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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA81

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing certain fees by approximately 4.1 percent; *i.e.*, contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.1 percent January 2003 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $685,000 in additional revenue.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *David.M.Orr@usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In Fiscal Year (FY) 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. In FY 2002, GIPSA's operating costs were $25,898,341 with revenue of $25,317,296 that resulted in a negative margin of $581,045 and a negative reserve balance of $3,339,097. The current reserve negative balance of $3,339,097 is well below the desired 3-month reserve of approximately $6 million. GIPSA recognizes the fact that retained earnings are well below the desired level. This final action will not have a major impact on improving GIPSA's financial position. GIPSA has been reviewing the fees and will propose changes that will address this deficit in the near future.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The general and locality salary increase that averages 4.1 percent for GIPSA employees, effective January 2003, will increase GIPSA's costs by approximately $685,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent salary increase will have to be recovered through increases in fees.

This fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 33 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.1 percent increase in the cost of official inspection and weighing services. This increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this

final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On February 28, 2003, GIPSA proposed in the **Federal Register** (68 FR 9589) to increase fees for official inspection and weighing services performed under the USGSA (7 U.S.C. 71 *et seq.*) by approximately 4.1 percent. The USGSA authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on March 21, 2002 (67 FR 13084), and became effective on April 22, 2002.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. In FY 2002, GIPSA's operating costs were $25,898,341 with revenue of $25,317,296 that resulted in a negative margin of $581,045 and a negative reserve balance of $3,339,097. The current reserve negative balance of $3,339,097 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that became effective in January 2003 averages 4.1 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $685,000. GIPSA recognizes that retained earnings are well below the desired level and that this final action will not have a major impact on improving its financial position. As a result, GIPSA has been reviewing its overall fee structure. Changes that will address this structure will be considered in the near future and will be proposed as appropriate. GIPSA remains committed to providing the most cost-effective services possible to the grain industry while maintaining program quality and integrity.

GIPSA has reviewed the financial position of the inspection and weighing program based on the increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent salary increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00
Noncontract	41.80	44.00	53.40	65.40

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 4.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.1 percent to the administrative tonnage fee.

Comment Review

GIPSA received a comment from two grain trade associations in response to the proposed rulemaking published February 28, 2003, in the **Federal Register** at (68 FR 9589). The trade associations stated that they consist of 1,000 grain, feed, processing, and grain-related companies, 70 percent of which are small entities. The commentors did not support the proposed rule. A summary of the comments and GIPSA's response is as follows:

The commentors opposed the fee increase and suggested that the Agency scale back the amount of the increase substantially; that the true cost of living has not increased nearly as much as the proposed fee increase nor is the proposed fee increase in line with the economic realities in the private sector. The commentors further stated that over the past few years, the Agency implemented a series of fee increases to recoup costs and stave off more significant difficulties. However, despite these infusions of cash, the Agency's financial condition continues to deteriorate. In addition, the fee increases have become problematic for many users, particularly those engaged in export trade. They urged GIPSA to develop a multi-year budget for the next three to five years that would forecast anticipated changes in agency fees for official services, based upon: (1) OMB's projected Federal personnel and non-pay cost increases through 2008 as published in the March 14, 2003, **Federal Register**; (2) anticipated revenue to replenish each Trust Fund account, along with implemented cost controls, to achieve the Agency's stated objective of a three-month operating reserve in each account; and (3) projected changes in the method of assessing fees, *e.g.*, local, GIPSA specific, and national tonnage fees.

Finally, the commentors stated that the multi-year budget for the next three to five years should describe management efforts to control costs and improve operating efficiencies, along with a critical evaluation of each program funded by user fees to determine which should be continued, scaled back, or terminated.

GIPSA offers the following response: Federal pay increases represent a significant part of FGIS user fee costs. GIPSA, over the past several years, proposed and finalized fee increases, on an annual basis, to reflect the costs of

Federal pay increases. It is common practice for user fee programs in the Department to adjust their user fees to reflect these increases. Adjusting fees in this manner is consistent with the provisions of the United States Grain Standards Act and is reasonable, given the current state of reserve balances for FGIS programs. However, over the past several years, GIPSA has been discussing with the grain industry a number of changes to the fee schedules, including restructuring them, to better address the financial condition of the agency. Such discussions have included, to one extent or another, the recommendations offered by the trade associations in their comments or other alternatives. While GIPSA continues to purse this process, it is important that the agency finalize the proposed fees as soon as possible to cover the costs of the 2003 Federal pay increase on the FGIS user fee program.

Final Action

Accordingly, GIPSA is increasing, by approximately 4.1 percent, certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3—Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

■ 2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

[(1) Inspection and Weighing Services Hourly Rates (per service representative)]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
1-year contract	$29.80	$32.60	$42.00	$50.60
6-month contract	33.00	34.80	44.60	58.40
3-month contract	37.00	38.80	48.60	60.40
Noncontract	43.60	45.80	55.60	68.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	12.50
(viii) Vomitoxin (quantitative)	18.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate	
(xi) Other services:	
(a) Class Y Weighing (per carrier):	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)	
(i) All outbound carriers (per-metric-ton) [4];	
(a) 1–1,000,000	$0.1199
(b) 1,000,001–1,500,000	0.1094
(c) 1,500,001–2,000,000	0.0591
(d) 2,000,001–5,000,000	0.0437
(e) 5,000,001–7,000,000	0.0239
(f) 7,000,001+	0.0109

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services:	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$19.80

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(b) Railcar (per carrier)	29.50
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	11.80
(b) Warehouseman inspection (per sample)	20.00
(c) Factor only (per factor—maximum 2 factors)	5.30
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour per service representative)	57.40
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (per test—other than TLC method)	29.80
(b) Aflatoxin (per test—TLC method)	113.00
(c) Corn oil, protein, and starch (one or any combination)	9.00
(d) Soybean protein and oil (one or both)	9.00
(e) Wheat protein (per test)	9.00
(f) Sunflower oil (per test)	9.00
(g) Vomitoxin (qualitative)	31.00
(h) Vomitoxin (quantitative)	38.50
(i) Waxy corn (per test)	10.30
(j) Canola (per test—00 dip test)	10.30
(k) Pesticide Residue Testing: [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(2) Appeal inspection and review of weighing service [4]	
(i) Board Appeals and Appeals (grade and factor)	
(a) Factor only (per factor—max 2 factors)	82.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	43.00
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	30.00
(b) Aflatoxin (TLC)	120.00
(c) Corn oil, protein, and starch (one or any combination)	17.20
(d) Soybean protein and oil (one or both)	17.20
(e) Wheat protein (per test)	17.20
(f) Sunflower oil (per test)	17.20
(g) Vomitoxin (per test—qualitative)	41.00
(h) Vomitoxin (per test—quantitative)	46.00
(i) Vomitoxin (per test—HPLC Board Appeal)	140.00
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	82.60
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$57.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	57.40
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	57.40
(ii) Evaluation of weighing and material handling systems	57.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	57.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	57.40
	110.00

TABLE 3.—MISCELLANEOUS SERVICES [1]—Continued

(v) Mass standards calibration and reverification	57.40
(vi) Special projects	57.40
(4) Foreign travel (per day per service representative)	510.00
(5) Online customized data EGIS service:.	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.65
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost).	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

[1] Any requested service that is not listed will be performed at $57.40 per hour.
[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: May 28, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–13679 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1700

RIN 2550–AA27

Organization and Functions

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is revising its regulation that describes the Agency's organization and functions. Specifically, OFHEO is revising sections in the regulation that describe and display the Agency's official seal and logo. The logo is the official symbol representing OFHEO and is displayed on correspondence, selected documents, and signage of the Agency.

In promulgating this rule, OFHEO finds that notice and public comment are not necessary. Section 553(b)(3)(A) of title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the Agency may publish regulations in final form. In addition, OFHEO finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

EFFECTIVE DATE: The final rule is effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Christine C. Dion, Associate General Counsel, telephone (202) 414–3838 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Discussion of the Final Regulation

This final rule informs the public about changes to the official symbol of OFHEO.

Background on OFHEO

OFHEO was established as an independent entity within the Department of Housing and Urban Development by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (title XIII of Pub. L. 102–550, 12 U.S.C. 4501 *et seq.*). OFHEO's primary mission is ensuring the capital adequacy and financial safety and soundness of Fannie Mae and Freddie Mac (collectively, the Enterprises).

OFHEO began operating when its first employee, the first director, took office on June 1, 1993. The Agency was built from the ground up. It had to acquire staff and address hundreds of administrative issues involved in establishing an agency infrastructure. OFHEO needed to procure office space, equipment, computers, telecommunications, and other logistical support for the lawyers, economists, examiners and administrative personnel who would carry out the duties of the Agency.

In its early years, OFHEO's experienced staff worked to develop an in-depth understanding of the operations of the Enterprises. OFHEO grew from a one-person agency into a strong and well-rounded regulator, fully capable of meeting its regulatory responsibilities.

While the Agency was being built, it was still obligated to fulfill its mission of regulating two extremely large and enormously complex financial institutions. OFHEO now has all the key elements of a strong, thorough oversight program in place: Capital Standards, Examinations, and Research.

As required by the 1992 Act, OFHEO established minimum and risk-based capital standards as part of its role as a safety and soundness regulator. These capital requirements are intended to ensure that both Enterprises continue to operate and perform their crucial roles in the secondary mortgage market, keeping constant the flow of funds to mortgage lenders and prospective American homeowners.

In addition to its quarterly release with respect to the minimum capital requirement, OFHEO has adopted a risk-based capital standard that is unique among financial regulators. Unlike ratio-based capital rules, OFHEO's standard is based on a 10-year stress test. A stress test measures risk in the context of a company's overall portfolio, including the company's risk management activities. While companies often use stress tests for internal risk management, and rating agencies use stress tests to rate companies and securities, OFHEO is among the first of the financial institutions regulators to use a comprehensive stress test to determine capital adequacy.

In addition to developing a strong, rigorous risk-based capital standard, OFHEO has an annual risk-based examination program that is an integral part of a system designed to ensure the ongoing safety and soundness of the Enterprises. OFHEO's comprehensive risk-based examinations apply a consistent set of standards to assess and evaluate each Enterprise's financial condition, business operations, and internal controls. These standards remain consistent from year-to-year and are appropriately updated to reflect enhancements in regulatory best practice, developments in risk management or market practices, and innovations at either Enterprise.

OFHEO's examination program contributes to OFHEO's capital adequacy framework by further informing the Director's evaluation about the appropriateness of the balance of risk and capital at each Enterprise. OFHEO has implemented a plan to enhance its examination program and double the size of the examination staff.

Complementing its Capital and Examination regulatory elements, OFHEO has developed a Research element to ensure that ongoing research and analysis is conducted on a variety of topics to understand how changes in the market impact the Enterprises and, conversely, how changes in the Enterprises' operations impact the market. A recent example of the Agency's research and analysis is a February 4, 2003, report released by OFHEO's Director, which is entitled: ''Systemic Risk: Fannie Mae, Freddie Mac and the Role of OFHEO.'' The report analyzes how the Enterprises operate in the housing finance system and the financial sector, how their activities affect economic activity and how they can affect systemic risk in different circumstances.

