subpart	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to § 63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device.	a. In Tables 1 and 2 to this subpart	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
3. Leaking equipment affected source	a. In Table 1 to this subpart	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

As stated in § 63.9050(a), you must submit a compliance report that includes the information in § 63.9050(c) through (e) as well as the information in the following table. You must also submit startup, shutdown, and malfunction (SSM) reports according to the requirements in § 63.9050(f) and the following:

TABLE 6 TO SUBPART NNNNN OF PART 63.—REQUIREMENTS FOR REPORTS

If...	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from any emission limitations that apply to you during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CMS were out-of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.9050(d).
4. There were periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	Contains the information in § 63.9050(d).
5. There was a SSM during the reporting period that is not consistent with your SSM plan.	Contains the information in § 63.9050(f).
6. There were periods when the procedures in the LDAR plan were not followed.	Contains the information in § 63.9050(c)(7).

As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.9075.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements—applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes.	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements.	Yes.	
§ 63.6(e)(3)	SSM plans	Yes.	
§ 63.6(f)(1)	Compliance except during SSM	Yes.	
§ 63.6(f)(2)–(3)	Methods for determining compliance ..	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for existing affected sources as specified in § 63.9010(b).
§ 63.7(a)(3)	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—
Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(3)	Applicability of monitoring requirements.	Yes	Additional monitoring requirements are found in § 63.9005(d) and 63.9035.
§ 63.8(a)(4)	Monitoring with flares	No	Subpart NNNNN does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system O&M ...	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(7)(8)	Out-of-control periods, including reporting.	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.9005(d).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method.	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.9005(d).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1) (iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—
Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.9(f)	Notification of visible emissions/opacity test.	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart NNNNN does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.9055 and 63.9060 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to SSM periods and CMS.	Yes.	
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005(d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes.	
§ 63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations.	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(ii)	Results of COMS performance evaluations.	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports.	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—
Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.11	Control device requirements—applicability.	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/ confidentiality.	Yes.	

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Federal Register

**Thursday,
April 17, 2003**

Part III

Environmental Protection Agency

40 CFR Part 52

**Approval and Promulgation of Air Quality
Implementation Plans; District of
Columbia, Maryland, Virginia; Post 1996
Rate-of-Progress Plans and One-Hour
Ozone Attainment Demonstrations; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[DC052-7007, MD143-3102, VA129-5065; FRL-7484-6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is conditionally approving the severe ozone nonattainment area State Implementation Plan (SIP) revision for the Metropolitan Washington severe ozone nonattainment area. This SIP revision includes the one-hour severe ozone attainment demonstration, the 1996-1999 portion of the severe area rate-of-progress (ROP) plan and transportation control measures for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VADEQ). EPA is conditioning approval on commitments submitted by DoH, MDE and VADEQ to submit adopted control measures that qualify as contingency measures to be implemented for failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999 and adopted contingency measures that will be implemented should the area fail to attain by the November 15, 2005 severe ozone attainment deadline or fail to achieve any post-1996 three-percent year emissions reduction requirement. Approval is also conditioned on commitments that require the Washington area jurisdictions to submit a revised rate-of-progress plan that includes emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005, an updated attainment demonstration that reflects revised MOBILE6-based motor vehicle emissions budgets, a revised analysis of reasonably available control measures (RACM) and to revise the attainment demonstration as necessary to reflect the revised budgets and RACM analysis. Approval is also conditioned on the Washington area jurisdictions submitting a SIP revision that meets all

of the requirements of a severe area SIP including, but not limited to lower major stationary source thresholds, revised offset ratios, any required transportation control strategies and a fee requirement for major sources should the area fail to attain by 2005.

EFFECTIVE DATE: This final rule is effective on May 19, 2003.**ADDRESSES:** 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; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at cripps.christopher@epa.gov.**SUPPLEMENTARY INFORMATION:** The use of "we," "us," or "our" in this document refers to EPA.

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

- I. What Action Is EPA Taking Today?
- II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996-1999 ROP Plan and Attainment Demonstration?
- III. What Comments Were Received on the Proposed Conditional Approvals and How Has EPA Responded to them?
- IV. Applicability of Revised Motor Vehicle Emissions Budgets
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is taking a final action to conditionally approve the Washington area severe ozone nonattainment SIP. This SIP revision includes previously submitted attainment demonstration and 1996-1999 ROP plan SIPs and contingency measures that now apply to the Washington area as a severe area ozone nonattainment area. EPA is issuing a final conditional approval on the basis that the Washington area jurisdictions must revise and submit a severe area SIP that is consistent with the principle that attainment must be achieved as expeditiously as possible but no later than the severe ozone area attainment deadline of November 15, 2005 and that the previously submitted attainment demonstration and ROP SIPs must include contingency measures,

RACM, motor vehicle emissions budgets that are consistent with a severe attainment deadline and all of the remaining severe ozone nonattainment area requirements. On February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve these SIP revisions as a severe area attainment demonstration and only the 1996-1999 portion of the Washington area's ROP obligation in accordance with section 110(k)(4) of the Clean Air Act (CAA), on the basis of commitments from DoH, MDE and VADEQ to remedy these certain limited inadequacies. EPA has since determined that the severe ozone nonattainment requirements in their entirety are inseparable from the overall Washington Area attainment demonstration. EPA is therefore authorized to conditionally approve the attainment demonstration as a whole based on commitments submitted on April 7 and 8, 2003, from Maryland, the District and Virginia, respectively, to submit measures to complete the severe area requirements to revise the previously submitted SIPs listed in Tables 1 and 2 of this notice to be consistent with and to include all of the section 182(d) requirements of a severe ozone nonattainment area SIP. The specific commitments submitted by the Washington area jurisdictions are to:

(A) Revise the 1996-1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to

reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Details on EPA's analysis of the previously submitted SIP revisions and their adequacy with respect to the requirements of a severe ozone nonattainment area are explained in detail in the proposal notice and will not be restated here.

Under the CAA, EPA is required to approve or disapprove a State's

submission no later than 12 months after the submission is determined or deemed complete. On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (District Court) against the EPA (*Sierra Club v. Whitman*, No. 1:02CV02235(JR)) claiming, among other things, that the EPA had not issued a final action on several SIP revisions (those listed in Tables 1 and 2 of this document) submitted by the District, Maryland and Virginia for the Washington area. On December 18, 2002, the District Court issued an order directing the EPA to publish, by February 3, 2003, a notice of proposed rulemaking on these SIP revisions and to publish by April 17, 2003, a final rule on these SIP revisions. This final rulemaking action complies with the Court's Order to publish a final action on these SIP revisions by April 17, 2003.

Tables 1 and 2 identify the submittal and amendment dates for the ROP plans and attainment demonstrations for which EPA is taking final action to conditionally approve.

TABLE 1.—1996–1999 ROP PLANS

	DC	MD	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amendment dates	May 25, 1999	May 20, 1999	May 25, 1999.

TABLE 2.—ATTAINMENT DEMONSTRATIONS

	DC	MD	VA
Initial submittal dates	April 24, 1998	April 29, 1998	April 29, 1998.
Amendment dates	October 27, 1998	August 17, 1998	August 18, 1998.
Supplemental dates	February 16, 2000	February 14, 2000 (MD SIP No. 00–01).	February 9, 2000.
Supplemental dates	March 22, 2000	March 31, 2000 (MD SIP No. 00–02).	March 31, 2000.

II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996–1999 ROP Plan and Attainment Demonstration?

Under section 110(k)(4) of the CAA, the EPA “may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.” In the Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve the Washington

area severe attainment demonstration and 1996–1999 portion of the ROP plan on the basis that the Washington area jurisdictions had committed to submit to EPA by April 17, 2004 revised SIPs that meet the following conditions.

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the Washington area severe attainment demonstration to include a

contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(C) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(E) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration adopted control measures as necessitated by such analysis.

III. What Comments Were Received on the Proposed Conditional Approvals and How Has EPA Responded to Them?

In EPA's Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246) EPA proposed conditional approval of the Washington area's severe area attainment demonstration and the 1996–1999 portion of the severe area ROP obligation. EPA also proposed disapproval in the alternative to preserve the court-ordered schedule to issue a final rule by April 17, 2003 in the event that EPA could not issue a final conditional approval with respect to either or both the attainment demonstration and 1996–1999 ROP plan. EPA received comments from the Virginia Department of Transportation on March 5, 2003 supporting EPA's proposed conditional approval. These comments will not be addressed here. On March 5, 2003 EPA also received comments from the Sierra Club. The Sierra Club's March 5 comments specifically incorporate by reference comments submitted by the Sierra Club and others on February 14, 2000, October 30, 2000, November 15, 2000, November 20, 2000, September 9, 2002, and December 13, 2002.

To the extent that the previously submitted comments are germane to the current action, EPA generally incorporates by reference its prior responses to those comments published at 66 FR 586, January 3, 2001, and 68 FR 5246, February 3, 2003. We respond with particularity to many of the previously submitted comments (1) to the extent that events occurring after publication of EPA's prior responses require that our prior responses be updated and revised or (2) to the extent that we feel that consolidating prior responses helps create a more comprehensive record for the current rulemaking. The following discussion summarizes and responds to particular comments.

A. Comments in the March 5, 2003

1. Conditional Approval

Comment: The commenter argues that EPA cannot conditionally approve the Washington area SIPs for various reasons. First, the commenter alleges that even EPA concedes that it cannot fully approve the SIPs based on various defects noted by the D.C. Circuit court in *Sierra Club v. Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002), therefore, EPA cannot conditionally approve the SIPs. The commenter further alleges that conditional approval cannot be used to circumvent or postpone statutory deadlines, and that conditional approval will prevent the Washington area from attaining the ozone standard as expeditiously as possible, prevent achievement of Post-1999 ROP and prevent timely implementation of contingency measures in the event the area fails to achieve timely rate-of-progress or attainment. The commenter also asserts that conditional approval cannot be used when a state has failed to submit a relevant substantive SIP component at all; that the SIP components at issue were due on November 15, 1994; that the States' commitments do not identify "specific enforceable measures" to be adopted by a date certain; that the commitments are to fix major components not minor details; that conditional approval is not allowable here because EPA has already allowed the States to defer submission of various required SIP components for more than one year; and finally, that all of the defects the commenter has identified means any conditional approval would violate section 110(l) of the Act.

Response: The commenter misconstrues the conditional approval mechanism. Conditional approval under section 110(k)(4) is quite different from full approval under section 110(k)(3) of the Act, which the Court of Appeals considered in *Sierra Club*. Conditional approval is a statutory technique that allows EPA to give a limited form of approval to SIPs that do not meet all of the standards for full approval, but where a substantive SIP also includes commitments made by the states to remedy limited, identified deficiencies through the adoption of specific enforceable measures by a date certain. 42 U.S.C. 7410(k)(4). Here, the States have committed to undertake various analyses and ultimately adopt specific enforceable measures as appropriate to remedy the deficiencies in the currently submitted SIP revisions. Based on the fact that the SIP contains most of the substantive components for the required plans as well as commitments to correct

limited deficiencies, which EPA received after the court ruling, the statute provides for EPA to conditionally approve the SIPs even though the court found that EPA could not fully approve them. The Court of Appeals did not address whether EPA could conditionally approve the SIPs as the issue of conditional approval was not before the court and the States had not made appropriate commitments at the time of the court ruling.

With respect to the assertion that EPA cannot use the conditional approval mechanism to allow areas to avoid a statutory deadline, and the complaint about SIP submittal deadlines that have long passed, EPA is dealing in this case with a SIP that was submitted by the States, reviewed by EPA and approved by EPA in January 2001 through notice-and-comment rulemaking. EPA's approval was then vacated by the Court of Appeals on July 2, 2002, after judicial review. Whatever the merits of any argument about delays that occurred previously, EPA must now take action on the SIPs under court order based on the submittal before the agency. That submittal consists of the previously submitted SIP and the recently submitted commitments by the States to conduct the appropriate analyses and submit any necessary measures to rectify certain limited defects in the SIPs. EPA believes it is appropriate to conditionally approve the SIPs that the States have recently committed to revise to satisfy deficiencies which were the basis for vacatur by the Court of Appeals. The States could not have been expected to remedy these deficiencies previously as EPA had in fact approved the SIPs without noting any such deficiencies prior to the court ruling. The States have now committed to revise the SIPs on an expeditious schedule that is no later than one year following EPA's final action. Furthermore, EPA notes that there is nothing in the statute that limits the use of conditional approval to SIP revisions that are submitted by the statutory due date. Nor does the statute link the period for conditional approval to the time by which the SIP was due. Finally, EPA has never before conditionally approved these SIPs nor have the States previously made commitments to submit all of these portions of the attainment demonstration within a year. For these reasons, EPA believes it is reasonable to use this tool in this case.

The commenter further claims that a conditional approval will delay timely attainment. However, the commitments are to submit any necessary additional measures by April 2004 while the attainment date for the area is not until

November 2005, so all deficiencies will be cured at least 18 months prior to the attainment date and will therefore not delay timely attainment because the States will need to ensure any necessary emission controls are in place by the beginning of the 2005 ozone season. One year should provide sufficient time to implement any necessary controls. To the extent the commenter addresses alleged deficiencies in the 2005 attainment date itself, these comments will be addressed in section III.A.2. of this document responding to comments on the attainment demonstration.