In addition to its research and analysis, OFHEO presents symposiums on issues relating to the Enterprises and the mortgage markets, *e.g.,* the March 10, 2003, symposium on ''House Prices in the U.S. Economy.'' Moreover, OFHEO advises the public and market participants on housing activities through issuance of periodic reports, such as the Agency's quarterly report analyzing housing appreciation trends, *i.e.,* OFHEO's House Price Index (HPI) report.

In support of its regulatory infrastructure based on Capital, Examination, and Research, OFHEO has adopted guidelines, policy guidances, and regulations, which are accessible on the Agency's website. The guidelines relate to risk-based capital and information quality. The policy guidance includes guidance on Non-Mortgage Liquidity Investments, and Safety and Soundness Standards for Information. OFHEO's rulemaking ranges from administrative regulations, *e.g.,* rules of practice and procedure, to regulatory oversight regulations, *e.g.,* a regulation that requires public disclosure by the Enterprises of their securities and financial information, and a regulation addressing corporate governance, which enhances the transparency of regulatory standards for the executives and boards of directors of the Enterprises.

The preceding background was provided to summarize OFHEO's first 10 years as a Federal financial regulatory agency. The public is encouraged to visit OFHEO's Web site for a fuller understanding about the Agency and its accomplishments to date.

Over the past 10 years, OFHEO has met and continues to meet its mandate to ensure that the Enterprises are well-capitalized and operating in a safe and sound manner. Accordingly, on the occasion of OFHEO's successful completion of a range of regulatory duties and its 10 year anniversary, the Agency has determined to update its logo. The triangle representing the roof has been properly centered. In a sense, the roof in the logo, like OFHEO, has been strengthened and put in good working order. OFHEO looks forward to continued success.

Changes to the Official Symbol of OFHEO

OFHEO is revising sections of this regulation that describe and display the official seal and logo representing the Agency. Under the revisions, the seal and logo are combined to be the sole official symbol of OFHEO that will be displayed on correspondence, selected documents, and signage. The logo, as restructured, also will serve as the official seal to authenticate official documents of the Agency.

Specifically, the logo is a disc consisting of two concentric circles enclosing the words ''Office of Federal Housing Enterprise Oversight'' and the Agency's inaugural year, 1993. In the center of the disc is a stylized image of a structure consisting of a solid two-tiered pedestal base topped by a solid triangular shape. The structure represents a house or home, symbolic of the role of OFHEO in promoting a stable and efficient housing finance system. The triangular top of the symbol represents the roof of the structure. The base represents the foundation. The two tiers of the foundation represent the safety and soundness oversight of OFHEO. The Agency's role with respect to the Enterprises is emphasized by placement of the acronym of the Agency (OFHEO) between the base and top of the symbol.

It is noted that the official symbol of OFHEO, as revised by this final regulation, is effective on June 2, 2003. However, for purposes of cost efficiency, OFHEO will continue to use and recognize its original seal and logo until such time as supplies containing them are exhausted and signage displaying them is replaced.

This final rule is not classified as a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final rule under the Regulatory Flexibility Act. The General Counsel certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1700

Organization and functions (government agencies).

■ For the reasons stated in the preamble, OFHEO is amending 12 CFR part 1700 as follows:

PART 1700—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 4513 and 4526.

■ 2. Revise § 1700.3 to read as follows:

§ 1700.3 Official logo and seal.

The section describes and displays the logo adopted by the Director as the official symbol representing the Office of Federal Housing Enterprise Oversight. It is displayed on correspondence, selected documents, and signage. The logo serves as the official seal to authenticate official documents of the Agency.

(a) *Description.* The logo is a disc consisting of two concentric circles enclosing the words ''Office of Federal Housing Enterprise Oversight'' and the inaugural year, 1993. In the center of the disc is a stylized image of a structure consisting of a solid two-tiered pedestal base topped by a solid triangular shape, which represents the roof of the structure. Placed between the base and the top are the letters ''OFHEO.'' These letters spell out the acronym of the Office of Federal Housing Enterprise Oversight and act as a visual link between the top and bottom of the structure.

(b) *Display.* The Office of Federal Housing Enterprise Oversight's official logo and seal appears below:

§ 1700.4 [Removed]

■ 3. Remove § 1700.4.

Dated: May 22, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–13281 Filed 5–30–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–24–AD; Amendment 39–13171; AD 2003–11–12]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Model Z–242L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document supersedes Airworthiness Directive (AD) 2003–03–13, which currently establishes a technical service life for MORAVAN a.s. (Moravan) Model Z–242L airplanes by restricting Acrobatic and Utility category operations and requiring replacement of the wings after a certain operational time. AD 2003–03–13 resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The restrictions required by AD 2003–03–13 only take account for the aerobatic load spectrum and do not account for the aerobatic frequency. The restrictions also address the life limit of the wings when they should address the life limit of the entire airframe (life limit of the airplane). Although the aerobatic frequency will extend the operational times, it more importantly will ensure that all airplanes (even those that have not reached the operational limits) are not subject to fatigue cracking caused by exceeding the aerobatic frequency. This AD will maintain the restrictions of AD 2003–03–13, but will incorporate the aerobatic frequency and life limit the airplane instead of just the wings. The actions specified by this AD are intended to prevent structural failure of the wing due to fatigue cracking. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

DATES: This AD becomes effective on June 5, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000, as of March 21, 2003 (68 FR 4910, January 31, 2003).

The Director of the Federal Register approved the incorporation by reference of Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 2; and Moravan Mandatory Service Bulletin Z24L/38a—Rev. 1, both dated April 15, 2003, as of June 5, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 7, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–24–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

The Civil Aviation Authority for the Czech Republic (CAA CZ) reported to FAA that Moravan Model Z–242L airplanes are operated over the load spectrum that was used at certification and are in need of a technical service life. This caused FAA to issue AD 2003–03–13, Amendment 39–13037 68 FR 4905, January 31, 2003). AD 2003–03–13 establishes a technical service life for these airplanes by restricting Acrobatic and Utility category operations and requiring replacement of the wings after a certain operational time period. The technical service life required by AD 2003–03–13 is as follows:

	Acrobatic and utility category operations	All operations
Group 1	190 hours time-in-service (TIS) only in these categories. Operation only in the Normal category thereafter.	3,500 hours TIS. New wings must be installed prior to further operation.
Group 2	450 hours TIS only in these categories. Operation only in the Normal category thereafter.	5,500 hours TIS. New wings must be installed prior to further operation.

Accomplishment of AD 2003–03–13 is required in accordance with the following:

—Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000: This service bulletin includes procedures for installing strengthened wings on airplanes with a serial number in the range of 0001 through 0656; and

—Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, and Mandatory Service Bulletin Z 242L/38a (Z 142C/18a), both dated October 31, 2000: These service bulletins include criteria for a new technical service life of the affected airplanes and specify operational limitations for Acrobatic and Utility category operations.

What Has Happened Since AD 2003–03–13 To Initiate This Action?

The Civil Aviation Authority Czech Republic (CAA CZ), which is the airworthiness authority for the Czech Republic, notified FAA of the need to change AD 2003–03–13. The CAA reports that the restriction and replacement actions of AD 2003–03–13 do not completely address the unsafe condition.

The restrictions only take account for the aerobatic load spectrum and do not account for the aerobatic frequency. Although the aerobatic frequency will extend the operational times, it more importantly will ensure that all airplanes (even those that have not reached the operational limits) are not subject to fatigue cracking caused by exceeding the aerobatic frequency.

The restrictions also address the life limit of the wings when they should address the life limit of the entire airframe (life limit of the airplane). The CAA CZ reports that the AD change is necessary to:

—Address the aerobatic frequency so affected airplanes that are operated in accordance with the current restrictions do not continue to be subject to the unsafe condition because the aerobatic frequency was not accounted for;

—Life limit the entire airplane instead of just the wings; and

—Prevent structural failure of the wing due to fatigue cracking. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

Why Should the Affected Airplanes Be Life Limited?

The airframe of the Moravan Model Z–242L airplanes has always been life limited. The problem is that there have been numerous changes to the Airworthiness Limitations section of the maintenance manual, which has caused confusion as to what the actual life limits are. These life limits vary between 3,500 hours time-in-service (TIS) and 5,500 hours TIS, and the affected airplanes incorporate both unstrengthened wings and strengthened wings.

In addition, the CAA CZ has accomplished fatigue testing on both the unstrengthened wings and strengthened wings using the FAA-approved load spectrum and aerobatic frequency. This testing shows that:

—The 3,500-hour TIS total airframe life limit and 190-hour TIS acrobatic and utility category restriction is necessary for airplanes with the unstrengthened wings; and

—The airplanes with strengthened wings are safe to fly up to 5,500 hours TIS total time.

The CAA CZ is continuing to test and analyze the strengthened wings. This testing and analysis could show that, with certain modifications or additional equipment, the airplanes could be operated past 5,500 hours TIS. As the CAA CZ shares this information, FAA may initiate additional rulemaking to address this matter. We will also consider alternative methods of compliance submitted in accordance with the procedures specified in the AD on a case-by-case basis.

Is There Service Information That Applies to This Subject?

Moravan has issued the following revised service information:

—Mandatory Service Bulletin Z 242L/38a—Rev. 1, dated April 15, 2003; and

—Mandatory Service Bulletin Z 242L/27a—Rev. 2, dated April 15, 2003;

The service bulletin revisions incorporate updated information and specify which AFM and maintenance manual revisions apply to individual airplanes.

What Action Did the CAA CZ Take?

The CAA CZ classified these service bulletins as mandatory and issued CAA-AD–T–100/2000R1, dated April 28, 2003, in order to ensure the continued airworthiness of these airplanes in the Czech Republic.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Czech Republic and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA CZ has kept us informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has examined the findings of Czech Republic; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on type design Moravan Model Z 242L airplanes that are registered for operation in the United States;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This action supersedes AD 2003–03–13 with a new AD that requires an adjustment to the operational limitations based on the aerobatic frequency and changes the life limit to the entire airplane instead of just the wings. The operational limitations adjustment consists of incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) and the Airworthiness Limitations section of the maintenance manual.

In preparation of this rule, we contacted Moravan America, type clubs, and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action. This includes notes from the meeting between FAA and Moravan America.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in a wing separating from the airplane with consequent loss of control of the airplane, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–24–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket. 4

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–03–13, Amendment 39–13037 (68 FR 4905, January 31, 2003), and by adding a new AD to read as follows:

2003–11–12 MORAVAN A.S.: Amendment 39–13171; Docket No. 2003–CE–24–AD; Supersedes AD 2003–03–13, Amendment 39–13037.

(a) *What airplanes are affected by this AD?* This AD affects Model Z–242L airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the wing due to fatigue cracking. Such failure could result in a wing separating from the airplane with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must establish a technical service life and restrict Acrobatic and Utility category operations. This must be done by accomplishing the following, as applicable:

Actions	Compliance	Procedures
(1) *For all affected airplanes:* You must annotate Acrobatic and Utility category operational time in the logbook. If the airplane is utilized in either of these categories at any time during a flight, you must annotate the total time for that flight in the Utility or Acrobatic category, as appropriate.	As of March 21, 2003 (the effective date of AD 2003–03–13).	This is specified in Moravan Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, dated October 31, 2000; and Moravan Mandatory Service Bulletin Z 242L/38a (Z142C/18a)—Rev. 1, April 15, 2003. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may annotate the logbook.