The commenter next claims that EPA cannot use the conditional approval mechanism where states have failed to submit a substantive SIP component at all, alleging that in this case various parts of the attainment demonstration, such as ROP plans, contingency measures and RACM, constitute separate SIP components. EPA had indeed argued in *Sierra Club, supra*, that these were separate SIP requirements and for that reason the attainment demonstration should have been upheld without them. However, the Court of Appeals agreed with the contrary argument, which was actually made by the commenter, and held that ROP plans, RACM and contingency measures are actually parts of the overall Washington Area attainment demonstration and must be included within it. See *Sierra Club v. Whitman*, 285 F.3d at 163–64 (D.C. Cir. 2002). The attainment demonstration includes many components in addition to these. The attainment demonstration already demonstrates attainment no later than November 15, 2005, based on photochemical grid modeling and a suite of adopted and SIP approved control measures that reduce local emissions down to the allowable levels established by the photochemical grid modeling. A list of these control measures can be found in the notice of proposed rulemaking for this action. See 68 FR at 5252–5253 and at 5255–5256, February 4, 2003. Given that these items to which the States have committed are a part of the overall Washington area attainment demonstration rather than separate SIP components, EPA concludes that it is authorized to conditionally approve an attainment demonstration that contains commitments to submit limited components of the attainment demonstration.

The commenter then argues that these elements of the attainment demonstration are so significant that the SIPs cannot be conditionally approved without them. However, the primary portions of the attainment

demonstration are the adopted control measures themselves coupled with the modeling demonstration showing that implementation of these measures will result in attainment by the requisite date. The RACM analysis merely analyzes potential additional measures to determine whether any could advance the attainment date; the post-1999 ROP analysis addresses interim progress prior to the attainment date; and the contingency measures address measures to be implemented in the event rate-of-progress or attainment is not timely achieved. Although all of these elements are important portions of the overall attainment demonstration SIP, EPA does not believe that any of them amount to such a significant portion of the attainment demonstration that the demonstration cannot be conditionally approved based on the States commitment to complete the additional analyses along with adoption of any necessary additional measures in the short term. EPA addresses the commenters specific concerns about the substance of these three SIP portions elsewhere in responding to comments regarding the individual elements of the attainment demonstration.

Further, the commenter alleges that conditional approval is inappropriate in this case because the States have purportedly not made commitments to adopt specific enforceable measures as required by section 110(k)(4). In contrast, EPA believes that the commitments submitted by the States do indeed commit the States to ultimately adopt specific enforceable measures if such measures are determined to be needed based on further analysis. The commitment letters specifically state that the States will submit adopted contingency measures requisite to satisfy the contingency measure requirements for various circumstances relating to ROP and attainment. The States further commit not only to conduct the various RACM and mobile modeling analyses, but also to revise the attainment demonstration itself as appropriate in light of these analyses. EPA believes that there can be no interpretation of these commitment letters other than a conclusion that the States have committed to submit specific enforceable measures to support the revised attainment demonstration if necessary. However, since the States have submitted additional commitment letters for various reasons described elsewhere in this document, the States have clarified in those letters their intent to submit specific measures in support of the demonstrations, if

appropriate. It is true that the States have not yet identified the specific measures that could ultimately be adopted, however it would be impossible for them to do so in advance of conducting the requisite RACM and modeling analyses.

The commenter argues that contingency measures should not be the subject of a conditional approval in DC because it is likely that by the summer of 2003 it could be determined that the DC area will fail to attain in 2004 and the contingency measures would then be triggered. However, contingency measures are not required to be implemented under the Act until an area fails to attain by the applicable attainment date. (CAA section 172(c)(a)). The statute does not require implementation of contingency measures prior to the attainment date based on a projection that the area will not attain when the attainment date is reached. Given that the States have committed to submit all necessary contingency measures by April 2004, any needed contingency measures would be available for implementation should EPA make a determination by May 15, 2006 under section 181(b)(2) of the Act that the area failed to attain by November 15, 2005.

We also disagree with the commenters' allegation in comments previously submitted on September 9, 2002 that the motor vehicle emissions budgets (MVEBs) in the attainment demonstration do not reflect the potential to lower the MVEB through transportation related control measures should the area fail to attain or to meet ROP requirements. With respect to those contingency measures that would be triggered by the failure to attain, the attainment year MVEB would never account for these contingency measures because such measures would never be triggered until after the attainment year. Should those contingency measures be triggered, it would be appropriate at that time for the state to revise the budgets to reflect implementation of such measures in future years, but this cannot be done in advance of implementation of the measures as it is unclear whether the measures would ever in fact be implemented.

Similarly, with respect to contingency measures triggered by the failure to meet ROP, the obligation to account for those contingency measures is not triggered until it has been determined that the area has failed to meet its ROP requirements. EPA is allowing the Washington area jurisdictions to demonstrate the first required post-1999 nine percent ROP (which was due under the statute by November 15, 2002), as

expeditiously as practicable, if control measures currently in the SIPs, or already promulgated by EPA, did not achieve the required nine percent reduction by November 15, 2002. (See 68 FR 3418). Therefore, the date for fulfilling the first post-1999 ROP requirement lies in the future, and the requirement to implement any needed contingency measures for failure to meet that ROP has not been, and may not ever be, triggered. This is true, too, for the 1999 ROP requirement. It has not yet been determined that the Washington area did, or did not, meet its 1999 ROP requirement and the requirement to implement contingency measures for failure to meet the 1999 ROP requirement has not yet been (and may not ever be) triggered. As with any contingency measures that would be implemented for a future failure to attain, because the obligation to implement contingency measures for failure to meet the post-1999 ROP requirements has not arisen, the area has no obligation to account for these measures in the attainment demonstration MVEB.

Finally, the commenter argues that all the defects it has asserted entail that any conditional approval would violate section 110(l) of the Act, which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement of the Act. However, EPA has concluded that the submitted attainment demonstration, coupled with the commitments the States have made to remedy the deficiencies in their demonstrations, fully satisfy all of the applicable requirements of the Act requisite to support a conditional approval.

2. Attainment Demonstration

a. RACM and Attainment as Expeditiously as Practicable.

Comment: The commenter argues that the submitted SIPs do not provide for attainment as expeditiously as practicable, as required by the Act, because the States have not properly analyzed whether any additional RACMs could advance the 2005 attainment date.

Response: EPA acknowledges that the RACM analyses in the SIPs are not sufficient, as noted by the Court of Appeals in *Sierra Club, supra*. However, the attainment demonstration does provide for attainment by 2005, a date consistent with the outside statutory date for attainment for severe ozone nonattainment areas and one that is only two years away. EPA therefore concludes, in light of the States commitments to conduct a RACM analysis and submit any additional

measures determined to constitute RACM within a year, that it is appropriate to conditionally approve the attainment demonstration SIPs at this time. Should the RACM analyses determine that there are in fact potential RACM that could advance the attainment date, then EPA could approve an earlier attainment demonstration including such measures. However, in advance of completion of such RACM analyses EPA believes on the basis of the attainment demonstration before it that the SIP does demonstrate attainment as expeditiously as practicable. This preliminary conclusion is neither arbitrary nor capricious given the short period of time until the attainment date. Although no final conclusions can be reached until the RACM analyses are completed, given the time necessary for implementation of measures EPA believes it is unlikely that sufficient measures could be adopted and implemented to allow the Washington area to reach attainment by the 2004 ozone season. Specifically, the state process for developing control requirements in the form of SIP revisions, providing a public hearing, and adopting SIP revisions, typically takes at least a full year. In addition, the state typically allows a period of at least a year, often longer, for sources to implement required controls. Even if these process were significantly accelerated, it is highly unlikely that controls would be implemented by the start of the 2004 ozone season.

b. Demonstration of Attainment by 2005.

Comment: We received comments declaring that the attainment demonstration, and EPA's analysis of it, look only at ozone levels in 2005, not 2003 and 2004. The comments assert that to demonstrate attainment by November 15, 2005, the demonstration of attainment must show that no monitor in the nonattainment area will have an average of more than 1.0 expected exceedance per year for the period 2003–2005 but that the demonstration does not address the entire period. The comments cite § 50.9 of 40 CFR part 50.

Response: EPA disagrees with the comment. While EPA does agree that § 50.9 of 40 CFR part 50 establishes the form of the 1-hour ozone standard in terms an annual average number of expected exceedances, EPA's guidance for conducting an attainment demonstration are a reasonable interpretation of the requirements for an attainment demonstration required under section 182(c) of the CAA in light of the form of the ozone NAAQS.

Air quality models do not know what year is being modeled, only the emissions levels and the meteorology. The meteorology component would be the same for any year because historical weather episodes are modeled.

Under EPA's modeling guidance the States are required to model severe episodes corresponding to those weather conditions thought to generate high levels of ground level ozone. In contrast, all monitored exceedances count towards a determination of whether all monitors are actually meeting the standard under the standard set in 40 CFR 50.9 and appendix H to 40 CFR part 50. A monitored value of 0.125 ppm counts as one exceedance to the same extent as a value of 0.150 ppm. Modeling demonstrating that the most severe episodes will yield few or no exceedances will be consistent with elimination of exceedances on less severe weather days.

As EPA stated in the technical support for this rule, the modeling demonstration considered severe episodes: the ozone forming potential rank is very high for one day—July 20, 1991. This is the thirteenth most severe day out of approximately the last 50 years, one that is likely to recur only once every 4 to 5 years on average. This type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this plan should eliminate ozone exceedances for all but the most meteorologically severe days.

EPA has concluded that the modeling analysis allows anthropogenic emissions in the Washington area of 360 tons per day of VOC and 538 tons per day of NO_x.

To reduce future year emissions to levels consistent with the modeling demonstration, the attainment demonstration has to provide for enough emission reductions net of growth to reduce emissions down to the levels allowed by the attainment modeling demonstration. Therefore, the attainment demonstration has to provide for emission reductions to accomplish two purposes: first, the plan has to offset growth in emissions due to increases in emissions-related activity to reduce emissions to the base year levels; and, second, the plan has to produce sufficient additional reductions beyond that needed to offset post-1990 growth to reduce emissions to the levels allowed by the attainment modeling demonstration.

When viewed from this perspective, the Post-1996 ROP plan for the 1999 milestone (hereafter "the 1996–1999 ROP plan") had to achieve reductions

net of growth of 128.3 tons per day of VOC and 116.2 tons per day of NO_x to make the ROP targets. The plan actually achieved creditable reductions net of growth of 143.7 tons per day VOC and 123.0 tons per day NO_x. The demonstration of ROP for the 1999 milestone year in Post-1996 plan clearly did not rely upon controls beyond reasonably available control technology (RACT) at large NO_x sources. Even though the potential benefits of beyond-RACT controls were calculated, the 1996–1999 ROP plan did not rely upon those controls and did not rely upon Phase II of the RFG program which was implemented in January 2000.

The attainment modeling considered the effects of the OTC Phase II NO_x controls. The benefits for these controls would have been 93 tons per day in 1999. 70 tons per day of reduction were achieved from the District's and Maryland's Phase II NO_x rules which were implemented commencing May 1, 2002.¹ Major further reductions will occur in 2003 from the implementation of the NO_x SIP call rules in Maryland and Virginia and beyond RACT controls on the two major utility sources in Virginia.² Thus, by 2003, the local NO_x emissions would be close to the levels required by the local area modeling.

The Phase II RFG program is projected to yield 23.5 tons per day of VOC reductions in 2005 versus a little less than 16 in 1999. Much of this additional benefit would have been achieved in calendar year 2000 when the second phase of the program was implemented to achieve the mandated additional VOC reductions over and above that required by the first phase.

The attainment plan requires reductions net of growth of 148.5 tons per day of VOC and 192.9 tons per day of NO_x to reduce emissions to the levels allowed by the attainment modeling demonstration. These are 4.8 tons per day of VOC and 69.9 tons per day of NO_x lower than the reductions credited to the Post-1996 for the 1999 milestone. The creditable emissions reductions net of growth by 2005 are 151.8 tons per day of VOC and 327.9 tons per day of NO_x. The Post-1999 reductions are mainly used to offset growth in emissions after 1999 once the RFG and Phase II NO_x rules are in place.

The Plan's local emissions levels are very close to that required under the local air quality modeling in 1999 once

the RFG and Phase II NO_x rules are considered. Significant reductions in upwind NO_x will not commence sooner than May 31, 2004, under the NO_x SIP call and related federal requirements. EPA believes modeling a 2003 year case would merely show continued exceedances due to transport. For a 2004 year, EPA believes that the resources needed to develop the necessary inventories, process them for incorporation into the air quality model and to perform the actual air quality modeling would not add any value. The emissions levels would be expected to be essentially the same as for 2005 because the 2005 plan is projected to exceed the emission reduction requirements set by the modeling demonstration.

c. The Ozone Standard.

Comment: The commenter stated that EPA had based its proposed approval of the attainment demonstration on the assumption that the 1-hour ozone standard is 0.125 ppm, when the actual standard is 0.12 ppm.

Response: The level of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms * * *". Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

As early as 1977, two years before EPA promulgated the 1-hour ozone

NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (see "Guidelines for the Interpretation of Air Quality Standards," OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR part 58, appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the lowest concentration value in excess of the level of the standard." See "Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003, at p. 6. EPA's guidance on air quality modeling is consistent with those Guidelines. See, e.g., Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

d. Modeled Demonstration of Attainment.

Comment 1: The commenter alleges that photochemical grid modeling shows that the Washington area will not attain the ozone standard by the November 2005 attainment date and because the "weight of evidence" (WOE) analysis used by EPA to conclude that the Washington area has demonstrated attainment by November 2005 is not authorized by the Act or by EPA rules. The comments claim that the modeling demonstration and WOE used in the attainment demonstration for the Washington area do not meet requirements of section 182(c) of the CAA and EPA's own regulations for photochemical grid modeling and other analytical methods, that the WOE is an alternative method to photochemical grid modeling which has not been shown to be equally effective to the Urban Airshed Model (UAM), and that WOE is a proscribed rollback method. Also, the commenter claims the most recent modeling guidance is flawed because: it is allegedly a rollback technique; because it allegedly allows the averaging across the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site and, thus,

¹ These controls have been approved into the SIPs. See 65 FR 78416, December 15, 2000, and 65 FR 80783, December 22, 2000.