Actions	Compliance	Procedures
(2) *If you have an airplane with a serial number in the range of 0001 through 0656 that does not have strengthened wings installed (both left and right wings) in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev 2. dated April 15, 2003, or Rev. 1, dated October 31, 2000,* accomplish the following: (i) Incorporate aerobatic frequency information into the Limitations Section of the Airplane Flight Manual (AFM); and (ii) Establish the airplane life limit to 3,500 hours TIS by incorporating the applicable information into the Airworthiness Limitations section of the maintenance manual.	On or before June 15, 2003 (10 days after the effective date of this AD).	As specified in Moravan Mandatory Service Bulletin Z 242L/38a—Rev. 1, dated April 15, 2003. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 Federal Aviation Regulations (14 CFR 43.7) may accomplish the Limitation Section incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) *If you have an airplane with a serial number in the range of 0001 through 0656 that does not have strengthened wings installed (both left and right wings) in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 2. dated April 15, 2003, or Rev. 1, dated October 31, 2000,* accomplish the following: (i) Insert the following information into the Limitations Section of the Airplane Flight Manual (AFM): ''Do not operate in the Acrobatic or Utility category. Operate in the Normal category only.'' (ii) Replace both wings with the following part numbers: (A) L 242.2100 left-hand wing; and (B) L 242.2200 right-hand wing.	*AFM incorporation:* Upon the accumulation of 190 hours time-in-service (TIS) in the Acrobatic category and/or Utility category or on or before June 10, 2003 (90 days after the effective date of AD 2003–03–13), whichever occurs later; and *Replacement:* Upon the accumulation of 3,500 hours TIS in all operations or within the next 50 hours TIS in all operations after March 21, 2003 (the effective date of AD 2003–03–13), whichever occurs later. This replacement will allow you to operate the airplane for a total of 5,500 hours TIS. The time accumulated with unstrengthened wings installed counts toward this 5,500 hours TIS.	*AFM incorporation:* The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this AFM insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). This operational restriction is referenced in Moravan Mandatory Service Bulletin Z 242L/37a (Z 142C/17a), Rev. 1, dated October 31, 2000. *Replacement:* In accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 2, dated April 15, 2003, or Rev. 1, dated October 31, 2000.
(4) *If you have an airplane with a serial number of 0657 or higher or one in the range of 0001 through 0656 that has strengthened wings (both left and right) installed in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000, or Rev. 2, dated April 15, 2003,* accomplish the following: (i) Incorporate aerobatic frequency information into the Limitations Section of the Airplane Flight Manual (AFM); and (ii) Establish the airplane life limit to 5,500 hours TIS and establish by incorporating the applicable information into the Airworthiness Limitations section of the maintenance manual.	On or before June 15, 2003 (10 days after the effective date of this AD).	As specified in Moravan Mandatory Service Bulletin Z 242L/38a—Rev. 1, dated April 15, 2003. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the AFM and maintenance manual incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(5) *For all affected airplanes:* only install a wing with a part number of L242.2100 left-hand wing or L 242.2200 right-hand wing. The airplane is still life limited to a total of 5,500 hours TIS.	As of March 21, 2003 (the effective date of AD 2003–03–13).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(2) Alternative methods of compliance approved in accordance with AD 2003–03–13, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 2, dated April 15, 2003, or Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000; and Moravan Mandatory Service Bulletin Z 242L/38a—Rev. 1, dated April 15, 2003.

(i) The Director of the Federal Register previously approved the incorporation by reference of Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 1, dated October 31, 2000, under 5 U.S.C. 552(a) and 1 CFR part 51 as of March 21, 2003 (68 FR 4910, January 31, 2003).

(ii) The Director of the Federal Register approved the incorporation by reference of Moravan Mandatory Service Bulletin Z 242L/27a—Rev. 2; and Moravan Mandatory Service Bulletin Z 242L/38a—Rev. 1, both dated April 15, 2003, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You may get copies from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2003–03–13, Amendment 39–13037.

(h) *When does this amendment become effective?* This amendment becomes effective on June 5, 2003.

Note: The subject of this AD is addressed in CAA–AD–T–100/2000R1, dated April 28, 2003.

Issued in Kansas City, Missouri, on May 22, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13384 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–P

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, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Aurora, NE.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

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: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 17, 2003 (68 FR 18858) [FR Doc. 03–9507]. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 2003.

Donald F. Hensley,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–13731 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14844; Airspace Docket No. 03–ACE–29]

Modification of Class E Airspace; New Madrid, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at New Madrid, MO.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

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: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 15, 2003 (68 FR 18117) [FR Doc. 03–9178]. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 2003.

Donald F. Hensley,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–13732 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30369; Amdt. No. 3059]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 30, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2003.

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

For examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

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

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591 or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 9554–4164.

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and navigation (Air).

Issued in Washington, DC on May 23, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

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

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

Effective July 10, 2003

Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6L, Orig-A
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6R, Orig–A
Atqasuk, AK, Atqasuk Edward Burnell Sr Memorial, RNAV (GPS) RWY 6, Orig-A
Atqasuk, AK, Atqasuk Edward Burnell Sr Memorial, RNAV (GPS) RWY 24, Orig-A
Bethel, AK, Bethel, RNAV (GPS) RWY 18, Orig-B
Bethel, AK, Bethel, RNAV (GPS) RWY 36, Orig-B
Fairbanks, AK, Fairbanks Intl, RNAV (GSP) Y RWY 1L, Orig-A
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 19R, Orig-A
Huslia, AK, Huslia, RNAV (GPS) RWY 3, Orig-A
Huslia, AK, Huslia, RNAV (GPS) RWY 21, Orig-A
Mena, AR, Mena Intermountain Muni, RNAV (GPS) RWY 17, Orig
Mena, AR Mena Intermountain Muni, GPS RWY 17, Amdt 1, CANCELLED
Window Rock, AZ, Window Rock, VOR/DME–A, Orig-C
Window rock, AZ, Window Rock, RNAV (GPS)–B, Orig
Window Rock, AZ, Window Rock, RNAV (GPS) RWY 2, Orig
Window Rock, AZ, Widow Rock, VOR/DME RNAV OR GPS RWY 2, Amdt 1A, CANCELLED
Marina, CA, Marina Muni, VOR/DME RWY 29, Orig
La Junta, CO, La Junta Muni, RNAV (GPS) RWY 8, Orig
La Junta, CO, La Junta Muni, RNAV (GPS) RWY 26, Orig
Windsor Locks, CT, Bradley Intl, NDB RWY 6, Amdt 29
Windsor Locks, CT, Bradley Intl, ILS RWY 6, Amdt 35
Windsor Locks, CT, Bradley Intl, ILS RWY 24, Amdt 10
Windsor Locks, CT, Bradley Intl, ILS RWY 33, Amdt 8
Windsor Locks, CT, Bradley Intl, RNAV (GPS) Y RWY 6, Orig
Windsor Locks, CT, Bradley Intl, RNAV (GPS) Z RWY 6, Orig
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 15, Orig
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 24, Orig
Windsor Locks, CT, Bradley Intl, RNAV (GPS) RWY 33, Orig
Windsor Locks, CT, Bradley Intl, GPS RWY 15, Amdt 3a CANCELLED

Windsor Locks, CT, Bradley Intl, COPTER ILS 058, Amdt 2A, CANCELLED
Yap Island, FM, Yap Intl, NDB RWY 7, Amdt 2
Yap Island, FM, Yap Intl, NDB/DME RWY 7, Amdt 2
Yap Island, FM, Yap Intl, NDB/RWY 25, Orig
Yap Island, FM, Yap Intl, NDB/DME RWY 25, Orig
Brunswick, GA, Malcom McKinnon, VOR RWY 4, Amdt 16
Brunswick, GA, Malcom McKinnon, NDB RWY 4, Amdt 1
Brunswick, GA, Malcolm McKinnon, NDB RWY 22, Amdt 1
Hinesville, GA, Liberty County, NDB–A, Admt 3
Hinesville, GA, Liberty County, RNAV (GPS) RWY 32, Orig
Hinesville, GA, Liberty County, GPS RWY 32, Orig, CANCELLED
Savannah, GA, Savannah/Hilton Head Intl, VOR OR TACAN OR GPS RWY 27, Amdt 15D, CANCELLED
Savannah, GA, Savannah/Hilton Head Intl, ILS RWY 9, Amdt 26
Savannah, GA, Savannah/Hilton Head Intl, ILS RWY 36, Amdt 7
Savannah, GA, Savannah/Hilton Head Intl, NDB RWY 9, Amdt 22
Savannah, GA, Savannah/Hilton Head Intl, MLS RWY 27, Amdt 1
Statesboro, GA, Statesboro-Bulloch County, ILS RWY 32, Amdt 1
Statesboro, GA, Statesboro-Bulloch County, NDB RWY 32, Amdt 6
Chicago/Aurora, IL, Aurora Muni, VOR/DME RNAV RWY 27, Amdt 1
Chicago/Aurora, IL, Aurora Muni, ILS RWY 9, Amdt 2
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 9, Orig
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 27, Orig
Moundridge, KS, Moundridge Muni, RNAV (GPS) RWY 17, Orig
Moundridge, KS, Moundridge Muni, RNAV (GPS) RWY 35, Orig
Bastrop, LA, Morehouse Memorial, VOR/DME–A, Amdt 9
Bastrop, LA, Morehouse Memorial, NDB RWY 34, Amdt 6
Bastrop, LA, Morehouse Memorial, RNAV (GPS) RWY 16, Orig
Bastrop, LA, Morehouse Memorial, GPS RWY 16, Orig, CANCELLED
Baudette, MN, Baudette Intl, RNAV (GPS) RWY 12, Orig-A
Baudette, MN, Baudette Intl, RNAV (GPS) RWY 30, Orig-A
Pedrictown, NJ, Spitfire Aerodrome, RNAV (GPS) RWY 7, Orig
Pedrictown, NJ, Spitfire Aerodrome, RNAV (GPS) RWY 25, Orig
Durant, OK, Eaker Field, VOR/DME RWY 17, Orig
Durant, OK, Eaker Field, VOR/DME RWY 35, Amdt 6
Durant, OK, Eaker Field, NDB RWY 35, Orig
Durant, OK, Eaker Field, RNAV (GPS) RWY 17, Orig
Durant, OK, Eaker Field, RNAV (GPS) RWY 35, Orig
Durant, OK, Eaker Field, GPS RWY 35, Orig-A, CANCELLED
Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS) RWY 9, Orig
Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS) RWY 27, Orig
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 9, AMDT 1B (CANCELLED)
Babelthuap Island, PW, Babelthuap/Koror, GPS RWY 27, AMDT 1B (CANCELLED)
Providence, RI, Theodore Francis Green State, VOR RWY 34, Amdt 4C
Providence, RI, Theodore Francis Green State, VOR/DME RWY 23L, Amdt 6E
Providence, RI, Theodore Francis Green State, ILS RWY 5R, Amdt 18
Providence, RI, Theodore Francis Green State, ILS RWY 23L, Amdt 5
Providence, RI, Theodore Francis Green State, ILS RWY 34, Amdt 10
Providence, RI, Theodore Francis Green State, RNAV (GPS) Y RWY 5R, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) Z RWY 5R, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 16, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 23L, Orig
Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 34, Orig
Providence, RI, Theodore Francis Green State, GPS RWY 16, Orig-B, CANCELLED
Beaufort, SC, Beaufort County, RNAV (GPS) RWY 7, Orig
Beaufort, SC, Beaufort County, RNAV (GPS) RWY 25, Orig.
Beaufort, SC, Beaufort County, GPS RWY 24, Orig-A CANCELLED
Hilton Head Island, SC, Hilton Head, LOC/DME RWY 21, Amdt 3
Houston, TX, Houston-Southwest, RNAV (GPS) RWY 9, Amdt 1
Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 9, Amdt 2, CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV RWY 27, Amdt 3. CANCELLED
Ozona, TX, Ozona Muni, RNAV (GPS) RWY 16, Orig
Ozona, TX, Ozona Muni, GPS RWY, 16, CANCELLED
Snyder, TX, Winston Field, NDB RWY 35, Amit 2
Snyder, TX, Winston Field, RNAV (GPS) RWY 35, Orig
Yoakum, TX, Yoakum, Muni, NDB RWY 31, Amdt 3
Yoakum, TX, Yoakum, Muni, RNAV (GPS) RWY 31, Orig
Salt Lake, City, UT, Salt Lake City Muni 2, RNAV (GPS) RWY 34, Amdt 1
Wallops Island, VA, Wallops Flight Facility, VOR OR TACAN RWY 17, Amdt 6B
Wallops Island, VA, Wallops Flight Facility, RNAV (GPS) RWY 4, Orig
Wallops Island, VA, Wallops Flight Facility, RNAV (GPS) RWY 10, Orig
Wallops Island, VA, Wallops Flight Facility, RNAV (GPS) RWY 17, Orig
Wallops Island, VA, Wallops Flight Facility, RNAV (GPS) RWY 22, Orig
Wallops Island, VA, Wallops Flight Facility, RNAV (GPS) RWY 28, Orig
Parkersburg, WV, Wood County Airport-Gill Robb Wilson Field, ILS RWY 3, Amdt 12