² These controls have been approved into the SIPs. See 66 FR 55099, November 1, 2001, and 66 FR 1866, January 10, 2001; and 65 FR 78100, December 14, 2000.

effectively lowers the total emission reduction needed to attain at the highest site; and because of alleged flaws in the techniques for determining the magnitude of additional emission reductions. The commenter therefore asserts that approval of the attainment demonstration would be arbitrary, capricious and contrary to law for reasons set forth in comments submitted on March 5, 2003, as well as those previously submitted to EPA on February 14, 2000. Such comments also included EPA's treatment of over-prediction of ozone levels by the photochemical grid model, EPA's treatment of modeled exceedances over the standard and EPA's treatment of the photochemical grid modeling results prediction of exceedances even over the levels allowed after a downward adjustment under EPA's alternative test. Finally, the commenter asserts that EPA failed to adequately explain certain adjustments made to the photochemical grid modeling for the Washington area.

Response 1:

WOE is consistent with the CAA and EPA regulations.

With respect to the allegation that the WOE analysis used by EPA is not authorized by the Act or EPA rules, EPA consistently has interpreted the CAA to allow for a weight-of-evidence analysis as an interpretive adjunct to the photochemical grid modeling used to show that the Washington area will attain the ozone standard in 2005. *See, e.g.*, 66 FR 634, January 3, 2001; 66 FR 666, January 3, 2001; 66 FR 54143, October 26, 2001; 66 FR 54577, October 29, 2001; 66 FR 54597, October 29, 2001; 66 FR 54666, October 30, 2001; 66 FR 56903, November 13, 2001; 66 FR 56931, November 13, 2001; 66 FR 56944, November 13, 2001; 66 FR 57159, November 14, 2001; 66 FR 63921, December 11, 2001; 67 FR 5151, February 4, 2002; 67 FR 5170, February 4, 2002; 67 FR 30574, May 7, 2002; 67 FR 61786, October 2, 2002; 67 FR 72576, December 6, 2002; and 67 FR 72574, December 6, 2002. Because WOE is an adjunct to photochemical grid modeling, not a separate analysis, the commenter's assertion that the modeling for the Washington area is not consistent with the CAA is a mis-statement.

As described in more detail below, the EPA allows states to supplement their photochemical modeling results with additional evidence designed to account for uncertainties in the photochemical modeling databases and application in order to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment

demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

This interpretation of the Act has been upheld by the Court of Appeals for the Fourth Circuit, which stated "EPA has long recognized that there are uncertainties inherent in available models and in estimating future emissions * * *. EPA thus allows the use of supplemental analysis, including a "weight of evidence" analysis, to demonstrate attainment in cases where the modeling shows ozone levels exceeding the NAAQS." *1000 Friends of Maryland v. Browner*, 265 F.3d 216, 234 (4th Cir. 2001)(internal quotation omitted).

The flexibility granted to EPA under section 182(c)(2)(A) is also reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in (40 CFR part 51, appendix W) (Guideline on Air Quality Models)." ³ 40 CFR 51.112(a)(1). The regulations further provide, "Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *." Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991; however, EPA envisioned that the

guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to the use of the photochemical grid model, as well, or in conjunction, with additional analytical methods approved by EPA.

EPA's interpretation of the CAA is consistent with the statute's requirement that the attainment demonstration be "based on photochemical grid modeling." Giving the phrase "based on" its ordinary meaning, the statute requires only that an attainment demonstration "arise from" photochemical grid modeling, using the modeling as a "starting point" or "foundation." *See McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1111 (9th Cir. 2000) (reviewing cases interpreting the phrase "based on"); *United States v. United Technologies Corp.*, 985 F.2d 1148, 1158 (2d Cir. 1993) ("based upon" does not mean "solely"). EPA's weight-of-evidence analysis is consistent with the plain meaning of the statute because photochemical grid modeling is the starting point of the analysis; indeed, the very purpose of the WOE analysis is to determine whether the modeling, in light of all the evidence, demonstrates attainment.

Even if the statutory language is ambiguous, EPA's interpretation is reasonable under *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-45 (1984). The comments apparently are based on the premise that the statute should be read to say an attainment demonstration must be based solely on photochemical grid modeling without reliance on any analytical adjuncts. Even if this were a plausible reading of the statute, EPA's interpretation is equally permissible. *See United Technologies*, 985 F.2d at 1158. Our interpretation adheres to the normal meaning of the statutory language and is supported by the broad discretion that Congress granted to EPA in section 182(c)(2)(A).

Because EPA reasonably determined that WOE analysis is based on photochemical grid modeling, there is no merit to the alternative statutory argument found in the comments. The comments contend that WOE qualifies as an "other analytical method" under section 182(c)(2)(A), requiring the EPA Administrator to determine that weight-of-evidence is "at least as effective" as photochemical grid modeling. As noted, however, weight-of-evidence analysis is "based on photochemical grid modeling"; therefore, EPA did not employ an "other analytical method"

³ The August 12, 1996 version of "Appendix W of Part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule which will not be in effect until the new rule is promulgated.

that would have required an effectiveness determination by the Administrator.⁴

Under "Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS," EPA-454/B-95-007, June 1996 (hereafter the 1996 Guidance), the modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: A deterministic test or a statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (*i.e.*, modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).

Based upon our experience with application of the models, which we did not have in 1991, EPA issued the 1996 Guidance to update the 1991 guidance referenced in 40 CFR part 50, appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (*i.e.*, the statistical test described above), and the meteorological conditions accompanying observed exceedances. The 1996 Guidance also allows for consideration of additional evidence to address uncertainties in the modeling databases and application. Therefore, when modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment.

EPA's 1996 Guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the

NAAQS is likely to be achieved. The process by which this is done is called a weight-of-evidence or WOE determination. Under a WOE determination, the state can rely on, and EPA will consider factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls in addition to the results of the modeled attainment test.

In 1999, EPA issued additional guidance (hereafter, the 1999 Guidance)⁵ that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard (which is 124 ppb). Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard.

Since the form of the 1-hour ozone NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions. The method outlined in the 1999 Guidance uses the highest measured design value from all sites in the nonattainment area for each of three years. The three year "design value" represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The "design value" calculation accounts for the fact that the NAAQS allows limited exceedances of the ozone standard without a resulting violation.

⁵ "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711.

The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology.⁶ The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.*, average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year.

The use of this analytical adjunct, however, does not mean that a state's attainment demonstration is "based on" something other than photochemical grid modeling, or that WOE is "less effective" than photochemical grid modeling. To the contrary, WOE analysis is used to assess the photochemical grid modeling results; it supplements, but does not replace, the modeling. See 1996 Guidance at S-1 ("In a weight of evidence determination, model results are weighed heavily"). It follows that the WOE approach is consistent with the CAA requirement that the attainment demonstration "be based on photochemical grid modeling," because WOE is merely an adjunct for assessing the photochemical grid modeling. In the case of the Washington area demonstration, photochemical grid modeling is the primary basis for the attainment demonstration. See 1996 Guidance at S-1.

The 1999 Guidance is reasonable and is not a proportional rollback.

As stated previously, episodic photochemical grid modeling is the primary basis for the attainment demonstration, as it was used to define the majority of the control strategy. However, the modeling and corroborative analyses, which form the basis of the weight of evidence analysis, provide a preponderance of evidence to

⁶ The commenter criticized the 1999 Guidance because it allegedly allows the averaging across the three highest air quality sites across a region, whereas EPA's earlier (1991 and 1996) modeling guidance requires that attainment be demonstrated at each site and, thus, effectively lowers the total emission reductions needed to attain at the highest site. The commenter's concern is misplaced. The 1999 Guidance uses averaging of the worst modeled air quality value across episode days or worst design value across a three year period. Also, the WOE determination, in turn, is intended to be a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

⁴ For the same reasons, EPA was not required to address whether its 1996 or 1999 Modeling Guidance is a "substitute" for modeling or is an adequate model by itself.

support EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005. One of these WOE analyses involved the use of a relative reduction factor (derived from the local model results) to determine if any additional NO_x and VOC emissions reductions are needed to attain. We used the photochemical grid model in a relative sense to determine if the response of ozone concentrations to controls was adequate to predict a future design value below the level of the NAAQS. Inherent in the base design value is the level and form of the NAAQS which allows exceedances in the future.

In contrast to the claims in the adverse comments, EPA did not rely on "proportional" rollback as defined in section 14.0 of 40 CFR part 51, appendix W which defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." The prohibition regarding proportional modeling in section 6.2.1.e of appendix W (*i.e.*, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies") applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. A true proportional rollback model does not rely on any photochemical grid modeling, and it assumes, for example, that a 20 percent decrease in NO_x emissions results in a proportional (*i.e.*, 20 percent) decrease in ozone concentrations. In this case, EPA used a locally derived relative reduction factor as determined by the photochemical grid model to estimate a future design value.

Other comments on the 1999 Guidance are not germane to the Washington area.

The comments alleged flaws in the two techniques for determining the magnitude of additional emission reductions. With respect to comments on these two techniques for determining the magnitude of additional emission reductions contained in the 1999 Guidance, EPA believes these comments do not apply in the case of EPA's analysis of the attainment demonstration for the Washington area.

The first allegation is that these techniques allow averaging the three highest design values across a nonattainment area whereas EPA's modeling guidance requires that

attainment be demonstrated at each site. The alleged effect of this averaging technique is that lower air quality concentrations are averaged against higher concentrations thus reducing the total emission reduction needed to attain at the highest site.

The second allegation concerns the assumption that the contribution of VOC versus NO_x emissions to ozone concentrations are the same from site to site in contrast the UAM model which considers the contribution of VOC versus NO_x emissions varies from site to site.

The 1999 Guidance provided a two-step method for evaluating the air quality modeling results. The first step is an assessment of whether attainment is demonstrated by a showing that a future year design value will be 0.124 ppm or less. In the event that the predicted attainment year design value is above the standard, the second step of the 1999 Guidance provides two techniques for identifying additional emission reductions, that were not modeled, and which at a minimum provide an estimated attainment year design value at the level of the standard. The first technique is the use of a "relative reduction factor (RRF)" analysis to estimate a future design value.⁷ We used this analytical method to demonstrate that the Washington area will attain the standard. Attainment can be demonstrated by showing that the future year design value will be 0.124 ppm or less. Modeling predicts the peak ozone values in the attainment year, but it cannot predict the future design value for that year due to the limited number of days that can reasonably be modeled. The RRF analysis, however, provides an estimate of future design value based on the principle that a control strategy that reduces ozone peaks will similarly reduce design values. The RRF analysis has two steps. First, the state derives the RRF from the modeled reduction in ozone peaks between the base year and the attainment year. Second, the state applies the RRF to the design value for the base year to estimate the future design value in the attainment year. EPA has concluded that for the Washington area the RRF analysis demonstrates a future year design value of 119.6 ppb which is less than 124 ppb. Using the 1999 Guidance, EPA never needed to go beyond the RRF technique to determine that the Washington area will attain the ozone standard. Therefore, the other comments regarding the techniques for determining the magnitude of such additional reductions are not germane to

⁷ 1999 Guidance at 3-4.

this rulemaking and are not addressed in this document.

EPA's treatment of over-prediction of ozone levels, of modeled exceedances and downward adjustment of results.

As another element of EPA's WOE analysis, we evaluated the photochemical grid modeling for the Washington area. We analyzed the severity of the episodes modeled for the Washington area and have concluded that these would be adequate for determining the emission reductions needed for attainment in the Washington area. When the emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 ppb from the modeled peak concentrations in the 1991 base cases. When the average modeled peak ozone reduction from the base year modeling to the attainment year modeling (22 ppb) is subtracted from the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb respectively. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. When the day-specific reduction of peak modeled ozone concentration from the base year modeling to the attainment year modeling is subtracted from the peak measured concentrations on July 16th, July 19th, and July 20th, the result is 120 ppb, 103 ppb, and 158 ppb respectively. Both methods (average, day-specific) resulted in two of the three days showing values below the ozone standard indicating attainment for these days. However, both methods resulted in values above the standard for July 20th.⁸

EPA has evaluated the ozone formation potential of the July 20, 1991, episode day and determined that it is 13th most severe day out of approximately the last 50 years with an average reoccurrence of once every 4-5 years; this type of day is not likely to occur often enough to be a major causative factor for nonattainment because the standard allows up to three monitored exceedances in any three year period. Because modeling for the Washington area showed some peak concentrations above 124 ppb, EPA conducted the RRF analysis which is

⁸ The details of this analysis and the method and calculation details by which EPA determined how much the model over-predicts monitored ozone concentrations is explained in "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area" dated April 10, 2003.

discussed in prior paragraphs of this section to determine what additional emission reductions may be needed to support ozone attainment in the Washington area using EPA's 1999 Guidance. As stated in previous paragraphs of this section, EPA has concluded that the Washington area does not need any additional emission reductions beyond those contained in the attainment demonstration for the Washington area to ensure attainment of the ozone NAAQS.

While the modeling results suggest that exceedances may still occur, EPA's 1996 Guidance allows for consideration in the weight-of-evidence analysis of whether the model over-predicts or under-predicts in the base case and consideration of other evidence.

The base case model performance for both of the July 1991 episodes show good alignment of the modeled ozone plume in comparison to monitored ozone values (e.g., the model predicted peak concentrations and monitored peak concentrations are generally paired in space). Therefore, the degree to which the peak predicted values exceed the measured values in the same general vicinity, indicates that the model is systematically over-predicting ozone concentration, while adequately representing the spacial distribution of ozone.

With respect to the assertion that EPA did not explain how adjusting model results to account for model over prediction is consistent with EPA's modeling rule, 40 CFR part 51, appendix W, the modeling rule encourages the assessment of model uncertainty as one of the factors affecting the model results. In EPA's view, model over prediction is only a rough approximation of the extent of modeling uncertainty. Consideration of model performance (specifically, a bias to under- or over-predict ozone levels) is one way to assess modeling uncertainty. For the Washington area, EPA explained how performance was more closely reviewed and used as part of the WOE determination.