Effective August 7, 2003

Clintonville, WI, Clintonville Muni, NDB RWY 32, Amdt 7

Effective September 4, 2003

Sioux Falls, SD, Joe Foss Field, VOR OR TACAN RWY 15, Amdt 21
Sioux Falls, SD, Joe Foss Field, NDB RWY 3, Amdt 24A
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 3, Orig
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 9, Orig
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 15, Orig
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 21, Orig
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 27 Orig
Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 33, Orig
Sioux Falls, SD, Joe Foss Field, GPS RWY 33, Orig. CANCELLED

[FR Doc. 03–13542 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 01N–0411]

Orthopedic Devices; Classification for the Resorbable Calcium Salt Bone Void Filler Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the resorbable calcium salt bone void filler device intended to fill bony voids or gaps of the extremities, spine, and pelvis that are caused by trauma or surgery and are not intrinsic to the stability of the bony structure into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a class II special controls guidance entitled ''Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA.'' This action is being undertaken based on new information submitted in a classification proposal from Wright Medical Technology under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997.

DATES: This rule is effective July 2, 2003

FOR FURTHER INFORMATION CONTACT: Nadine Y. Sloan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200

Corporate Blvd., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 7, 2002 (67 FR 5753), FDA issued a proposed rule to classify the resorbable calcium salt bone void filler device into class II based on new information regarding this device and on the recommendation of the Orthopedic and Rehabilitation Devices Panel. FDA identified the draft guidance document entitled ''Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Draft Guidance for Industry and FDA'' as the proposed special control capable of providing reasonable assurance of the safety and effectiveness of the device. The device is intended to fill bony voids or gaps of the extremities, spine, and pelvis that are caused by trauma or surgery and are not intrinsic to the stability of the bony structure. FDA invited interested persons to comment on the proposed rule by May 8, 2002. FDA received two comments, both supporting the proposed classification. One of the two comments also requested minor changes to the class II special controls guidance document.

II. Analysis of Comments and FDA's Response

One comment expressed concern over a perceived intent to apply the guidance to demineralized bone matrix (DBM) products. FDA acknowledges that there was a misunderstanding about whether the proposed rule applied to DBM products that have the same intended use as the resorbable calcium salt bone void filler device and that were recently determined to be medical devices. The proposed rule was intended to be specific to the resorbable calcium salt bone void filler device, including resorbable calcium salt bone void fillers that may contain some biologically sourced additives, including DBM. The proposed rule was not intended to apply to DBM products, i.e., products that contain DBM without any calcium salt or that are composed primarily of DBM. For clarity, FDA has deleted reference to all biologically sourced materials included in the proposed rule and draft class II special controls guidance and will address devices made of these other materials in the future.

III. FDA's Conclusion

Based on a review of the available information in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the class II special controls guidance document. The class II special controls guidance document was revised to reflect consideration of the comments received. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a resorbable calcium salt bone void filler device will need to address the issues covered in the class II special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA is now codifying the classification and the class II special control guidance document for the resorbable calcium salt bone void filler device by adding § 888.3045. For the convenience of the reader, FDA is also adding § 888.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 888.

IV. Environmental Impact

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

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. These devices are already subject to general controls, such as premarket notification. The class II special controls guidance document will not substantially change the way in which these devices are regulated. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

VI. 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.

VII. Paperwork Reduction Act of 1995

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 21 CFR Part 888

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for 21 CFR part 888 continues to read as follows:

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

■ 2. Section 888.3045 is added to subpart D to read as follows:

§ 888.3045 Resorbable calcium salt bone void filler device.

(a) *Identification.* A resorbable calcium salt bone void filler device is a resorbable implant intended to fill bony voids or gaps of the extremities, spine, and pelvis that are caused by trauma or

surgery and are not intrinsic to the stability of the bony structure.

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA.'' See § 888.1(e) of this chapter for the availability of this guidance.

Dated: April 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13592 Filed 5–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Powered Industrial Trucks

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment deletes a Powered Industrial Trucks Standard covering the use of powered industrial trucks to lift personnel. It is being deleted because it was invalidly promulgated from a non-mandatory provision of a national consensus standard.

DATES: This final rule becomes effective on July 2, 2003.

FOR FURTHER INFORMATION CONTACT: For general information and press contact Ms. Bonnie Friedman, Director, Office of Communications, OSHA, U.S. Department of Labor, Rm. N3637, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1999, Fax (202) 693–1634. For technical information contact: David Wallis, Office of Engineering Safety, Room N3609, telephone (202) 693–2064, or Patrick Kapust, Office of General Industry Enforcement, Room N3107, telephone (202) 693–1854 at the above address.

SUPPLEMENTARY INFORMATION: In section 6(a) of the Occupational Safety and Health Act of 1970, 84 Stat. 1593; 29 U.S.C. 655(a), Congress authorized OSHA to adopt national consensus standards and established Federal Standards without prior notice and public participation. On May 29, 1971, at 36 FR 10466, OSHA published a final rule in the **Federal Register** adopting national consensus standards and established Federal standards as OSHA's initial occupational safety and health standards for general industry.

The preamble to that final rule contained the following statement:

> I do hereby designate as national consensus standards those standards in Part 1910 which are standards adopted and promulgated by either the American National Standards Institute (ANSI) or the National Fire Protection Association (NFPA). The national consensus standards contain *only mandatory provisions* of the standards promulgated by those two organizations. *The standards of ANSI and NFPA may also contain advisory provisions and recommendations the adoption of which by employers is encouraged, but they are not adopted in Part 1910.* (36 FR 10466) (emphasis added).

Thus, the standards adopted on May 29, 1971, were intended to include only the mandatory provisions of the relevant ANSI and NFPA standards.

The American National Standard for Powered Industrial Trucks, ANSI B56.1–1969, was one of the national consensus standards that the Agency adopted under section 6(a). That ANSI standard was the source standard for 29 CFR 1910.178(e) through (p), the relevant paragraphs of OSHA's Powered Industrial Trucks Standard.

Paragraph (m)(12) of § 1910.178, as it was published in May 1971 and as it still appears today, reads as follows:

> Whenever a truck is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following additional precautions *shall be taken* for the protection of personnel being elevated.
>
> (i) Use of a safety platform firmly secured to the lifting carriage and/or forks.
>
> (ii) Means *shall be provided* whereby personnel on the platform can shut off power to the truck.
>
> (iii) Such protection from falling objects as indicated necessary by the operating conditions *shall be provided*. [Emphasis added.]

The requirement thus appears as a mandatory provision of OSHA's Powered Industrial Truck Standard.

The corresponding provision in the base standard, ANSI B56.1–1969, was contained in section 604L, which read as follows:

> Whenever a truck is equipped with vertical only, or vertical and horizontal travel controls elevatable with the lifting carriage or forks for lifting personnel, the following additional precautions *should be taken* for the protection of personnel being elevated.
>
> (a) Use of a safety platform firmly secured to the lifting carriage and/or forks.
>
> (b) Provide means whereby personnel on the platform can shut off power to the truck.
>
> (c) Provide such protection from falling objects as indicated necessary by the operating conditions. [Emphasis added.]

Consequently, OSHA revised the language of this subparagraph in the ANSI standard and, in doing so, made it mandatory instead. If a provision was not mandatory (''should''), in the source consensus standard, the corresponding OSHA provision that was invalidly adopted as (''shall'') mandatory is not enforceable [see *Usery* v. *Kennecott Copper Corporation*, 577 F.2d 1113, 1117 (10th Cir. 1977)]. Consequently, § 1910.178(m)(12) is unenforceable by OSHA.

Because it is unenforceable, OSHA is removing that provision, 29 CFR 1910.178(m)(12), from the Powered Industrial Trucks Standard. Note that OSHA is removing all of paragraph (m)(12), including its subordinate paragraphs (m)(12)(i) through (m)(12)(iii).

This action does not indicate that the underlying hazard addressed by these provisions is not serious. Indeed, if proper equipment, procedures and training are not provided, the lifting of personnel with powered industrial trucks poses hazards likely to cause death or serious injury to employees. As noted in OSHA's 1998 amendment to the Powered Industrial Trucks Standard, a significant percentage (4 to 14% depending on the study) of the 100 deaths and 95,000 injuries per year that involve powered industrial trucks, result from falls from personnel lifting. (See 63 FR 66238, December 1, 1998). The American Society of Mechanical Engineers' (ASME) current standard for powered industrial trucks (ASME B56.1–2000) addresses these hazards. For example, operator-up highlift trucks (order pickers, etc.) are addressed by paragraphs 4.17.1, 4.17.2 and 7.36. Trucks with work platforms which do not fit that category are covered by paragraphs 4.17.2, 4.17.3 and 7.36.3.