As a further part of the WOE analysis to corroborate the likelihood that the Washington area will attain the 1-hour ozone standard by the attainment date of 2005, EPA developed relative reduction factors based on regional scale modeling performed for the NO_x SIP call supplemental notice of proposed rulemaking (NO_x SIP Call SNPR) (see 63 FR 25902, May 11, 1998; and see 63 FR 57356, October 27, 1998). These relative reduction factors were used to adjust the 1994–1996 area design values for the Washington area. This analysis shows all future predicted design values below

the level needed for attainment (124 ppb). To provide additional information, the EPA's relative reduction factors were applied to the 1995–1997 and 1996–1998 Washington area design values, again resulting in all area design values below 124 ppb. This analysis was updated (see the response to comment 2. elsewhere in this section) to include more recent air quality data including data through the 2002 ozone season. The result of this updated analysis still showed all future predicted design values below 124 ppb.⁹ A future design value analysis was performed using relative reduction factors from the local photochemical grid modeling results. The outcome of this analysis shows a future predicted area-wide design value of 119.6 ppb.¹⁰

Based on the results of the local scale modeling along with the additional WOE arguments provided in the attainment demonstration plan, EPA believes that attainment of the 1-hour ozone standard has been successfully demonstrated for the Washington area by the November 2005 attainment date.

Comment 2: In the March 5, 2003, letter the commenter asserted that 2002 ozone levels recorded in the Washington area show that the WOE analysis is flawed. The comments summarize the 2002 data in terms of nine days that the 1-hour standard was exceeded with as many as 8 different monitors recording exceedances on some of those days and claim this number of exceedance days was higher than in any of the preceding 10 years. The comments assert that this data, including a peak ozone value of 0.158 ppm, refutes EPA's WOE analysis. The same commenter cited to pertinent comments previously submitted to EPA

⁹Table IV C–2 to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10 2003.

¹⁰Under the 1999 Guidance, the base design value is an average of three years of monitored design values that represent the modeled base case emissions. In the case of the Washington area, the model episodes are for 1991, and, thus, the three design values used are those that reflect the 1991 monitoring data, i.e., the design values for 1991, 1992 and 1993. In the case of the Washington area these three design values were 136, 136 and 137 ppb for 1991, 1992 and 1993, respectively. The relative reduction factor (RRF) was 0.88. Whether the RRF is applied to the average design value or the highest design value has no practical effect (0.88 times 137 ppb equals 120.6 ppb). See Attachment 5 "Improving Weight of Evidence Through Identification of Additional Emission Reductions Not Modeled" to "Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area" dated January 24, 2003.

on February 14, 2000. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those "weights" that favor a finding of attainment and specifically cited 1999 air quality data. The comments assert that the data through 1999 show current violations at 4 different monitoring sites. The comments highlight peak concentrations at various monitors and claim even assuming a 7 ppb reduction in ambient levels from the NO_x SIP call the peak value of 0.141 ppm recorded in 1999 would still be in violation.

Response 2:

Weight of Evidence and Air Quality Generally.

The District, Maryland and Virginia provided WOE arguments in the attainment demonstration to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of 1999 but for transport.

In the original plan, the States and the District used EPA-developed relative reduction factors based on regional scale modeling performed for the NO_x SIP Call SNPR. These relative reduction factors were used to adjust the 1996 area design values which considered air quality data for the years 1994, 1995 and 1996. The analysis showed all area future predicted design values below the level consistent with attainment (124 ppb). To supplement the state submittals, we originally applied the same relative reduction factors to the 1997 and 1998 area design values which include air quality data through 1998. Again the results were that all future predicted area design values were below 124 ppb.

Using the more recent air quality data, including that available for 2002, EPA has performed these same evaluations. Once again, the results were that all future predicted design values were below 124 ppb. The detail data and computations have been placed in the docket for this action.

Number of Exceedence Days.

Compliance with the one-hour ozone standard is determined by comparing the monitored annual average number of expected exceedances of the 0.12 parts per million (ppm) with the one-hour standard. The one-hour standard is exceeded in practice when the highest one-hour value for any calendar day is greater than 124 ppm. The standard is set at 0.12 ppm but due to rounding, a value of 0.124 ppm or less rounds down to 0.12 ppm and values of 0.125 ppm or more round up to 0.13 ppm which

exceeds the 0.12 ppm standard.¹¹ To account for missing days (monitors may not be operating on some days due to malfunctions, maintenance and calibration, or power outages, etc.) when the monitor is not functioning the procedure in appendix H of 40 CFR part 50 is used to convert the number of actual number measured exceedances for the year to an actual number of expected exceedances.

The form of the ozone NAAQS requires the use of a 3-year period to determine the average number of exceedances per year. In its simplest form, the ozone standard requires that the average number of exceedances over a 3-year period, cannot be greater than 1.0. An area with four exceedances during a 3-year period, therefore, does not meet the ozone standard because four exceedances in 3 years averages out to more than once per year. Because of the form of the ozone NAAQS, data are combined over multiple years but they are not combined from different sites.

The number of expected exceedances for a year is always equal to or greater than the actual number of measured exceedances. The one-hour ozone standard is violated when the annual average number of expected exceedances exceeds 1.0. The standard and the method for converting measured exceedances to expected exceedances is found in 40 CFR 50.9 and appendix H to 40 CFR part 50.

The proper use of the 1999 and 2002 and intervening years of ozone data would be to perform the expected exceedances determination using that data. That the area had "nine exceedance days in 2002" says only that there were nine days in 2002 during which at least one monitor recorded an exceedance. The proper context for the 2002 ozone data would be to compute the average annual number of expected exceedances over the three year period 2000 to 2002.

Therefore, EPA believes that the number of exceedance days is irrelevant when evaluating an attainment demonstration because the number of exceedance days has no bearing on the form of the 1-hour ozone standard. Compliance with the standard is performed on a monitor-by-monitor basis. The peak ozone value for 2002 (or 1999 for that matter) is irrelevant unless placed in context with the remaining data for 2002 as well as the data for 2000 and 2001. A monitor is in full compliance with the standard which

allows up to 3.1 expected exceedances under 40 CFR 50.9 and appendix H to 40 CFR part 50. Under appendix H to 40 CFR part 50, a monitor has to record at least a value equal to or greater than 0.125 ppm in order for the number of expected exceedances to be 1.0 or greater for determining exceedances of the one-hour ozone standard. Whether that monitored value is 0.125 ppm or 0.158 ppm does not matter.

Seven Parts Per Billion (ppb) Adjustment to Peak Values.

The commenter stated that even if one assumes that the NO_x SIP call will deliver a 7 ppb ozone reduction in the peak ozone values the peak ozone concentration will still be violating the standard.¹² As stated in the preceding paragraphs, compliance with the standard is not determined using the peak value, but whether the standard is exceeded more than an average of 1.0 times per year when averaged over three years. EPA disagrees that the peak monitored data would be the proper determinant of nonattainment using such a method. EPA believes that to use such a method properly the commenter's assumed adjustment of 7 ppb (0.007 ppm) would have to be subtracted from all the monitored data readings to see if a monitor would record more than three exceedances in any three year period.

One threshold issue with such a method is whether one should assume the same number of daily measurements in future years as in the past in order to compute expected number of exceedances. For example, for the new monitor at the Equestrian Center in Prince George's County, Maryland has provided only 123 days of data for 2002. Because the reported data covers the 123 days for the months of July through October, one could reasonably assume the monitor will be operated over the entire ozone season in the future. But such an assumption does not provide any insight into just how much data capture one should assign to the monitor in the future to compute expected number of exceedances using appendix H to 40 CR part 50. Likewise, assumptions have to be made concerning the number of days assumed less than the standard when computing the number of expected exceedances.

Examination of the ozone data for any time period will show a variation in the number of monitored exceedances at

any one monitoring site. For the 1997 to 2002 time period, the only monitors that have recorded exceedances in every year since 1997 are the two in Prince George's County Maryland and both monitors have shown continual improvement since 1997. All other monitors have had years where no exceedances have been recorded and years where one or more have been recorded.

EPA has determined that applying an assumed 7 ppb adjustment to all of the 1997 to 2002 data would yield no monitor, for which complete data is available for the 1997 to 2002 time period, with more than 3 exceedances for the three year period ending in 2002. For those monitors which have data for only one ozone season for the period ending in 2002, EPA notes that the 7 ppb adjustment would result in greater than 1.0 exceedances at the following two monitors: one monitor in Fairfax County, Virginia (monitor ID 510591005-1) and one in Prince George's County, Maryland (monitor ID 240338003-1). However, these monitors have only one year of data. And the monitor in Prince George's County recorded only one exceedance in 2002, but the number of expected exceedances for 2002 is 1.7 after applying the procedures of 40 CFR part 50, appendix H that account for missing days of data.

EPA has determined that applying a 5 ppb adjustment to all of the 1997 to 2002 data would yield only one additional monitor (that in Arlington, Virginia) with more than 3 exceedances for the three year period ending in 2002.

These results are presented in detail in the technical support for this final action.¹³ As noted above, EPA believes that monitoring data for one year is not necessarily a good indicator of future year data. For this reason, EPA believes this one scintilla of contrary evidence (which arises from a method that EPA neither proposed nor endorses) does not outweigh the preponderance of evidence supporting EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005.

Monitor Trends.

With regard to the 1999 data, EPA has determined that the one-hour ozone NAAQS was violated at six monitors with three full years of data for 1997 to

¹¹ While the rounding may seem to increase the standard by four percent (.005 divided by 0.12), the standard was set to include an ample margin of safety as required by section 109(b) of the CAA.

¹² The commenter submitted the 7 ppb adjustment to claim that "[e]ven if one were to assume a 7 ppb reduction in ambient levels from the NO_x SIP call which is near the middle of the 5-10 ppb reduction attributed to the SIP call in the TSD, the Greenbelt monitor would still be in violation."

¹³ See section IV. "Regarding Comment on Number of Exceedance Days and an Air Quality Adjustment of 7 ppb and Air Quality Trends" to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10, 2003.

1999 (inclusive) and at one additional monitor with two-years of data for 1998 and 1999, not the four monitors identified in the comments. For the 2002 ozone season, violations were recorded at seven monitors. One of these seven has only one full ozone season (which was 2002) and recorded two exceedances in 2002 (with the design value being the second highest reading which was 137 ppb). Another one of these seven has data for the last 123 days of the ozone season (July 1, 2003, through October 31, 2003 inclusive). This monitor recorded only one exceedance, but due to the adjustment procedure found in 40 CFR part 50, the number of expected exceedances is increased to 1.7.

The worst monitor for 1999 had an annual average of 4.2 expected exceedances and a design value of 0.132 ppm. By the end of the 2002 ozone season this monitor had an annual average of 1.4 expected exceedances and a design value of 0.128 ppm.

In terms of average number of expected exceedances, one monitor had an annual average of 2.7 expected exceedances based upon the 2002 ozone data. For 2002, this monitor had a design value of 0.126 ppm. At the end of the 1999 this monitor had an annual average of 1.3 expected exceedances and a design value of 0.128 ppm.

Since 1999, for the monitors with more than one season of data, the average number of expected exceedances at the worst monitor has dropped from 4.2 to 2.7 and the design value has dropped from 132 ppb to 128 ppb.

Comment 3: The commenter alleges that EPA's refusal to accept UAM results for the attainment demonstration conflicts with longstanding Agency policy, namely, EPA's policy that which requires the use of the UAM to demonstrate eligibility for granting waivers from the NO_x requirements under section 182(f). The commenter quotes a portion section 2.6.1 of the NO_x Supplement to the General Preamble.¹⁴ Section 2.6.1 says that "EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO_x requirements (or relaxation of otherwise required NO_x reductions)." See 57 FR at 55623 (November 30, 1992). The commenter notes that EPA extended a statutory SIP submittal deadline to enable states to complete

crucial UAM modeling. The commenter concludes with an assertion that EPA is being inconsistent by allowing attainment demonstrations to discount UAM results while requiring adherence to UAM before NO_x waivers can be granted to limited groups of sources.

Response 3: EPA disagrees with the comment for several reasons. The comments ignore the overall context in which EPA made this one statement in section 2.6.1, and, specifically, EPA does not agree that the use of the phrase "photochemical grid modeling is the only reliable tool" has the meaning ascribed to it by the commenter when placed in the context of the original guidance and subsequent guidance. The comments also ignore subsequent guidance issued regarding waivers from the NO_x requirements of section 182(f) (NO_x waivers).

In section 2.6.1, of the NO_x Supplement to the General Preamble, EPA stated that EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO_x requirements (or relaxation of otherwise required NO_x reductions). We concluded that states must include in such demonstrations photochemical grid modeling analyses that consider various control strategies with and without NO_x reductions. We stated that for a variety of ozone nonattainment areas photochemical grid modeling either has not been utilized previously or, if utilized, has not adequately considered the effects of NO_x emission reductions. We recognized that at that time, while efforts to conduct photochemical grid modeling were underway in many states, the time needed to establish and implement a modeling protocol and to interpret the model results will, in a variety of cases, extend beyond the November 15, 1992 deadline for submission of NO_x rules.

On December 16, 1993, EPA issued "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)." In that guidance EPA expounded upon the guidance provided in the NO_x Supplement to the General Preamble. For instance, EPA stated it would allow grid models other than UAM to be used for regional scale modeling needed for the net ozone benefits test in transport regions.¹⁵

Under the "net air quality test", EPA stated that the primary test should be

the effect the exemption would have on attainment of the primary NAAQS for the criteria pollutants and that secondary tests, as needed, can extend to the (qualitative or quantitative) consideration of other air quality impacts that are explicitly recognized in the CAA. Under this test, an area would have to make a showing that the area under consideration clearly does not need NO_x reductions to provide for attainment to attain any NAAQS.¹⁶ This should be based on a comparison of the geographic area exposed to concentrations above the ozone NAAQS with and without NO_x reductions from the sources concerned or where UAM results are available, population exposure to concentrations above or near the NAAQS may be used instead of the geographic area exposure factor.