Under the Voluntary Consensus Standards Project (RIN 1218–AC08), the Agency has asked various consensus standards organizations to review their standards, compare the latest versions of these standards to the ones currently adopted by OSHA, and to determine which ones are most important for OSHA to update. The organizations have provided considerable information on priorities and other related issues. OSHA is in the process of evaluating the information it has received from the consensus standards organizations and is now considering the possibility of initiating rulemaking to revise and update the Powered Industrial Truck Standard.

Exemption From Notice-and-Comment Procedures: The Agency has determined that this rulemaking is exempt from the procedures for public notice and comment rulemaking specified under section 4 of the Administrative Procedure Act (5 U.S.C. 553) and section (6)(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) because this technical amendment is required by law to remove an unenforceable provision. Consequently it does not change any existing rights or obligations. Therefore, the Agency finds that public notice-and-comment procedures are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(b) and 29 CFR 1911.5.

List of Subjects in 29 CFR Part 1910

Motor vehicle safety, occupational safety and health, Transportation, Powered industrial trucks.

Authority: This document was prepared under the authority of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 4 of the Administrative Procedure Act (5 U.S.C. 553) and Secretary of Labor's Order No. 5–2002 (67 FR 65008), OSHA is amending 29 CFR part 1910 as set forth below.

Signed at Washington, DC this 23rd day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart N—Materials Handling and Storage—[Amended]

■ 1.The authority citation for Subpart N of Part 1910 is revised to read as follows:

Authority: Sec. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736, 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017) or 5–2002 (67 FR 65008) as applicable. Section 1910.178 also amended under Section 4 of the Administrative Procedure Act (5 U.S.C. 653). Sections 1910.176, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

§ 1910.178 [Amended]

■ 2. Paragraph (m)(12) of § 1910.178 is removed and reserved.

[FR Doc. 03–13678 Filed 5–30–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of amendments to this part to exemptions claimed for seven systems of records formerly maintained by the Internal Revenue Service and that have been transferred to the Treasury Inspector General for Tax Administration and consolidated as Treasury/DO .311-TIGTA Office of Investigations Files.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, (202) 622–4068.

SUPPLEMENTARY INFORMATION: This amendment reflects the transfer of investigative responsibility from the Chief Inspector's Office of the Internal Revenue Service to the Treasury Inspector General for Tax Administration (TIGTA). The Chief Inspector's Office maintained information in the following exempt systems of records:

Treasury/IRS 60.001—Assault and Threat Investigation Files, Inspection.
Treasury/IRS 60.002—Bribery Investigation Files, Inspection.
Treasury/IRS 60.003—Conduct Investigation Files, Inspection.
Treasury/IRS 60.004—Disclosure Investigation Files, Inspection.
Treasury/IRS 60.006—Enrollee Charge Investigation Files, Inspection.
Treasury/IRS 60.007—Miscellaneous Information File, Inspection.
Treasury/IRS 60.009—Special Inquiry Investigation Files, Inspection.

The above systems of records maintained by the Chief Inspector's Office of the Internal Revenue Service have been consolidated and renamed as ''Treasury/DO .311–TIGTA Office of Investigations Files.'' This final rule removes the exempted systems of records maintained by the Office of the Chief Inspector, IRS from sections (c)(1)(viii) and (g)(1)(iii) and adds the consolidated system of records Treasury/DO .311–TIGTA Office of Investigations Files to sections (c)(1)(i) and (g)(1)(i). A notice reflecting the alterations to these systems of records is being published separately in the **Federal Register**.

The Department of the Treasury published a revised regulation setting out the exemptions claimed for these systems of records pursuant to 5 U.S.C. 552a(j)(2) and (k) in the **Federal Register,** at 65 FR 69865, on November 21, 2000.

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to comply with the Privacy Act.

Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 128662, it has been determined that this rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*), the Department of the Treasury has determined that this rule will not impose new record-keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1 Subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 of subpart C is amended as follows:

■ a. Paragraph (c)(1)(i) is amended by adding ''DO .311—TIGTA Office of Investigations Files'' to the table.

■ b. Paragraph (c)(1)(viii) is amended by removing the entry ''IRS 60.001—Assault and Threat Investigation Files, Inspection, IRS 60.002—Bribery Investigation Files, Inspection, and IRS 60.004—Disclosure Investigation Files, Inspection'' from the table.

■ c. Paragraph (g)(1)(i) is amended by adding ''DO .311—TIGTA Office of Investigations Files'' to the table in numerical order.

■ d. Paragraph (g)(1)(viii) is amended by removing ''IRS 60.003—Conduct Investigation Files; IRS 60.006—Enrollee Charge Investigation Files; IRS 60.007—Miscellaneous Information File, and IRS 60.009—Special Inquiry Investigation Files'' from the table.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *

(1) * * *

(i) * * *

Number	Name of system
* * * * *	
DO .311	TIGTA Office of Investigations Files
* * * * *	

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	Name of system
* * * * *	
DO .311	TIGTA Office of Investigations Files
* * * * *	

* * * * *

Dated: May 8, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–13673 Filed 5–30–03; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–049]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''OPA/NJ Offshore Grand Prix'', a marine event to be held on the waters of the Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 9:30 a.m. to 3:30 p.m. on June 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–049 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Because of the danger posed by high speed power boats racing in a closed circuit, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The event will take place on June 1, 2003. There is not sufficient time to allow for a notice and comment period prior to the event. However, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On June 1, 2003, the Offshore Performance Association and the New Jersey Offshore Racing Association will sponsor the ''OPA/NJ Offshore Grand Prix''. The event will consist of 30–35 offshore power boats racing along an oval course on the waters of the Atlantic Ocean. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean and the Manasquan River. The temporary special local regulations will be in effect from 9:30 a.m. until 3:30 p.m. on June 1, 2003. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participants to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean and Manasquan River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean and Manasquan River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 9:30 a.m. to 3:30 pm. on June 1, 2003. Vessel traffic will be allowed to transit the regulated area between races, when the Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

■ 2. Add a temporary § 100.35–T05–049 to read as follows:

§ 100.35–T05–049 Atlantic Ocean, Point Pleasant Beach to Bay Head, New Jersey.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol.* The Official Patrol is any vessel with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all waters of the Atlantic Ocean bounded by a line drawn from the end of the South Manasquan Inlet Jetty, easterly to Manasquan Inlet Lighted Buoy ''2M'', then southerly to a position at latitude 40°04′26″ N, longitude 074°01′30″ W, then westerly the shoreline. All coordinates reference Datum NAD 1983.

(b) *Special local regulations:*

(1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel. Notice of the closure times will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet shall be held in a spectator anchorage area north of the regulated area, which shall be marked by patrol vessels flying pennants to aid in their identification.

(4) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by U.S. Coast Guard patrol personnel and then proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(c) *Effective period.* This section is effective from 9:30 a.m. to 3:30 p.m. on June 1, 2003.

Dated: May 21, 2003.

Ben R. Thomason, III,

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

[FR Doc. 03–13734 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–013]

RIN 1625–AA08 (Formerly RIN 2115–AE46)

Special Local Regulations for Marine Events; Delaware River, Pea Patch Island to Delaware City, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for marine events held on the waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of the Delaware River between Pea Patch Island and Delaware City during the events.

DATES: This rule is effective July 2, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–013 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2003 we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Delaware River, Pea Patch Island to Delaware City, Delaware'' in the **Federal Register** (68 FR 9037). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Each year during the months of June and September, marine events are conducted on a portion of the Delaware River between Pea Patch Island and Delaware City, Delaware. The events consist of 175 to 800 athletes swimming from Fort Delaware on Pea Patch Island to Battery Park in Delaware City. A fleet of spectator vessels gathers nearby to view the swimming events. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the events.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Delaware River on the third Saturday of June or September.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 100.529 to read as follows:

§ 100.529 Delaware River, Pea Patch Island to Delaware City, Delaware.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Philadelphia.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Philadelphia with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points:

Latitude	Longitude
39°36′35.7″ North	075°35′25.6″ West, to
39°34′57.3″ North	075°33′23.1″ West, to
39°34′11.9″ North	075°34′28.6″ West, to
39°35′52.4″ North	075°36′33.9″ West.

All coordinates reference Datum NAD 1983.

(b) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned,

warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually for a 2-hour period on the third Saturday in June and for a 2-hour period on the third Saturday in September. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: May 21, 2003.

Ben R. Thomason, III,

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

[FR Doc. 03–13733 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–047]

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the U.S. 1 Bridge, mile 2.8, across the Mystic River at Mystic, Connecticut. This temporary deviation will test a proposed change to the drawbridge operation regulations to determine if a permanent change to the regulations is reasonable. It is expected that this change to the regulations will better meet the needs of navigation and vehicular traffic.

DATES: Comments must reach the Coast Guard on or before November 15, 2003. This deviation is effective from June 15, 2003 through August 31, 2003.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–047), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

The U.S. 1 Bridge has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water in the closed position.

The existing regulations, listed at 33 CFR 117.211(b), require the bridge to open on signal with a maximum delay of up to 20 minutes; except that: from May 1 through October 31, from 7:15 a.m. to 7:15 p.m., the draw need only open once an hour, at quarter past the hour. From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal after a six-hour advance notice is given.

The Mystic Connecticut Chamber of Commerce and Marine Affairs Committee requested that the U.S. 1 Bridge opening schedule be changed.

Under this temporary deviation the draw of the U.S. 1 Bridge shall open on signal; except that, from 7:40 a.m. to 7:40 p.m., daily, the draw need only open at 7:40 a.m., 8:40 a.m., 9:40 a.m., 10:40 a.m., 11:40 a.m., 1:10 p.m., 1:40 p.m., 2:40 p.m., 3:40 p.m., 4:40 p.m., 5:40 p.m., 6:40 p.m., and 7:40 p.m.

This temporary deviation eliminates the provision that permits openings to be delayed up to 20 minutes after a request is given. Under this temporary deviation, the bridge must open promptly and fully upon request, in accordance with 33 CFR 117.5.

This deviation from the operating regulations is authorized under 33 CFR 117.43, and comments and information gathered during the comment period will assist the Coast Guard in determining if this test operating schedule is reasonable and should be made a permanent change to the drawbridge operation regulations.

Dated: May 20, 2003.

John L. Grenier,

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

[FR Doc. 03–13698 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Philadelphia 03–005]

RIN 1625–AA00

Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters adjacent to the Oyster Creek Generation Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: This rule is effective from 5 p.m. eastern daylight time on May 13, 2003, to 5 p.m. eastern standard time on January 24, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHIMS 03–005 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Xaimara Vicencio-Roldan or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the

warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits due to the fact that the security zone does not block the channel.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington DC on September 11, 2001, heightened security measures are necessary for the area surrounding the Oyster Creek Generation Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants. The Coast Guard intends to implement a permanent security zone surrounding the plant. The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. The Coast Guard will use the effective period of this Temporary Final Rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Discussion of Rule

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

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

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of Oyster Creek and Forked River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of Oyster Creek and Forked River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34) (f) and (g), of Commandant Instruction M16475.1D, from further environmental documentation.

A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

General Regulated Navigation Areas, Safety Zones, Security Zones, Restricted Waterfront Areas, Specific Regulated Navigation Areas and Limited Access Areas.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–091.

§ 165.T05–091 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.