Under the "contribute to attainment test", EPA stated that the demonstration must show that additional NO_x reductions would not contribute to ozone attainment in the area. The guidance was to model: (1) Substantial VOC reductions; (2) substantial NO_x reductions; and (3) both the VOC and NO_x reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.¹⁷ If the area-wide predicted maximum 1-hour ozone concentration for each day modeled under scenario (1) is less than or equal to that from scenarios (2) and (3) for the same day, then the area would be eligible for an exemption from the section 182(f) requirements.¹⁸

Under the "net ozone air quality benefit test", EPA required a comparison of exposures to ozone concentrations resulting from: (1) Substantial VOC reductions; (2) substantial NO_x reductions; and (3) both the VOC and NO_x reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.¹⁹ The geographic scope was all portions of the ozone transport region in which impacts from NO_x emissions from the area seeking the exemption can be determined by the photochemical grid model. Under the guidance, if the exposure to ozone concentrations from scenario (1) is less than or equal to the exposure to ozone concentrations from scenarios (2) and (3), then the section 182(f) net ozone

¹⁴ "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 55620, November 30, 1992.

¹⁵ See Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993, section 7.3.

¹⁶ *Id.*, Chapter 3.

¹⁷ *Id.*, Chapter 8.

¹⁸ *Id.*, Chapter 4.

¹⁹ *Id.*, Chapter 8.

benefits demonstration could be approved.²⁰

The “contribute to attainment” and “net ozone benefit” tests described in preceding paragraphs both require an area-wide or regional analysis. In such area-wide/regional analyses, NO_x emission reductions at a large number of sources are considered. These analyses are appropriate to determine in a directional manner whether or not NO_x reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses may be less precise than an attainment demonstration required under section 182(c).²¹

Regarding the excess emissions reductions test, EPA believes that the excess reductions provision requires a more precise analysis; specifically an analysis which is based on the attainment demonstration. That is, the excess reductions provision must be more than a directional finding on an area-wide basis.²² As discussed elsewhere in this document in responses to comment, EPA believes that the WOE is not an alternative method or a roll-back analysis, or that the section 182(c) requirements for the attainment demonstrations does not exclude WOE and thus the attainment demonstration needed to support an excess emissions waiver could include the very same WOE analyses used in the Washington area.

When EPA stated that photochemical grid modeling was the only reliable tool we did not mean to confine modeling exclusively to just UAM. Rather, our guidance meant to exclude trajectory based models which lack the necessary treatment of the physical orientation of the NO_x sources, dispersion of their plumes and cannot assess whether NO_x control contributes to attainment in all parts of a nonattainment area because they address a limited number of trajectories.²³

The General Preamble specified that NO_x waivers would need to be supported by photochemical modeling analyses. The scope of these analyses was refined in subsequent guidance. This subsequent guidance specified the test required under for each of the different categories of NO_x waivers set by statute. Some of the tests needed for NO_x waivers are only directional in that one need to make comparisons in the changes in air pollutant concentrations due to large VOC-only, NO_x-only, and VOC plus NO_x reductions. Some of

these comparisons relate to geographic or population exposures to ozone levels. The excess emissions reduction test is tied to the attainment demonstration. With the exception of the excess emissions test, the photochemical analysis for the other tests only has to show that changes in ozone concentrations or net air quality benefits are greater in the absence of specified or substantial NO_x reductions than with such reductions.²⁴ In all the tests, except those tied to an area's attainment demonstration, results from photochemical modeling one reduction scenario are compared with modeling results from different reduction scenarios. The tests only compare modeling results. For the tests tied to the attainment demonstration, EPA would consider the same WOE analyses as an attainment demonstration not related to an exemption from the section 182(f) requirements.

e. Use of MOBILE6.

Comment: The commenter alleges that it is inappropriate for EPA to conditionally approve the SIPs based on modeling conducted with EPA's MOBILE5 motor vehicle emissions model now that the MOBILE6 model is available for use.

Response: The MOBILE6 model was not available for use at the time these SIPs were developed. The model is now available, and EPA guidance issued with release of the model does indicate that any new SIP modeling should be conducted with the new model. The Washington area jurisdictions had already completed significant SIP modeling efforts prior to release of MOBILE6. EPA's guidance provides that EPA may continue to approve SIPs based on MOBILE5 under these circumstances. See the January 18, 2002 Memorandum titled, “Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.” As noted in this January 18, 2002 Memorandum, the CAA requires that SIP inventories and control measures be based on the most current information available and applicable when a SIP is developed. See section 172(c)(3) of the CAA and 40 CFR 51.112(a)(1). However, as noted in the answer to the first question in this January 18, 2002 Memorandum, “EPA believes that the CAA would not require

states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs because a new motor vehicle emissions model is now available.” This concept was reiterated in the notice of availability, which was published in the **Federal Register** on January 29, 2002 (67 FR 4254), that announced the approval and availability of MOBILE6 for use in SIPs and conformity determinations. Use of the MOBILE6 model for SIP development was not allowed before the January 29, 2002, notice of availability. Since the Washington area attainment demonstration was submitted in February 2002, and the mobile source modeling was performed prior to that date, MOBILE5 had to be used.

It should also be noted that at the time of the development of the Washington area attainment demonstration changes were being made to the various draft versions of the MOBILE6 model as problems were detected in testing the drafts. Since the MOBILE6 model was not available when the SIPs for the Washington area was developed EPA concludes that it was appropriate to develop the SIP with the MOBILE5 model.

Furthermore, the States have committed not only to conduct further modeling reanalyses with the MOBILE6 model, but also to revise the attainment demonstration as necessary to demonstrate timely attainment with the new model, including any necessary additional control measures. EPA believes that in this case it is appropriate to conditionally approve the SIPs.

With respect to the commenter's criticism of MOBILE5 modeling, we believe that this modeling is not nearly so inaccurate or outdated as the commenter suggests. MOBILE5 modeling provides the best estimate of mobile source emissions that was available at the time the SIPs were developed. Soon the States will be reanalyzing mobile emissions with the improved MOBILE6 model and offsetting any additional emissions projected with the new model as necessary to provide for attainment.

The commenter further argues that because the States had previously committed to update the mobile modeling with MOBILE6 by this past January, it is arbitrary for EPA now to accept commitments from the States to complete this effort by April 2004. However, the SIPs in which the States had committed to complete these reanalyses were vacated by the Court of Appeals in response to litigation initiated by the commenter, and the

²⁴ In cases where an area outside the ozone transport region actually attained the ozone NAAQS as shown through air quality monitoring data without the NO_x reductions on major stationary sources required by section 182(f) such areas could also obtain a NO_x waiver. For example, refer to section 4.4 of Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993.

²⁰ *Id.*, Chapter 5.

²¹ *Id.*, Chapter 6.

²² *Id.*, Chapter 6.

²³ *Id.*, section 7.1.

States reasonably interrupted their work updating the modeling to consider the court's opinion and determine the appropriate route to developing an approvable SIP. Now the States have committed not only to update the mobile modeling as they had previously planned to do by this year, but also to revise the attainment demonstration as a whole, including adoption of any necessary additional control measures to assure timely attainment. As indicated in their commitment letters, the States believe that this much more significant effort will take until April 2004. The commenter correctly points out that the States have already done preliminary new model runs with the MOBILE6 model, and thus that they might not need until April 2004 to complete the new mobile modeling. However, the completed mobile modeling is only preliminary and only includes the mobile model runs with MOBILE6. The States have not even completed preliminary work on revising the attainment demonstration as a whole, nor the adoption of any additional control measures they might ultimately conclude appropriate to provide for timely attainment. All of this additional work is necessary to honor the recent commitments, and the States believe it will take them until April to complete that work.

f. *Contingency Measures.*

Comment: The commenter asserts that the SIPs do not provide contingency measures to make up for any emission reduction shortfall, either in achievement of ROP milestones or for failure to attain, as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act.

Response: EPA acknowledges that the SIPs do not yet contain all of the required contingency measures, however, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. One of the conditions for approval is submittal of appropriate contingency measures. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments (including those responses to comments that claim the severe area SIP elements are past due and claim conditional approval is not permissible), EPA believes that a conditional approval including conditions requiring

submittal of contingency measures is permissible in this case.

3. Comments Relating to Rate-of-Progress

a. *Post-1999 Progress.*

Comment: The commenter incorporates by reference previous comments regarding ROP submitted to EPA on December 13, 2002, asserting that section 182(c)(2)(B) of the Act mandates post-1999 ROP even for serious areas and that the submittal deadline for this SIP was November 15, 1994. The commenter then concludes that the EPA has no authority to extend the deadline for the submittal of the post-1999 portion of the ROP plan for an area that is later reclassified to severe because the statutory due date of November 15, 1994 is past. New comments by this same commenter assert that we cannot approve the 1996–1999 plan because the plan lacks the requisite 3 percent reduction per year (averaged over consecutive three-year periods) ROP demonstration for years between 1999 to the attainment date of 2005. Furthermore, the commenter argues that the CAA required serious and above areas to submit a single ROP plan by November 15, 1994 demonstrating a 3 percent reduction per year (averaged over consecutive three-year periods) after November 15, 1996 until the attainment date. The commenter asserts that the Court of Appeals has ruled in *Sierra Club, supra*, that EPA had no authority to approve the SIPs for the Washington area in the absence of the ROP plan covering the period November 15, 1999 through November 15, 2005.

Response: EPA does not agree that the post-1999 portion of the ROP plan is past-due in a serious area once such serious area is reclassified to severe nonattainment. EPA's exercise of discretion under section 182(i) to adjust the submission deadline for the post-1999 portion of the ROP plan requirements, which only became applicable to the Washington area for the first time upon the effective date of the area's reclassification on March 25, 2003, is not arbitrary or capricious, and is in keeping with the terms and purpose of the statute.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. Where a submission date has passed and is therefore impossible to meet, EPA has concluded that the

Administrator may establish a later date. EPA has applied this interpretation in its prior reclassification rulemaking actions. *See* Santa Barbara, California, (62 FR 65025, December 10, 1997); Phoenix, Arizona (62 FR 60001, November 6, 1997); and Dallas-Fort Worth, Texas (63 FR 8128, February 18, 1998).

The structure of the Clean Air Act itself reinforces this interpretation. Under the Act, the original dates for submissions for areas initially classified as serious, severe, and extreme areas was, as the commenter points out, 1994. The attainment date for serious areas is 1999. Thus, the Act does not require EPA to make a determination of whether or not a serious area met its 1999 attainment deadline until more than five years after the original submission date for areas originally classified as severe. Since the original 1992, 1994 and 2000 statutory deadlines have elapsed, it is impossible for EPA to establish any of these as the submission deadline for a newly reclassified area.

EPA has determined that in light of the fact that the original submission dates for severe areas have elapsed prior to the time that we issued the reclassification for the Washington area, it is a reasonable exercise of EPA's discretion to adjust the applicable submission deadlines in order to ensure consistency among the new requirements. Because it is impossible for the States to meet long-expired deadlines, EPA must set new deadlines that will ensure consistency of submissions for requirements that the state is only recently being notified that it must meet. This is entirely in keeping with the discretion that Congress accorded EPA in section 182(i), and with EPA's prior reclassification rulemakings making appropriate adjustments to submission deadlines. Because the States must now meet newly imposed requirements such as post-1999 ROP and additional severe area control requirements, EPA must set prospective submission dates, and has authority under section 182(i) to make these dates consistent.

To interpret the Clean Air Act as the commenter suggests would give the reclassification retroactive effect by holding the States in default of their submission obligations before the event necessary to trigger that obligation (reclassification) has occurred. Until EPA reclassified the Washington area effective March 25, 2003, the States were under no obligation to make the required submissions. To subject them to a lapsed deadline after reclassification would be patently unfair and contrary to the statute's intent.

Giving the submission deadlines retroactive effect would also be inconsistent with the Administrative Procedure Act, 5 U.S.C. 553(d), which requires that before a rule takes effect, persons affected will have advance notice of its requirements. A failure to meet an obligation, especially one accompanied by sanctions, cannot occur in advance of the imposition of that obligation. The obligation to submit requirements to meet the severe area classification did not exist for the Washington area prior to the final action that reclassifies the area. Giving retroactive effect to the old SIP submission deadlines would also preclude EPA from exercising the discretion with respect to setting the deadlines for these submissions that is specifically afforded by section 182(i).

In *Sierra Club v. Whitman*, 130 F. Supp.2d 78 (D.D.C. 2001), *aff'd*, 285 F.3d 63 (D.C. Cir. 2002), a case involving the reclassification of the St. Louis nonattainment area, the District Court refused to interpret the reclassification provisions as authorizing relief that would treat submission deadlines as having lapsed prior to EPA having issued a reclassification rulemaking. The court stated that such an interpretation “could ‘create * * * an injustice at the hands of the court itself.’” 130 F. Supp.2d at 94. Such relief “could throw the [area] into extreme noncompliance.” *Id.* The court refused to impose such relief when it “could effectively penalize the state and local entities that are required to comply with EPA findings.” *Id.* In the St. Louis case, the Sierra Club demanded not only retroactive reclassification, but also demanded that the district court declare that “the State of Missouri has failed to file a SIP revision that comports with the requirements of section 7511a(c) by the statutory deadline of May 15, 1998,” *id.* at 87, a date that had long since passed. The district court refused to do so, recognizing that this would unfairly penalize the States, which are entitled to rely on EPA’s actions in anticipating the burdens that will be imposed pursuant to the CAA. Imposition of sanctions would also have unfair adverse consequences for emissions sources.

The Court of Appeals upheld the District Court’s ruling. “In any event, what Sierra Club sought—to have the effective date of EPA’s court-ordered determination converted to the date the statute envisioned, rather than the actual date of EPA’s action—was a form of relief the district court quite properly rejected.” *Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir. 2002). The Court

of Appeals continued: “Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.” *Id.* See also *NRDC v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994).

EPA acknowledges that it cannot fully approve an attainment demonstration that has an outside attainment date of November 15, 2005, for the Washington area in the absence of a demonstration of ROP after 1999. See *Sierra Club v. Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002) (“[W]ith an attainment date in 2005, ‘the rate-of-progress plan for the Washington area had to demonstrate a 9% reduction in emissions from 1996 to 1999, another 9% from 1999 to 2002, and another 9% from 2002 to 2005’”). However, EPA believes that in the current circumstances where the States for an area that has been recently reclassified to severe have submitted the 1996–1999 ROP plan through the 1999 milestone year and an attainment demonstration for 2005 in advance of the date set forth in the final reclassification rule, EPA can issue a conditional approval of the attainment demonstration if EPA has a commitment from the States to submit the 1999–2005 ROP plan by April 2004. EPA believes this does not contravene the Circuit Court’s rulings and does not produce the absurd result of retroactive application of requirements and inconsistencies with the Administrative Procedure Act, 5 U.S.C. 553(d) discussed in the preceding paragraphs. On April 7 and 8, 2003, EPA received commitments from the States to submit by April 17, 2004, all of the elements, including the post-1999 ROP plan, required for a severe area SIP and EPA is conditionally approving the SIP revisions listed in Tables 1 and 2 in section I of this document based upon the conditions that the States submit all the severe area SIP elements. These are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

b. ROP and MOBILE6.

Comment: The commenter asserted that because the 1996–1999 ROP plan does not account for MOBILE6 modeling EPA cannot approve the 1996–1999 ROP plan even with respect to the 1999 milestone year. The commenter claimed that initial

MOBILE6 results are significantly higher than that in the plan and that EPA must first evaluate the impact of the MOBILE6 results on the required level of reductions to determine if the plan achieves that level of reduction.²⁵

Response: EPA acknowledges that emissions factors, as well as inventory calculation methodologies, are continually being improved. In general, EPA has not required changes to submitted SIPs that result from changes in factors and methodologies that occur after the SIP is submitted. With respect to the 15 percent plan due in November 1993, in section 2.4 of “Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate-of-Progress Plans” (EPA–452/R–92–005) EPA stated: “If other significant changes occur in emissions factors or methodologies before which time it is impossible for states to make adjustments to their 15 percent calculations and associated control strategies, then EPA may require states to make corrections to the base year emissions inventory, as well as to the adjusted base year inventory and the 1996 target level of emissions.” This guidance discussed the then pending transition from the MOBILE4.1 model to the MOBILE5 model but only prospectively, by requiring that emissions values calculated using MOBILE4.1 would have to be recalculated using MOBILE5 before submittal of the final rate-of-progress plan in November 1993.

Likewise with respect to the 1996–1999 plan, EPA has advised the states when changes in emissions factors or in methodologies for developing emissions inventories would force revisions to the inventories or plans. Changes would be necessary if they occurred before the plan was submitted. “However, if such changes occur after November 15, 1991, but prior to November 15, 1994, a serious or above area may be required to make corrections to the base year inventory and attainment year projection inventory for purposes of developing the 3 percent rate-of-progress demonstration. If such changes occur after November 15, 1994, EPA will advise on when it would be appropriate for the states to make corrections in future supplements to this General Preamble.” 57 FR at 13517 (April 16, 1992).

EPA established a policy to require that certain attainment demonstrations

²⁵ The comments referenced a Meeting Notice for the February 27, 2003 Meeting Notice of the Metropolitan Washington Air Quality Committee and provided the comments solely by reference to its URL (<http://www.mwcog.org/uploads/event-documents/WV2003022711708.pdf>).

and maintenance plans be revised using the then-forthcoming MOBILE6 model.²⁶ EPA required states that relied upon benefits from the Tier 2/Sulfur final rule for attainment or maintenance to commit to revise the applicable budgets using MOBILE6 in order for EPA to approve the SIP. However, the 1996–1999 ROP plan for the 1999 milestone year for the Washington area does not take credit for benefits from the Tier 2 motor vehicle standards and thus this guidance is not applicable.

EPA has established policy and guidance for when SIPs must be prepared using MOBILE6.²⁷ EPA believes that the Clean Air Act would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs simply because a new motor vehicle emissions model is now available. EPA believes that this is supported by existing EPA policies and case law. *See, e.g., Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990). Of course, states can choose to use MOBILE6 in these SIPs, for example, if it is determined that future conformity determinations would be ensured through such a SIP revision.

EPA does not believe that the State's use of MOBILE5 should be an obstacle to EPA approval for reasonable further progress, attainment, or maintenance SIPs that do not include Tier 2 sulfur rule reductions that have been or will soon be submitted based on MOBILE5, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.*, attainment modeling for an attainment SIP has already been completed with MOBILE5). It would be unreasonable to require the States to revise these SIPs with MOBILE6 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner. The ROP plan for 1999 was prepared and submitted well before MOBILE6 was released. The 1996–1999 ROP plan for the 1999 milestone year was prepared using the most current model, MOBILE5b, available at the time the SIP was prepared.

To act as the commenter suggests would be to purposelessly contradict EPA's long established policies and

guidance provided to the states with respect to us of new models.

As explained in a previous response, EPA does not agree that the 1996–1999 ROP plan for the Washington area had to include any post-1999 reductions until after the area was reclassified to severe nonattainment. As explained in the notice of proposed rulemaking for that action, EPA stated that the post-1999 portion of the ROP requirement will be developed using MOBILE6 in accordance with our existing policy²⁸ for newly developed SIPs. *See* 67 FR at 68611, November 13, 2002. We did not modify this requirement in the final action.

Furthermore, the MOBILE6 model was not available for use at the time these 1996–1999 ROP SIPs were developed. Also, for the same reasons, relating to the availability of the MOBILE6 model in relation to the date the 1996–1999 ROP was submitted, that were presented in section III.A.2e, EPA disagrees with these comments relating to MOBILE6 and the 1996–1999 ROP plan.

4. Severe Area SIP Requirements

Comment: The commenter claims that EPA cannot approve these SIP revisions because these revisions do not cover all of the required severe area SIP components and that EPA must therefore disapprove these SIP revisions.

Response: EPA agrees that we cannot fully approve these SIP revisions. However, EPA believes that to disapprove these SIP revisions because the States did not submit all the severe area SIP elements that became applicable after these SIP revisions were submitted would lead to the same absurd results and problems with retroactivity and to the same conflicts with the Administrative Procedure Act and CAA that were discussed previously with respect to the post-1999 rate-of-progress requirements.

EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments,

EPA believes that a conditional approval is permissible because EPA received commitments on April 7 and 8, 2003 from the Washington area jurisdictions to submit by April 17, 2004 revisions to the SIP that:

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

²⁶ Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I–VI, issued November 8, 1999.

²⁷ Memorandum from John S. Seitz and Margo Tsigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

²⁸ Memorandum from John S. Seitz and Margo Tsigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(L) Include as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

These required submittals are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

5. Alternative Proposal and Protective Finding

Comment: The commenter supports EPA's proposal in the alternative to disapprove attainment demonstration SIPs for the Washington area, but questions the proposal to issue a protective finding under EPA's transportation conformity regulations should EPA proceed with a final disapproval of the SIPs.

Response: EPA has concluded that a conditional approval is appropriate in this case and therefore will not be issuing a final disapproval nor a protective finding on the attainment demonstrations for the Washington area. Therefore, any comments relating to the proposed protective finding are not germane to this final action and EPA will not be responding to any such comments in this final action.

B. Comments Made on the Proposed Reclassification

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on December 13, 2002, relating to the proposed reclassification of the Washington area to severe nonattainment (67 FR 68805, November 13, 2002). To the extent that these comments are germane to the current action we incorporate by reference our responses to the comments on these issues found in our final rule published January 24, 2003

(see 68 FR at 3412–3421) as supplemented by the response to comment found in this final rule.

C. Comments Made Regarding Adequacy of Motor Vehicle Emissions Budgets

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on September 9, 2002, and on February 14, 2000, that related to the adequacy of the motor vehicle emissions budgets in the 1996–1999 ROP plan and the attainment demonstration.

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes. We also received comments asserting that EPA should not find the budgets adequate because EPA is plainly obligated to disapprove the attainment SIP because: (1) The budgets are based on a 2005 attainment date, rather than the area's then current attainment date of 1999; (2) the budgets do not necessarily reflect all RACM; (3) there are no budgets corresponding to the post-1999 rate-of-progress requirement; (4) the SIP lacks contingency measures; (5) the budgets do not reflect the potential that the budgets will be further tightened as a result of severe area SIP requirements; (6) the attainment demonstration is flawed due to the use of the weight of evidence approach; and (7) the budgets were developed using the MOBILE5 model.

Response: In the notice of proposed rulemaking EPA proposed to conditionally approve the attainment demonstration and ROP SIP revisions and did not propose to find the budgets adequate. EPA is conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. Therefore, comments relating to adequacy of budgets are not germane to this rulemaking. To the extent comments are germane to conditional approval of the SIPs, EPA addresses them elsewhere in this notice in response to comments on various aspects of the plans.

D. Comments Relating to Supplemental Information To Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on November 15, 2000, relating to EPA's proposed

“Supplemental Information to Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas” (65 FR 61134, October 16, 2000) relating to RACM requirements.

These comments are not germane to this action because EPA is not relying upon the supplemental information to show that the RACM requirement has been fulfilled.

E. Prior Comments on the Approvability of the Attainment and Rate-of-Progress Plans

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on February 14, 2000, October 30, 2000, and November 20, 2000 relating to the approval of the attainment demonstration and ROP plans.

1. Comments Relating to Extension of the Attainment Date to November 15, 2005

We received comments objecting to EPA's attainment date extension policy (a memorandum “Extension of Attainment Dates for Downwind Transport Areas” issued July 16, 1998), and to application of the extension policy to the Washington area. These comments are not germane to this action because EPA is not applying the extension policy to the area but rather has extended the attainment date to November 15, 2005, by reclassifying the area to severe nonattainment (see 68 FR 3410, January 24, 2003).

2. Motor Vehicle Emissions Inventory

Comment: We received comments stating that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix.²⁹ The comments stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those “weights” that favor a finding of attainment and specifically identified the changing fleet mix. We also received comments asserting that the Maryland and Virginia attainment and 1996–1999 ROP plans are flawed because they assume a fleet mix that does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks. The comments cite data from the Maryland Department of the

²⁹ These comments were contained in the February 14, 2000, October 30, 2000, and November 20, 2000, letters.

Environment for 1996 and 1999. The comments further assert that EPA and the States have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. The comments also assert that EPA cannot rationally approve SIPs that are based on such materially inaccurate assumptions; that continued use of out-dated assumptions is inconsistent with the duty imposed by Clean Air Act section 182(a)(3) to triennially update the emission inventory; and that if the motor vehicle inventory has not been updated to prepare the current SIP submission, it should be disapproved.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was prepared. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update at the time the SIP was prepared. The Metropolitan Washington, DC Ozone Nonattainment Area SIP is based on vehicle registration data from 1996, which was the most recently available data at the time the SIP was prepared and submitted. Clearly the 1999 data could not have been used in motor vehicle emissions projections prepared in the fall of 1998 as documented in Appendix D of the SIP. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Further, EPA does not require states to go back and re-analyze SIP submissions if new data becomes available shortly before EPA takes final action on the SIP. Nevertheless, we do expect that revisions to these SIPs that will be submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6. EPA is requiring the Washington area States to revise the attainment budgets using MOBILE6 pursuant to the commitments for conditional approval submitted by the States. The revised budgets must include the most recently available fleet information at the time the budgets are revised.

In addition, we incorporate by reference our responses to comments on these issues found in section II.H (see 66 FR at 614) and in response 20 of section

X. (see 66 FR at 630) of our final rule published January 3, 2001.

3. Credit for National Measures

Comment 1: We received comments stating that states should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have allegedly been delayed or weakened.

Response 1: On September 11, 1998, EPA promulgated three major regulations to reduce VOC emissions from covering three major categories of consumer and commercial products. The first rule covers 61 categories of architectural and industrial maintenance (AIM) coatings. The second rule covers 24 consumer product categories such as air fresheners, automotive windshield washer fluid, "household" adhesives, cleaners and polishes, hair care products, cleanser, underarm aerosol antiperspirants, insecticides and charcoal lighting fluids. The third rule covers seven categories of automobile refinishing (autobody refinishing) coatings and coating components; automobile refinishing is the process of coating automobiles or parts thereof, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

Architectural and Industrial Maintenance (AIM) Coatings

On March 22, 1995 EPA issued a memorandum³⁰ that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in a 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855, September 11, 1998). The estimated VOC reductions from the final AIM rule resulted in the same level as

those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have correctly assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A-92-18, item number IV-B-2).

In accordance with EPA's final regulation, the States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule (63 FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule

Consistent with a November 27, 1994 EPA policy,³¹ many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's

³⁰ "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I-X.

³¹ "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

Both the District and Virginia claimed 35.7 percent credit in their attainment and ROP plans while Maryland claimed 45 percent. EPA's final estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A-95-18. Since the District and Virginia did not claim more than the reduction provided in the final rule, there is no shortfall in the reductions claimed for this category.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001 (see 66 FR at 629).

Consumer Products Rule

Consistent with a June 22, 1995 EPA guidance,³² the states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819, September 11, 1998), has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined, and the

consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

We also incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614, and responses 10 to 15 of section II.X of our final rule published January 3, 2001, see 66 FR at 626-628 as supplemented by the response to comment found in this final rule.