(a) *Location.* The following area is a security zone: starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, west from a point located at 39° 49′11.8″ N, 074°12′ 10.5″ W. Oyster Creek West from a point located at 39° 48′39.7″ N, 074°12′ 0″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective dates.* This section is effective from 5 p.m. Eastern Daylight Time on May 13, 2003 to 5 p.m. Eastern Standard Time on January 24, 2004.

Dated: May 13, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–13697 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7505–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a petition submitted by Bekaert Steel, Dyersburg, Tennessee (''Bekaert''), to exclude (or ''delist'' a certain hazardous waste from the lists of hazardous wastes. Bekaert will generate the petitioned waste by treating wastewater from Bekaert's steel plant, copper electroplating area where steel wire is used to manufacture copper and zinc coated steel wire for the tire industry. The waste so generated is a wastewater treatment sludge that meets the definition of F006. Bekaert petitioned EPA to grant a generator-specific delisting, because Bekaert believes that its F006 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Bekaert, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Bekaert's petition to delist this waste on a ''generator-specific'' basis from the hazardous waste lists, and the approved delisting petition for the Bekaert, Rogers, Arkansas facility which utilizes an identical process. EPA took into account the final delisting levels which are based on the EPACML model as performed by Region 6. Unless adverse comments are received with sixty days of this Direct Final Rule and in accordance with the conditions specified in this final rule, Bekaert's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

DATES: This rule is effective on August 1, 2003 without further notice, unless EPA receives adverse comment by July 17, 2003. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental

Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–03–01–BekaertF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation , please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact David Langston, RCRA Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8588, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for David Langston to return your call. Questions may also be e-mailed to David Langston at *langston.david@epa.gov.* You may also contact Nina Vo,Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor L&C Tower 401 Church Street, Nashville, Tennessee 37243–1535. If you wish to copy documents at TDEC, please contact Ms. Vo for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please *see* 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* § 260.22 (a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the New EPACMTP Model To Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of Bekaert's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Registers**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. Bekaert's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors,* U.S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/dlistpdf.htm*

2. Delisting Risk Assessment Software (DRAS) *http://www.epa.gov/Arkansas/6pd/rcra_c/pd-o/dras/dras.htm*

3. DRAS Technical Support Document (DTSD) *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/dtsd.htm*

4. DRAS Users Guide *http://www.epa.gov/earthlr6/6pd/rcra_c/pd-o/uguide.pdf* Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills,* Westat, 1987

waste's constituents will leach and move out of the landfill. Since EPA has made a final decision to delist Bekaert's F006 waste, Bekaert must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML. The improvements include:

1—Incorporation of additional fate and transport processes (*e.g.*, degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (*e.g.*, for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (*e.g.*, to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide,* Office of Solid Waste, U.S. EPA, Washington, DC, September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact David Langston, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8588, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for David Langston to return your call. You may also contact him by e-mail: *langston.david@epa.gov*.

The EPACML accounts for: one-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995) A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Method Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

Bekaert submitted to the EPA analytical data from its Dyersburg, Tennessee plant and the Rogers, Arkansas plant. Samples of wastewater treatment sludge were collected from roll-off containers over a one-month period. A summary of analytical data is presented in Table 1 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and raw materials that Bekaert submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for Bekaert's petitioned waste.

EPA considered two additional methods of evaluating Bekaert's delisting petition and determining delisting levels: (1) Setting limits on total concentrations of constituents in the waste that are more conservative than results obtained by DRAS for total concentrations; and (2) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for Bekaert's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l

TCLP; Nickel: 11 mg/l TCLP; Silver: 0.14 mg/l TCLP; Vanadium: 1.6 mg/l; Zinc: 4.3 mg/l TCLP.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Bekaert Steel Corporation, Dyersburg, Tennessee (Bekaert)

Bekaert initially petitioned EPA, Region 6, in September 11, 1995, to exclude from the Rogers, Arkansas facility, a maximum annual weight of 1,250 cubic yards of its F006 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. Because of the identical construction and operation of Rogers, Arkansas and the Dyersburg, Tennessee facilities, Bekaert petitioned EPA, Region 4, in October 28, 2002, to consider a delisting based on equivalent data and operations. Bekaert petitioned the EPA to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, its wastewater treatment sludges from its electroplating operations. Specifically, in its petition, Bekaert petitioned the Agency to exclude its wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' The listed constituents of concern for EPA Hazardous Waste No. F006 are: cadmium, hexavalent chromium, nickel and cyanide (complexed). See 40 CFR part 261, Appendix VII. Bekaert petitioned the EPA to exclude this waste because it does not believe that the waste meets the criteria for which it was listed. Bekaert also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

In support of its petition, Bekaert submitted the previous petition for the Rogers, Arkansas facility and documentation which supported equivalency of the Dyersburg, Tennessee facility. Included within the petition are: (1) Descriptions of its manufacturing and wastewater treatment processes, including schematic diagrams; (2) a list of all raw materials and Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for fourteen metals including the eight Toxicity Characteristic (TC) metals listed in § 261.24 (*i.e.*, the TC metals) and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for fourteen metals which include the eight TC metals, and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (5) results from total constituent analysis for total and reactive sulfide and cyanide for representative samples of the petitioned waste; (6) results from total oil and grease analyses from representative samples of the petitioned waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent analyses for certain volatile and semi-volatile organic compounds from representative samples of the petitioned waste.

The hazardous constituents of concern for which F006 was listed are hexavalent chromium and cyanide (complexed). Bekaert petitioned the EPA to exclude its F006 waste because Bekaert does not believe that the waste meets the criteria of the listing.

TABLE 1.—WASTE WATER CONCENTRATIONS ZINC & COPPER

[Metals Constituent Comparison Between Rogers, Arkansas F006 and Dyersburg, Tennessee F006]

	Cell 1	Cell 2	Cell 3	Cell 4	Cell 5	Average
Zinc Concentration mg/l:						
Dyersburg	19875	20867	Inactive	9978	Not present	16907
Rogers	11480	14350	Inactive	16502	28700	17758
Copper Concentration mg/l:						
Dyersburg	0	22.6	Inactive	5.6	Not present	11.2
Rogers	70	50	Inactive	70	50	60

TABLE 2.—METALS ANALYSIS F006 FILTER CAKE

Total Metals mg/kg	Dyersburg, Tennessee	Rogers, Arkansas: Petition	Rogers, Arkansas: 1997	Rogers, Arkansas: 1998	Rogers, Arkansas: 1999
Arsenic	<900	<5.00			
Barium	46.4	2.5			
Cadmium	0.24	3.1			
Chromium	13.6	68			
Copper	7.81	580			
Lead	12.5	<5.0			
Selenium	3.5	6.4			
Silver	<0.9	1.2			
Zinc	113	16000			
TCLP Metals mg/l:					
Antimony	<0.20				
Arsenic	<0.20	<0.05	<0.10	1.92	<0.085
Barium	<0.050	1.3	0.18	0.078	<0.004
Cadmium	<0.040	<0.05	<0.01	<0.005	<0.005

TABLE 2.—METALS ANALYSIS F006 FILTER CAKE—Continued

Total Metals mg/kg	Dyersburg, Tennessee	Rogers, Arkansas: Petition	Rogers, Arkansas: 1997	Rogers, Arkansas: 1998	Rogers, Arkansas: 1999
Chromium	<0.050	<0.05	<0.01	<0.007	<0.007
Copper	<0.050	.....	.....	.....	.....
Lead	<0.10	<0.10	<0.10	<0.050	<0.05
Nickel	<0.10	.....	.....	.....	.....
Selenium	<0.20	0.091	<0.10	<0.10	<0.10
Silver	<0.070	0.2	<0.01	0.0182	0.007
Zinc	26	.....	.....	.....	.....
Mercury Total mg/kg	<0.8	<0.125	.....	.....	.....
Mercury TCLP mg/l	<0.002	<0.005	<0.005	<0.002	<0.002

EPA concluded after reviewing Bekaert's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Bekaert's petitioned waste. In addition, on the basis of test results and other information provided by Bekaert, pursuant to § 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During its evaluation of Bekaert's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Bekaert's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Bekaert's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (*See* the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (*see* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the extraction procedure test results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

In order to account for possible variability in the generation rate, EPA calculated delisting levels using a waste volume of 1,250 cubic yards. Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Tables 3, 4, and 5 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and the majority of the delisting and risk levels for the TCLP leachate of the waste were calculated based on that pathway. EPA used DRAS-calculated values based on MCLs, when these would result in more conservative delisting levels. The input values required by DRAS were the chemical constituents in Bekaert's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (*See* Table 1, Preamble section II.A.); the maximum annual volume to be disposed (1,250 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-5} for carcinogens; and a hazard quotient of no greater than 1 [1.48] for non-carcinogens. The only carcinogenic constituent detected in the waste is cadmium (arsenic not detected in the Dyersburg, TN, waste). Cadmium also has non-carcinogenic toxic effects.

TABLE 3.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S—PETITIONED WASTE BASED ON LIMITING PATHWAY

Constituent	Delisting level in TCLP based on limiting pathway	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Inorganic Constituents				
Antimony	2.31	34.3	.....	1.300
Arsenic	0.0419	19.2	1.01×10^{-5}	4.39×10^{-2}
Barium	[4] 328	27.8	.....	1.000
Cadmium	[4] 2.52	30.0	3.45×10^{-5}	0.999

TABLE 3.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S—PETITIONED WASTE BASED ON LIMITING PATHWAY—Continued

Constituent	Delisting level in TCLP based on limiting pathway	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Chromium	[4] 49.71×10	3850	.....	1.000
Copper	[4] 4.71×10	7010	.....	10.000
Cyanide	60.5	18	.....	1.000
Lead	[5] 5.0	5000	.....	.....
Nickel	127	37.6	.....	1.000
Selenium	[6] 9.74	11.6	.....	1.000
Silver	[6] 17.2	20.5	.....	1.000
Mercury	[6] 0.364	74.5	.....	2.000
Zinc	1260	24.9	.....	1.000
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	21.400
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium)	.....	.....	1.01×10^{-5}	.....

[4] Level exceeds characteristic level for this constituent. Therefore, this concentration in TCLP cannot be used for means of delisting the waste.
[5] Lead had no limiting value, therefore, characteristic level was used in place of limiting pathway.
[6] Concentration calculated here exceeds characteristic level for this constituent. Although the carcinogenic risk is acceptable, the calculated hazard quotient exceeds the necessary standard. Additionally, 4 constituents exceed the TCLP characteristic level for hazardous waste.

TABLE 4.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S PETITIONED WASTE BASED ON MCLS

Constituent	MCL or drinking water standard (mg/l)	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Inorganic Constituents					
Antimony	0.006	0.922	34.3	.....	4.00×10^{-1}
Arsenic	0.010	0.516	19.2	6.16×10^{-5}	2.67×10^{-1}
Barium	2.0	[7] 249	27.8	.....	7.60×10^{-1}
Cadmium	0.005	0.672	30.0	3.45×10^{-12}	2.66×10^{-1}
Chromium	0.10	[7] 1720	3850	.....	1.77×10^{-3}
Copper	[8] 1.30	40800	7010	.....	8.66×10^{-1}
Cyanide	0.20	16.1	18	.....	1.33×10^{-1}
Lead	0.015	[7] 336	5000	.....	.....
Nickel	[9] 0.10	16.9	37.6	.....	1.34×10^{-1}
Selenium	0.05	[7] 2.60	11.6	.....	1.33×10^{-1}
Silver	[8] 0.10	[7] 9.16	20.5	.....	2.66×10^{-1}
Mercury	0.002	0.149	74.5	.....	1.83
Zinc	[8] 5.0	558	24.9	.....	4.44×10^{-1}
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	.....	5.50
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium)	.....	.....	.....	6.16×10^{-5}	.....

[7] DRAS Calculated level exceeds TCLP Characteristic level for this constituent.
[8] The Safe Drinking Water Act standard is a recommended secondary standard, rather than an enforceable MCL.
[9] MCL for Nickel was remanded on February 9, 1995, such that no legal limit exists. However, it is still recommended that nickel be monitored and exposure minimized until such time EPA reconsiders the MCL standard.

TABLE 5.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BEKAERT'S PETITIONED WASTE BASED ON MCL/LIMITING PATHWAY, DETECTION LEVEL, AND PERFORMANCE DEMONSTRATED CONCENTRATIONS FROM F006 TESTING

Constituent	Delisting Level (mg/l TCLP)	DAF	DRAS-Calculated Risk for Maximum Concentration of Carcinogen in Waste	DRAS-Calculated Hazard Quotient for Maximum Concentration of Non-Carcinogen in Waste
Inorganic Constituents				
Antimony	0.60	34.3	.....	2.60×10^{-1}
Arsenic	<0.20	19.2	2.39×10^{-5}	1.04×10^{-1}
Barium	50	27.8	.....	1.53×10^{-1}
Cadmium	0.50	30.0	3.45×10^{-12}	1.98×10^{-1}
Chromium	1.0	3850	.....	1.03×10^{-6}
Copper	100	7010	.....	2.12×10^{-3}
Cyanide	<0.005	18	.....	4.13×10^{-5}
Lead	<0.10	5000	.....	.....
Nickel	10	37.6	.....	7.90×10^{-2}
Selenium	<0.20	11.6	.....	1.03×10^{-2}
Silver	1	20.5	.....	5.82×10^{-2}
Mercury	<0.005	74.5	.....	3.95×10^{-2}
Zinc	125	24.9	.....	9.95×10^{-2}
Total Hazard Quotient for All Waste Constituents	.....	.....	.....	1.00
Total Carcinogenic Risk for the Waste (due to Arsenic, and Cadmium, which were non-detect in the waste.)	.....	.....	2.39×10^{-5}	.....

The Safe Drinking Water Act standard for copper is a recommended secondary standard, rather than an enforceable MCL.

EPA proposes to use the delisting levels in the TCLP leachate calculated by the DRAS, using the EPACMTP (Table 5) as well as the performance levels demonstrated during the F006 testing. These delisting levels are summarized in Table 6, below.

TABLE 6.—SUMMARY OF DELISTING LEVELS FOR BEKAERT'S PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)
Antimony	0.60
Arsenic	<0.20
Barium	50.0
Cadmium	0.50
Chromium	1.0
Copper	100
Cyanide	<0.005
Lead	<0.10
Nickel	10.0
Selenium	<0.20
Silver	1.0
Mercury	<0.005
Zinc	125

C. Conclusion

After reviewing Bekaert's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in Bekaert's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that Bekaert's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels for land disposal as proposed in Preamble section II.B. are met.

EPA is finalizing it's decision to exclude Bekaert's petitioned waste from being listed as F006, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Bekaert's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's decision is based on verification testing conditions. When the rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of Appendix IX of 40 CFR part 261. When the rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will this Rule Apply in All States?

This Direct Final Rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this exclusion, if promulgated, would not apply in those authorized States. If the petitioned

waste will be transported to any State with delisting authorization, Bekaert must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective 45 days from this date of publication, unless adverse comments are received. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective 45 days from this date of publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, when promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to 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.

OMB has exempted this direct final rule from the requirement for OMB

review under section (6) of Executive Order 12866.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084 Affecting Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

XII. Submission to Congress and General Accounting Office

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

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3). This rule will become effective 45 days from the date of this publication as a direct final rule in the **Federal Register**.

XIII. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''

''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: May 12, 2003.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Bekaert Industries, Inc.	Dyersburg, TN	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 1,250 cubic yards per calendar year after December 31, 2002 and disposed of in a Subtitle D landfill. For the exclusion to be valid, Bekaert must implement a testing program that meets the following Paragraphs:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) Delisting Levels: All leachable concentrations for those constituents listed below in (i) and (ii) must not exceed the following levels (mg/l). The petitioner must use an acceptable leaching method, for example SW 846, Method 1311 to measure constituents in the waste leachate. Dewatered WWTP sludge (i) Inorganic Constituents Antimony 0.60; Arsenic <0.20; Barium 50; Chromium 1.0; Copper 100; Lead <0.10; Nickel 10.0; Selenium <0.20; Silver 1.0; Zinc 125; and mercury <0.005. (2) Waste Holding and Handling: (A) Bekaert must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Bekaert can manage and dispose the nonhazardous dewatered WWTP. (A) Initial Verification Testing: After EPA grants the final exclusion, Bekaert must do the following: (i) Collect and analyze composites of the dewatered WWTP sludge. (ii) Make two composites of representative grab samples (according to SW 846 methodologies) collected. (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1. (iv) Sixty (60) days after this exclusion becomes final, report to EPA the operational and analytical test data, including quality control information. (B) Subsequent Verification Testing: Following written notification by EPA, Bekaert may substitute the testing conditions in (3)(B) for (3)(A). Bekaert must continue to monitor operating conditions, and analyze representative samples (according to SW 846 methodologies) each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. (4) Changes in Operating Conditions: If Bekaert significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify EPA in writing; they may no longer handle the waste generated from the new process as nonhazardous until the waste meets the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA. (5) Data Submittals: Bekaert must submit the information described below. If Bekaert fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Bekaert must: (A) Submit the data obtained through Paragraph 3 to the Region 4 RCRA Enforcement & Compliance, U.S. EPA, 61 Forsyth St SW, Atlanta, Georgia 30303 8909, within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Tennessee request them for inspection. (D) A company official having supervisory responsibility should send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener (A) If, anytime after disposal of the delisted waste, Bekaert possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Bekaert must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Bekaert fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) Notification Requirements: Bekaert must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.
*	*	* * * * *

[FR Doc. 03–13568 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Final Rule; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations for mining claims under the General Mining Laws published in the **Federal Register** on November 21, 2000 (65 FR 69998).

DATE: Effective on January 20, 2001.

FOR FURTHER INFORMATION CONTACT: You may contact Michael Schwartz on (202) 452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Schwartz through the Federal Information Relay Service on 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Need for Correction

The regulations as published contain a nonexistent cross reference section which may confuse or mislead the public.

In § 3809.202(d), we have a cross reference to a nonexistent § 3809.800(c) which could mislead or confuse the public. Therefore, we are changing the cross reference from § 3809.800(c) to § 3809.802.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public Lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: May 21, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, 43 CFR part 3800 is corrected by making the following correcting amendment:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

■ 1. The authority citation for part 3800 continues to read as follows:

Authority: 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21A, 22 *et seq.*, 36, 621 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

■ 2. Revise § 3809.202(d) to read as follows:

§ 3809.202 Under what conditions will BLM defer to State regulation of operations?

* * * * *

(d) Appeal of State Director decision. The BLM State Director's decision will be a final decision of BLM and may be appealed to the Assistant Secretary for Land and Minerals Management, but not to the Department of the Interior Office of Hearings and Appeals. The items you should include in the appeal are the same as the items you must include under § 3809.802.