Comment 2: We received comments asserting that because the final national rules for autobody refinishing, surface coatings and consumer products allow for exemptions or variances, EPA cannot grant any emission reduction credit at all because the Clean Air Act does not allow EPA to credit state or national measures with emission reductions when emission limits are subject to waiver at any time. The comments further assert that because the tonnage exceptions and exceedance fee provisions or variance provisions in the rules are not limited to a specific tonnage figure at all the rules place no cap on the use of these provisions and thus assert in the absence of such caps, EPA cannot rationally or lawfully grant emission reduction credit for these rules.

Response 2: We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 10 of section II.X of our final rule published January 3, 2001, see 66 FR at 626, as supplemented by the response to comment found in this final rule.

Comment 3: We received comments asserting that the proposed rulemakings used estimates from the proposed rather than the final rulemakings for autobody refinishing, consumer products, and architectural and industrial maintenance coatings as a basis for approving the States' reduction claims. The comments allege that the final rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings are weaker in a number of respects than the proposed rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings.

Response 3: As stated in response to a prior comment, while it is true that the states in many cases estimated the benefits based upon the proposed rules in some of their SIP revisions, these estimates are fully in line with the benefits that have accrued from the final rules.

We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 11 of section II.X of our final rule published January 3, 2001, see 66 FR at 626, as supplemented by the response to comment found in this final rule.

Comment 4: We received comments asserting that for the architectural and industrial maintenance (AIM) coatings rule, the limits on a number of coatings were changed between the proposal and final rule either directly, or by establishing new subcategories with higher VOC limits. The comments assert that the effects of these changes and other changes is not documented precisely how those changes justify the claimed emission reduction credit. The comments further state that EPA does not show how the effects of these were reflected in the final percentage reduction estimate EPA is allowing states to claim from the rule.

Response 4: We incorporate by reference our responses to the comments on these issues found in response 12 of section II.X of our final rule published January 3, 2001. See 66 FR at 627, supplemented as follows:

The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A-92-18, item number IV-B-2).

Comment 5: We received comments asserting that the estimate of emission reductions from the autobody refinishing rule does not account for establishment of a separate category for multi-colored topcoats in the final rule—a category that has weaker limits than would have applied to the same topcoats under the proposed rule. The comments further assert that EPA has no data on the usage of multi-colored topcoats—data that is required in order to rationally estimate the expected emission reductions from the rule.

Response 5: We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 13 of section II.X of our final rule published January 3, 2001, see 66

³² "Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

FR at 627 as supplemented by the response to comment found in this final rule.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001. See 66 FR at 629.

Comment 6: We received comments that assert there is insufficient basis for granting full credit for the AIM rule as of November 15, 1999 because EPA has failed to offer any facts or analyses showing that only compliant products were in use as of November 15, 1999, and the late implementation deadline of September 12, 1999 virtually assures that this was not the case.

Response 6: We incorporate by reference our responses to the comments on this issue found in section II.J. See 66 FR at 614, and response 14 of section II.X of our final rule published January 3, 2001, see 66 FR at 627, as supplemented by the response to comment found in this final rule.

For the reasons explained in our prior response to comment (66 FR at 614, 627), EPA still believes that with these reductions the area has achieved the 9 percent ROP as expeditiously as practicable and that there is no other reasonable emissions control strategy that would allow the area to achieve the 9 percent ROP for the 1999 milestone any sooner.

4. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit. We also received comments that assert that the 1996–1999 ROP plan and the attainment plan fail to include a program to provide for the enforcement of the adopted control measures, as required by section 110(a)(2)(C) of the CAA. The comments also assert that these plans must contain a legally enforceable SIP commitment to enforce the various control strategies relied upon for emission reduction credit. The comments assert that EPA review of state enforcement programs in connection with federal grantmaking does not satisfy EPA's duty to ensure that the SIP itself contains the legally required enforcement and funding commitments.

Response: We incorporate by reference our responses to the comments on these issues found in section II.K. See 66 FR at 615 and response 21 of section II.X of our final

rule published January 3, 2001, see 66 FR at 630.

5. Reliance on Commitments and State Rules Not Yet Adopted

Comment: We received comments that disagreed with the EPA's proposal to approve attainment demonstrations and rate-of-progress plans for the Washington ozone nonattainment area because not all of the emissions reductions credited in the demonstrations or plans are supported by legally enforceable limitations adopted and approved by the States and approved by the EPA as part of the SIP. Commenters also objected to accepting enforceable state commitments to adopt emission reduction control measures in the future in lieu of current adopted measures.

Response: When viewed in the context that this comment was made, this comment is not germane to the proposed action. This comment was made in response to a December 16, 1999, notice of proposed rulemaking (64 FR 70460) for the SIP revisions listed in Tables 1 and 2 of this document. That December 16, 1999, proposed rule contained a proposal to approve attainment demonstrations that contained an enforceable commitment to adopt additional measures to support the WOE that the area will attain.³³ EPA identified the areas where we had concluded that the WOE needed such supporting reductions but the Washington area was not such an area. See 64 FR at 70466, December 16, 1999. EPA has concluded that the WOE for the Washington area needs no additional reductions to support the WOE demonstration and is not approving such an enforceable commitment for the Washington area.

Further, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments, EPA believes that a conditional approval is permissible. Therefore, EPA

³³ See "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711.

believes this comment is not germane to this action.

6. Rate-of-Progress—NO_x Substitution

Comment: We received comments that assert the 9 percent ROP demonstration assumes that a 1 percent reduction in NO_x emissions is equivalent in ozone reducing benefit to a 1 percent reduction in VOC emissions. The commenter asserts that EPA's NO_x Substitution Guidance (December 1993) is flawed under section 182(c)(2)(C) of the Clean Air Act because it allows NO_x substitution without a demonstration that such substitution will in fact provide ozone reductions at least equivalent to that which would result from a 3 percent annual cut in VOC emissions. The commenter claims that such a demonstration requires photochemical grid modeling showing equivalency and that EPA's own guidance (*Guidance on the Post-1996 Rate-of-Progress Plan and Attainment Demonstration* (corrected version as of 2/18/94)) requires such modeling. The States cannot use a 1 percent NO_x for 1 percent VOC substitution without proving that a 1 percent NO_x cut will in fact provide ozone reductions at least equivalent to that resulting from a 1 percent VOC cut.

The commenter further asserts that more recent EPA guidance dated January 10, 2000 for NO_x substitution in out-year conformity budgets requires 1.6 tons in NO_x reductions to offset 1 ton of VOC reductions. The commenter does not disavow other comments that the States must prove the validity of their NO_x substitution ratios as discussed in the summary of the comments in the preceding paragraph but rather claim the 9 percent demonstration fails to use the ratio of 1.6 to 1 required by the more recent EPA guidance.

Additionally, the commenter asserts that substitutions should not be allowed because the plan does not demonstrate timely attainment.

Response: We incorporate by reference our responses to the comments on these issues found in section II.M. of our final rule published January 3, 2001, see 66 FR at 616–619, as supplemented by the response to comment found in this final rule:

EPA still disagrees with the assertion that the attainment plan does not demonstrate attainment. The TSD and other documents in the docket support the conclusion that the area will attain, as do our responses to other comments elsewhere in this notice.

In our January 3, 2001, final rule (66 FR 586), EPA placed a document titled "RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr

Ozone NAAQS” in the docket to support our conclusion that all RACM have been adopted for the Washington area as well as the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO_x reductions than VOC reductions. For this final rule, EPA has placed Attachment 4 (“Model Sensitivity Study for Metropolitan Washington Area”) of “RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS” in the docket solely for the technical analysis of the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO_x reductions than VOC reductions. A copy of “RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS” U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, cited in the response to comments portion of the January 3, 2001 final rule can be obtained by contacting the regional office listed under the **ADDRESSES** section of this document.

7. NO_x and VOC Reduction Credits

Comment 1: We received comments that both the attainment and ROP demonstrations are flawed because they rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP. Specifically, the comments identified NO_x RACT rules for all three Washington area States, NO_x reductions claimed for the beyond RACT NO_x control rules and Virginia’s generic non-CTG VOC RACT rule.

Response 1: We incorporate by reference our responses to the comments on these issues found in sections II.N and R, *see* 66 FR at 619 and 66 FR at 620, and responses 3, 4, 8 of section II.X, *see* 66 FR at 623–625, of our final rule published January 3, 2001 as supplemented in this document:

The technical support documents for this action lists the current approval status of control measures in the Washington area.³⁴ With the exception of the transportation control measures found in the ROP plan, for which we

proposed approval on February 3, 2003, all the other measures credited towards the 1999 ROP requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled “Credited in 1996–1999 ROP plan” in Table 3 “Control Measures in the 1-hour Ozone 1996–1999 ROP Plan and Attainment Plans for the Metropolitan Washington Nonattainment Area” of the notice of proposed rulemaking for this action. *See* 68 FR at 5252, February 3, 2003.

Likewise, with the exception of any remaining RACM, if any, and of the transportation control measures specified in the attainment demonstration plan, all the other measures credited towards the attainment plan requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled “Credited in attainment plan” in Table 3 of the notice of proposed rulemaking for this action. The States have committed to timely submit any additional RACM, and we are taking final action to approve the TCMs in this notice.

The District’s NO_x RACT rule was approved on December 26, 2000 (65 FR 81369), Maryland’s on February 8, 2001 (66 FR 9522), and Virginia’s on January 2, 2001 (66 FR 8).

The District’s rule for beyond RACT control on large stationary sources of NO_x was approved on December 22, 2000 (65 FR 80783) and an additional rule on November 1, 2001 (66 FR 55099), Maryland’s rules were approved on December 15, 2000 (65 FR 78416) and January 10, 2001 (66 FR 1866), and Virginia’s on December 14, 2000 (65 FR 78100).

The technical support documents for this action lists the basis for the reduction credits from Virginia’s non-CTG RACT rule.³⁵

Comment 2: We received comments asserting that EPA’s reliance on SIP call reductions is particularly unjustified in the D.C. Area, given that Virginia is challenging EPA’s authority to require those very reductions and that EPA cannot grant credit for SIP call reductions when the SIP call has been judicially stayed.

Response 2: We incorporate by reference our responses to the comments on these issues found in

response 8 of section II.A.2 of our final rule published January 3, 2001, *see* 66 FR at 602, supplemented as follows: The stay of the SIP call has been vacated and the SIP call has been upheld. The court lifted its stay and States are now required to submit SIPs fully addressing the SIP call and if they fail, EPA must promulgate a Federal plan. EPA is fully justified in its reliance on SIP call reductions and in granting credit for them in the areas’ attainment demonstrations. *See* 67 FR 21867 (May 1, 2000).

8. Attainment Demonstration and Rate-of-Progress Control Measures Not In SIP

Comment 1: We received comments asserting that both the attainment demonstration and rate-of-progress plan for the Washington area rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP.

Response 1: We incorporate by reference our responses to the comments on this issue found in response 1 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619, supplemented by our response elsewhere in this document to other comments under the heading of “NO_x and VOC Reduction Credits.”

Comment 2: We received comments stating that there are significant disparities between the projections of 1999 regional emissions found in the most recent 9 percent ROP plan for the Washington area and the EPA’s Technical Support Document for the attainment demonstrations. The commenter claims that lower emissions in the TSD for the December 16, 1999 NPR, should not be used unless EPA provides an adequate technical basis.

Response 2: We incorporate by reference our responses to the comments on this issue found in response 2 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619.

9. Modeling Assumptions

Comment 1: We received comments asserting that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel and citing to an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration, dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect this development

³⁴ *See* pages 22 through 35 of “Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)”, dated January 24, 2003.

³⁵ *See* page 31 of “Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)”, dated January 24, 2003.

will have on the transportation system. The comments discuss the transportation model's land use assumptions, and imply that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOG) (hereafter, "the MPO") has not included the effects of land use in the model and that EPA has known about this issue since 1998.

Response 1: We incorporate by reference our responses to the comments on this issue found in response 1 of section II.P of our final rule published January 3, 2001, see 66 FR at 619–620.

Comment 2: We have received comments saying that the temperature assumed in the mobile source modeling inputs was 93 degrees (Fahrenheit), yet the maximum recorded temperatures for those days during which peak ozone values in the 1999 ozone season were recorded were higher (96 to 98 degrees).

Response 2: For two reasons EPA disagrees with the comment that this is a reason to determine that the budgets are not approvable. First, the comments cite peak temperatures for a particular ozone season. This is at odds with EPA's guidance. EPA guidance on projecting all future mobile source emissions inventories requires the States to use the temperatures representative of a "typical ozone season day". See section 3.3.5.2 of *Procedures for Emission Inventory Preparation Volume IV: Mobile Sources*, EPA-450/4-81-026d (Revised), 1992, which also sets the procedure for determining the temperature for the base year and all subsequent projection inventories. EPA has updated this guidance for use with the MOBILE6 emissions factor model, but the updated guidance still requires the use of the typical ozone season day.³⁶ The typical ozone season day conditions are those used when determining the typical daily emissions for the base year emissions inventory. The same typical ozone season day is also used when setting target levels of emissions in ROP plans and all future year projection inventories in ROP plans and the budgets for attainment demonstrations.

EPA believes that the ambient temperature is key to estimating emission rates for highway vehicles with MOBILE6.³⁷ Temperature inputs were a key input to the MOBILE5 mobile source emission factor model as

well.³⁸ For this reason mobile source emission factors produced by EPA approved mobile source emission factor models are temperature dependant.

Second, if EPA were to require SIPs to be revised periodically on the basis of more recent temperatures, EPA would have to allow revisions and conformity determinations incorporating more recent data that reflect a lower temperature profile, and hence lower mobile source emissions, as well as requiring revisions to incorporate more recent data which includes higher temperatures.

EPA believes it is reasonable to use the same typical ozone season day temperatures used to develop the base year inventory rather than trying to predict actual future year temperatures when projecting future emissions because these projections are made in advance when actual temperatures cannot be known.

10. NO_x RACT Size Cutoff

Comment: We received a comment asserting that all of the States should extend NO_x RACT to 25 ton per year sources. In addition, the SIP must require Virginia to extend VOC RACT to 25 ton per year sources, like Maryland.

Response: EPA agrees that full approval of the Washington area SIP to meet the severe area requirements is precluded in the absence of RACT regulations incorporating the severe area RACT thresholds mandated by the CAA in section 182(d). However, as explained in previous responses, EPA believes conditional approval based upon a commitment to submit these regulations by April 17, 2004 is permissible.

11. List of Control Measures

Comment 1: We received comments claiming that the States have failed to submit lists of potential control measures by December 31, 1999 as required by EPA's December 16, 1999 notice of proposed rulemaking. The comments assert that the States submitted commitments to adopt additional control measures if needed, but did not provide lists from which those measures would be chosen and further state that because the States have failed to meet a condition that EPA itself set as a prerequisite for plan approval EPA must disapprove the Washington area SIP.

Response 1: The list of control measures to which these comments refer has to be viewed in context of the entire

December 16, 1999 notice of proposed rulemaking (64 FR 70460). The proposed rulemaking was published at a time when the attainment plan contained no motor vehicle emissions budget for 2005. The list of potential measures was to have been those potential measures needed to allow an adequacy finding under the transportation conformity rule on the requisite 2005 budgets in the event the attainment plan was not supported by fully adopted measures. EPA is now conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. EPA does not believe a list of potential control measures is necessary here because EPA is conditionally approving the SIPs based upon the States committing to complete all necessary modeling and RACM analyses and to adopt and submit by April 2004 any additional measures necessary to demonstrate attainment.

We also incorporate by reference our responses to the comments on these issues found in response 1 of section II.S of our final rule published January 3, 2001, see 66 FR at 620–621, as supplemented by the response to comment found in this final rule.

12. Phase II NO_x Limits Are RACM

Comment: We received a comment asserting that the Phase II NO_x limits agreed to by OTC are also clearly RACM.

Response: As a factual matter, with respect to the OTC MOU Phase II NO_x limits in the Washington nonattainment area, Maryland and the District have adopted programs to implement the Phase II NO_x reduction in the OTC memorandum of understanding. EPA has approved these programs into Maryland's and the District's SIPs. Virginia was not a signatory to the OTC MOU. However, in permits approved into the Virginia SIP, Virginia has imposed beyond RACT requirements on two large point sources of NO_x in the Virginia portion of the Washington area, see 65 FR 78100 (December 14, 2000). These permits impose limits of 0.15 pounds of NO_x per million BTU heat input on these two sources. Such limits go beyond the OTC Phase II limits. EPA acknowledges the States must identify which RACM have already been adopted and adopt any which, if any, still remains as the States have committed to do so by April 2004. RACM is discussed in response to other comments.

³⁶ See "Technical Guidance on the Use of MOBILE6 for Emission Inventory Preparation," U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, January 2002.

³⁷ *Id.*

³⁸ See Chapter 2, User's Guide to MOBILE5 (Mobile Source Emission Factor Model) EPA-AA-TEB-94-01, September 1996.

13. Additional Comments on the Rate-of-Progress Plan

Comment 1: We received comments asserting that EPA cannot act on the District's, Maryland's and Virginia's 1996–1999 ROP plan in isolation because the 1996–1999 ROP plan for the Washington area was developed using a regional approach. EPA cannot know whether these requirements are met unless it acts on all three plans simultaneously.

Response 1: The comment is moot because EPA is concurrently approving the District's, Maryland's and Virginia's submittals of the 1996–1999 ROP plan for the Washington area in one final action published in the **Federal Register**.

Comment 2: We received comments asserting that modeling does not show that a 1 percent reduction in NO_x emissions provides the same ozone reduction benefit as a 1 percent reduction in VOC emissions, and that these results address post-1999 conditions—not 1996–99 conditions, and that one cannot reliably extrapolate back from the modeled results to the reductions at issue in the 9 percent plan. The comments also assert there must be photochemical grid modeling of the actual substitution being proposed to determine the extent to which NO_x can be substituted for VOC. These comments also note these model results themselves show that NO_x reductions sometimes actually lead to an increase in the number of cells exceeding the ozone standard.

Response 2: We incorporate by reference our responses to the comments on this issue found in response 2 of section II.X of our final rule published January 3, 2001 (*see* 66 FR at 622–623).

Comment 3: We received comments asserting that although the ROP plan cites various rules and programs that have been adopted to reduce emissions, it does not demonstrate that actual compliance with the rules and implementation of necessary programs will be achieved by the deadline or that claimed emission reductions will be fully realized by that date. We received comments asserting that EPA can only credit the ROP plan with reductions actually achieved by November 15, 1999. We also received general comments that the ROP plan cannot be approved because programs on which the area relies for ROP credit were not approved by EPA until after November 15, 1999, thus the programs were not federally enforceable during the 1996–99 ROP period. Finally, the commenters suggest that certain programs may not

have achieved the level of reductions for which credit was taken in the ROP plan.

Response 3: We incorporate by reference our responses to the comments on these issues found in response 3 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623.

Comment 4: We received comments asserting that the reductions from the National Low Emission Vehicle (NLEV) program are not creditable because the District did not submit a SIP revision for the NLEV program and because the NLEV SIPs for Maryland and Virginia were not approved until after the November 15, 1999 milestone date. The comments also assert that emission reductions are creditable toward the ROP requirement only to the extent that they have actually occurred by the November 15, 1999 milestone date. The comments state that if the ROP plan does not get sufficient creditable reductions then the plan cannot be approved.

Response 4: We incorporate by reference our responses to the comments on these issues found in response 4 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623–624.

Comment 5: We received comments asserting that EPA should not credit reductions from the District's NO_x RACT rule because: (1) EPA has not yet approved the District's NO_x RACT rule and, therefore, it will not become federally enforceable until long after 11/15/99; and (2) the District has not shown actual implementation of NO_x RACT before 11/15/99 by major NO_x sources within the District.

Response 5: We incorporate by reference our responses to the comments on these issues found in response 5 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624. Further, the District's NO_x RACT rule was approved on December 26, 2000 (65 FR 81369).

Comment 6: We received comments asserting that the NO_x RACT rules include inadequate emission control requirements for various source categories. With respect to Maryland and Virginia NO_x RACT rules, the commenter referenced comments submitted in response to EPA's proposed rulemaking actions on those SIPs. With respect to the District's NO_x RACT rule, the commenter says the District proposed to amend its rule to eliminate deficiencies precluding EPA approval.

Response 6: We incorporate by reference our responses to the comments on these issues found in response 6 of section II.X of our final

rule published January 3, 2001, *see* 66 FR at 624.

Comment 7: We received comments asserting that EPA cannot credit reductions because the District has not implemented its NO_x RACT rules. Specifically, the comments state that the District's proposed Title V permit for the Blue Plains Wastewater Treatment Plant contains no NO_x RACT requirements (either as federal or state-only requirements), even though the District has identified the plant as a major NO_x source.

Response 7: We incorporate by reference our responses to the comments on this issue found in response 7 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624–625.

Comment 8: We received comments asserting that EPA should not credit reductions from Maryland's or Virginia's NO_x RACT rules for the following reasons: (1) EPA has not yet even approved these NO_x RACT rules; (2) even if the rules are approved prior to final action on the ROP plan, the approvals will not become federally enforceable until long after 11/15/99; and (3) Maryland and Virginia have not shown actual implementation of all RACT requirements before 11/15/99.

Response 8: We incorporate by reference our responses to the comments on these issues found in response 8 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625, supplemented as follows: EPA fully approved Maryland's and Virginia's NO_x RACT rules on February 8, 2001 (66 FR 9522), and on January 2, 2001 (66 FR 8), respectively.

Comment 9: We received comments asserting that EPA can only credit those reductions that the District actually achieved as a result of enhanced vehicle inspection between April 1999 and November 15, 1999. The comments state that only a fraction of the fleet was tested between the April 1999 commencement of the enhanced I/M program and November 15, 1999.

Other comments likewise questioned whether full emission reductions credited from the Maryland and Virginia I/M programs actually occurred by 11/15/99. The latter comments assert that States must demonstrate full implementation including enhanced testing of the entire fleet. These comments also questioned whether the full emission reductions were credited to the enhanced I/M programs in Maryland and Virginia given that final SIP approval did not occur until late 1999.

All comments state if the ROP plan does not get sufficient creditable

reductions by November 15, 1999, then the plan cannot be approved.

Response 9: We incorporate by reference our responses to the comments on these issues found in response 9 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625–626.

Comment 10: We received comments claiming that one EPA analysis indicates some reductions from the AIM rule could be deferred to as late as 2002. The comments cite a Memorandum dated May 30, 2000 from Paul T. Wentworth, EPA, to Administrative Record on the Adequacy findings for the Motor Vehicle Emissions Budgets in the Revised Phase II Ozone Attainment Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area.

Response 10: We incorporate by reference our responses to the comments on this issue found in response 15 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628, supplemented as follows: For the reasons discussed in responses to other comments, EPA believes the AIM reductions have already occurred. EPA believes that these reductions were achieved as expeditiously as practicable and that no other reasonable emissions control strategy would have allowed the States or EPA to achieve these reductions sooner.

Comment 11: We have received comments saying that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel. In support, the comments cite an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect of this development will have on the transportation system. The comments concern the land use assumptions in the transportation model and allege that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOC) (hereafter, “the MPO”) has not included the effects of land use in the model and that EPA has known about this issue since 1998.

Response 11: We incorporate by reference our responses to the comments on this issue found in response 16 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628.

Comment 12: We received comments asserting that EPA cannot credit the 1996–1999 ROP plan submitted by Virginia and Maryland with reductions from measures credited in the 15 percent plan and cannot count emission reductions to both the 15 percent and 9 percent reduction requirements. That is, according to the comments, reductions from some measures are allegedly being counted towards both the 15 percent and 9 percent reduction requirements.

Response 12: We incorporate by reference our responses to the comments on this issue found in response 17 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628–629, supplemented as follows:

The same reasoning that allows reductions from measures in the 15 percent plan to count towards achieving the 1999 target level for the 1999 milestone applies to counting such reductions towards achievement of the 2002 target level of emissions.

The last sentence of section 182(c)(2)(B) specifically allows reductions that exceed those needed to achieve the 15 percent amount for the 15 percent plan to count towards the post-1996 ROP requirements.

Comment 13: We received comments asserting that EPA must document its reasons for accepting Maryland’s and Virginia’s emission reduction claims. The comments cite the example of the reductions from Maryland’s and Virginia’s open burning program and the 45 percent reduction claimed by Maryland for the Maryland rules applicable to autobody refinishing. The comments state that the States assume an 80 percent compliance with the open burning regulations without documenting the basis for this assertion. The comments claim that the 80 percent compliance assertion is void in the absence of plans or commitments needed for local enforcement.

Response 13: We incorporate by reference our responses to the comments on these issues found in response 18 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 629.

Comment 14: We received comments claiming that open burning emissions were not in the 1990 base year emissions inventory for Maryland and Virginia. The comments assert that EPA cannot credit reductions from emissions that were not included in the 1990 base year emissions inventory.

Response 14: We incorporate by reference our responses to the comments on these issues found in response 19 of section II.X of our final

rule published January 3, 2001, *see* 66 FR at 629.

IV. Applicability of Revised Motor Vehicle Emissions Budgets

This final action to conditionally approve the severe ozone nonattainment SIP for the Washington area includes conditional approval of SIP revisions submitted on February 9, 14 and 16, 2000 by Virginia, Maryland and the District, establishing the 2005 motor vehicle emissions budgets. These conditionally approved motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets required by this final action have been submitted and we have found the budgets to be adequate for conformity purposes.

Because the attainment demonstration includes the effects of the Tier 2/sulfur program, EPA is requiring the States to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. EPA is conditioning approval upon the States revising the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

As we proposed on February 4, 2003, the final conditional approval action we are taking today on the 2005 attainment budgets will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. In other words, the budgets we are approving today as part of the attainment demonstration will apply for conformity purposes only until there are new, adequate budgets consistent with the States’ commitments to revise the budgets. The revised budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of our approval in this manner because we are only conditionally approving the attainment demonstrations and their budgets because the States have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now.

V. Final Action

EPA is conditionally approving the SIP revisions and amendments identified in Tables 1 and 2 as the severe ozone nonattainment area SIP for

the Washington area contingent on the Washington area jurisdictions satisfying the following conditions. Should the Washington area jurisdictions fail to fulfill these conditions by May 19, 2003, this conditional approval will convert to a disapproval pursuant to CAA section 110(k).

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to

include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

VI. 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 (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.*).

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 must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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 to conditionally approve the severe ozone nonattainment area SIP revisions for the Metropolitan Washington severe ozone nonattainment area 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 10, 2003.

Thomas C. Voltaggio,

Acting 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 J—District of Columbia

■ 2. Section 52.473 is added to read as follows:

§ 52.473 Conditional approval.

The District of Columbia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on November 3, 1997, and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 24, 1998, October 27, 1998, February 16, 2000 and section 9.1.1.2 of the March 22, 2000 submittal, is conditionally approved contingent on the District submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_x) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. The District must submit a

revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Subpart V—Maryland

■ 2. Section 52.1072 is amended by adding paragraph (e) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(e) Maryland's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 24, 1997 and May 20, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 17, 1998, February 14, 2000 and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Maryland submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_x) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Maryland must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be

implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Subpart VV—Virginia

■ 2. Section 52.2450 is amended by adding paragraph (b) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(b) Virginia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 19, 1997 and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 18, 1998, February 9, 2000, and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Virginia submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_x) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Virginia must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source

emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in

combination with other emission
reduction requirements in the
Washington area, to comply with the

rate-of-progress requirements for severe
areas. Measures specified in section
108(f) of the Clean Air Act will be

considered and implemented as
necessary to demonstrate attainment.
[FR Doc. 03-9337 Filed 4-16-03; 8:45 am]
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