[FR Doc. 03–13677 Filed 5–30–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7809]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and local jurisdiction	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Plattsburgh, City of, Clinton County.	360168	April 12, 1973, Emerg.; April 17, 1978, Reg.; June 3, 2003, Susp.	June 3, 2003.	June 3, 2003.
Plattsburgh, Town of, Clinton County ...	360169	May 25, 1973, Emerg.; September 28, 1979, Reg.; June 3, 2003, Susp.	..... do*	Do.
Region IV				
North Carolina: Laurinburg, City of, Scotland County.	370222	February 14, 1975, Emerg.; January 3, 1986, Reg.; June 17, 2003, Susp.	June 17, 2003	June 17, 2003.
Scotland County, Unincorporated Areas.	370316	July 30, 1975, Emerg.; December 16, 1988, Reg.; June 17, 2003, Susp.	.....do	Do.
Region V				
Wisconsin: Belleville, Village of, Dane County.	550159	July 15, 1975, Emerg.; November 19, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Black Earth, Village of, Dane County ...	550079	August 7, 1975, Emerg.; January 2, 1981, Reg.; June 17, 2003, Susp.	.....do	Do.
Cambridge, Village of, Dane County	550080	November 28, 1975, Emerg.; June 4, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Cottage Grove, Village of, Dane County.	550617	July 11, 2000, Emerg.; June 17, 2003, Reg.; June 17, 2003, Susp.	.....do	Do.
Cross Plains, Village of, Dane County	550081	June 16, 1975, Emerg.; February 16, 1983, Reg.; June 17, 2003, Susp.	.....do	Do.
Dane County, Unincorporated Areas ...	550077	October 20, 1972, Emerg.; September 29, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
De Forest, Village of, Dane County	550082	April 16, 1975, Emerg.; September 1, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
Fitchburg, City of, Dane County	550610	August 23, 2001. Reg.; June 17, 2003, Susp.	.....do	Do.
Madison, City of, Dane County	550083	July 17, 1975, Emerg.; September 30, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Marshall, Village of, Dane County	550084	July 15, 1975, Emerg.; December 16, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Mazomanie, Village of, Dane County ...	550085	July 29, 1975, Emerg.; December 1, 1981, Reg.; June 17, 2003, Susp.	.....do	Do.
McFarland, Village of, Dane County	550086	April 17, 1975, Emerg.; June 15, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
Middleton, City of, Dane County	550087	June 27, 1974, Emerg.; May 1, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Monona, City of, Dane County	550088	March 25, 1975, Emerg.; June 15, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
Oregon, Village of, Dane County	550089	May 28, 1974, Emerg.; September 30, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Stoughton, City of, Dane County	550091	April 15, 1975, Emerg.; June 15, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
Sun Prairie, City of, Dane County	550573	December 11, 1995, Reg.; June 17, 2003, Susp.	.....do	Do.
Verona, City of, Dane County	550092	June 24, 1975, Emerg.; August 1, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.
Waunakee, Village of, Dane County	550093	May 29, 1975, Emerg.; May 1, 1978, Reg.; June 17, 2003, Susp.	.....do	Do.
Region VIII				
Colorado: Wheat Ridge, City of, Jefferson County.	085079	April 16, 1971, Emerg.; May 26, 1972, Reg.; June 17, 2003, Susp.	.....do	Do.
Wyoming: Lincoln County, Unincorporated Areas.	560032	June 23, 1978, Emerg.; February 15, 1980, Reg.; June 17, 2003, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13632 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local 2 circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: New Haven (FEMA Docket No. D–7531).	City of Milford	Oct. 9, 2002, Oct. 16, 2002, *New Haven Register*.	The Honorable James L. Richetelli, Mayor of the City of Milford, City Hall, 110 River Street, Milford, Connecticut 06460.	Jan. 15, 2003	090082 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland: Frederick (FEMA Docket No. D–7535).	City of Frederick	Oct. 18, 2002, Oct. 25, 2002, *Frederick News Post*.	The Honorable Jennifer P. Dougherty, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	Jan. 24, 2003	240030 B
North Carolina: Buncombe (FEMA Docket No. D–7531).	City of Ashville	Oct. 9, 2002, Oct. 16, 2002, *The Asheville Citizen-Times*.	The Honorable Charlie Worley, Mayor of the City of Asheville, P.O. Box 7148, Asheville, North Carolina 28802.	Jan. 15, 2003	370032 C
Pennsylvania:					
Allegheny (FEMA Docket No. D–7531).	Township of Moon.	Oct. 9, 2002, Oct. 16, 2002 *Moon Record Star*.	Mr. Gregory S. Smith, Manager of Moon Township, 1000 Beaver Grade Road, Moon, Pennsylvania 15108.	Jan. 14, 2003	421082 E
Allegheny (FEMA Docket No. D–7531).	Township of North Fayette.	Oct. 9, 2002, Oct. 16, 2002, *Moon Record Star*.	Mr. Robert T. Grimm, Manager of the Township of North Fayette, 400 North Branch Road, Oakdale, Pennsylvania 15071.	Jan. 14, 2003	421085 E
Allegheny (FEMA Docket No. D–7531).	Township of Robinson.	Oct. 9, 2002, Oct. 16, 2002, *Suburban Gazette*.	Mr. William L. Blumling, Chairman of the Board of Commissioners, Township of Robinson, 1000 Church Hill Road, Pittsburgh, Pennsylvania 15205.	Jan. 14, 2003	421097 E
Tennessee: Shelby (FEMA Docket No. D–7531).	City of Memphis ..	Oct. 15, 2002, Oct. 22, 2002, *The Commercial Appeal*.	The Honorable Willie W. Herenton, Ph.D., Mayor of the City of Memphis, City Hall, 125 North Main Street, Suite 700, Memphis, Tennessee 38103.	Jan. 22, 2003	470177 E
Virginia:					
Fauquier (FEMA Docket No. D–7533).	Unincorporated Areas.	Nov. 7, 2002, Nov. 14, 2002, *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	Feb. 13, 2003	510055 A
Independent City (FEMA Docket No. D–7531).	City of Winchester.	Sept. 23, 2002, Sept. 30, 2002, *Winchester Star*.	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	Dec. 30, 2002	510173 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13643 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7539]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Houston	City of Dothan	Mar. 14, 2003, Mar. 21, 2003, *The Dothan Eagle*.	The Honorable Chester L. Sowell III, Mayor of the City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.	June 20, 2003	010104 E
Colbert	City of Muscle Shoals.	Apr. 7, 2003, Apr. 14, 2003, *Times Daily*.	The Honorable David H. Bradford, Mayor of the City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, Alabama 35662.	Mar. 28, 2003	010047 C
Connecticut:					
Fairfield	Town of Greenwich.	Apr. 9, 2003, Apr. 16, 2003, *Greenwich Time*.	Mr. Richard Bergstresser, Town of Greenwich First Selectman, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	Apr. 1, 2003	090008 C
New Haven	City of West Haven.	Apr. 4, 2003, Apr. 11, 2003, *New Haven Register*.	The Honorable H. Richard Borer, Jr., Mayor of the City of West Haven, West Haven City Hall, 355 Main Street, West Haven, Connecticut 06516.	July 11, 2003	090092 C
Delaware: New Castle.	Unincorporated areas.	Mar. 3, 2003, Mar. 10, 2003, *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	Feb. 21, 2003	105085 G
Florida:					
Volusia	City of Daytona Beach.	Mar. 28, 2003, Apr. 4, 2003, *Daytona Beach News-Journal*.	The Honorable Baron Asher, Mayor of the City of Daytona Beach, P.O. Box 2451, Daytona Beach, Florida 32115.	Mar. 20, 2003	125099 G
Duval	City of Jacksonville.	Apr. 16, 2003, Apr. 23, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	Apr. 4, 2003	120077 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Duval	City of Jacksonville.	Mar. 3, 2003, Mar. 10, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	June 9, 2003	120077 E
Duval	City of Jacksonville.	Mar. 5, 2003, Mar. 12, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	Feb. 25, 2003	120077 E
Manatee	Unincorporated Areas.	Feb. 28, 2003, Mar. 7, 2003, *Bradenton Herald*.	Mr. Ernie Padgett, Manatee County Administrator, 1112 Manatee Avenue West, P.O. Box 1000, Bradenton, Florida 34206.	Feb. 20, 2003	120153 C
Polk	City of Lakeland	Apr. 18, 2003, Apr. 25, 2003, *The Ledger*.	The Honorable Ralph Fletcher, Mayor of the City of Lakeland, Lakeland City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.	Apr. 10, 2003	120267 F
Orange	Unincorporated areas.	Mar. 5, 2003, Mar. 12, 2003, *Orlando Sentinel*.	M. Krishnamurthy, Ph.D., P.E., Orange County Stormwater Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Feb. 25, 2003	120179 E
Broward	City of Parkland	Apr. 10, 2003, Apr. 17, 2003, *The Sun-Sentinel*.	The Honorable Sal Pagliara, Mayor of the City of Parkland, 6600 University Boulevard, Parkland, Florida 33067.	July 17, 2003	120051 F
Pinellas	Unincorporated areas.	Feb. 27, 2003, Mar. 6, 2003, *St. Petersburg Times*.	Mr. Stephen Spratt, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 33756.	Feb. 19, 2003	125139 E
Polk	Unincorporated areas.	Apr. 10, 2003, Apr. 17, 2003, *The Ledger*.	Mr. Jim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	July 17, 2003	120261 F
Georgia:					
Gwinnett	Unincorporated areas.	Mar. 6, 2003, Mar. 13, 2003, *Gwinnett Daily Post*.	Mr. F. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Feb. 21, 2003	130322 E
Jackson	Unincorporated areas.	Apr. 23, 2003, Apr. 30, 2003, *The Jackson Herald*.	Mr. Al Grace, Jackson County Manager, 67 Athens Street, Jefferson, Georgia 30549.	Apr. 10, 2003	130345 A
Jackson	City of Jefferson	Apr. 23, 2003, Apr. 30, 2003, *The Jackson Herald*.	The Honorable Jim Joiner, Mayor of the City of Jefferson, 147 Athens Street, Jefferson, Georgia 30549.	Apr. 10, 2003	130112 B
Indiana:					
Allen	Unincorporated areas.	Feb. 28, 2003, Mar. 7, 2003, *The Journal Gazette*.	Ms. Marla Irving, President of the Allen County Board of Commissioners, 1 East Main Street, Room 200, Fort Wayne, Indiana 46802.	Mar. 22, 2003	180302 D
Hamilton	City of Carmel	Apr. 21, 2003, Apr. 28, 2003, *The Indianapolis Star*.	The Honorable James Brainard, Mayor of the City of Carmel, One Civic Square, Carmel, Indiana 46032.	July 28, 2003	180081 F
Allen	City of New Haven	Feb. 25, 2003, Mar. 4, 2003, *Fort Wayne Journal Gazette*.	The Honorable Terry E. McDonald, Mayor of the City of New Haven, P.O. Box 570, City Administration Building, New Haven, Indiana 46774.	February 19, 2003	180004 D
Kentucky: Jefferson.	City of Jeffersontown.	Mar. 26, 2003, Apr. 2, 2003, *The Courier-Journal*.	The Honorable Clay S. Foreman, Mayor of the City of Jeffersontown, 10416 Waterson Trail, Jeffersontown, Kentucky 40299.	July 2, 2003	210121 D
Maine:					
Hancock	Town of Bar Harbor.	Apr. 17, 2003, Apr. 24, 2003, *Bar Harbor News*.	Ms. Dana Reed, Bar Harbor Town Manager, 93 Cottage Street, Bar Harbor, Maine 04609.	Apr. 4, 2003	230064 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lincoln	Town of South Bristol.	Mar. 13, 2003, Mar. 5, 2003, *Lincoln County Weekly*.	Mr. Donald G. Stanley, Jr., Town of South Bristol Selectman, South Bristol Town Hall, 470 Clarks Cove Road, Walpole, Maine 04753–3315.	Mar. 5, 2003	230220 B
Cumberland	Town of Standish	Mar. 5, 2003, Mar. 12, 2003, *Portland Press Herald*.	Mr. Gordon Billington, Manager of the Town of Standish, Standish Town Office, 175 Northeast Road, Standish, Maine 04084.	Feb. 25, 2003	230207 D
Massachusetts: Plymouth.	Town of Plymouth	Apr. 9, 2003, Apr. 16, 2003, *Old Colony Memorial*.	Ms. Eleanor Beth, Plymouth Town Manager, Plymouth Town Hall, 11 Lincoln Street, Plymouth, Massachusetts 02360.	Apr. 1, 2003	250278 C
Michigan: Kent	Township of Plainfield.	Apr. 18, 2003, Apr. 25, 2003, *The Grand Rapids Press*.	Mr. David Groenleer, Township of Plainfield Supervisor, 616 Belmont Avenue, NE., Belmont, Michigan 49306.	Apr. 8, 2003	260109 B
Mississippi:					
DeSoto	City of Olive Branch.	Mar. 26, 2003, Apr. 2, 2003, *The DeSoto County Tribune*.	The Honorable Samuel P. Rickard, Mayor of the City of Olive Branch, City Hall, 9189 East Pigeon Roost Avenue, Olive Branch, Mississippi 38654.	Mar. 19, 2003	280286 E
Pearl River	Unincorporated areas.	Apr. 10, 2003, Apr. 17, 2003, *The Poplarville Democrat*.	Mr. Charles Ray Perry, President of the Pearl River County Board of Supervisors, 200 Courthouse, P.O. Box 569, Poplarville, Mississippi 39470.	Apr. 2, 2003	280129 D
New Hampshire: Strafford.	City of Somersworth.	Mar. 5, 2003, *Foster's Daily Democrat*.	The Honorable James M. McLin, Mayor of the City of Somersworth, Somersworth City Hall, 1 Government Way, Somersworth, New Hampshire 03878.	Apr. 4, 2003	330151 B
North Carolina:					
Dare	Unincorporated areas.	Mar. 4, 2003, Mar. 11, 2003, *The Coastland Times*.	Mr. Warren Judge, Chairman, Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	Feb. 21, 2003	375348 E
Durham	City of Durham	Apr. 4, 2003, Apr. 11, 2003, *The Herald-Sun*.	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	July 11, 2003	370086 G
Durham	City of Durham	Feb. 27, 2003, Mar. 6, 2003, *The Herald-Sun*.	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	Mar. 21, 2003	370086 G
Durham	Unincorporated areas.	Apr. 4, 2003, Apr. 11, 2003, *The Herald-Sun*.	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	July 11, 2003	370085 G
Pennsylvania:					
Montgomery	Borough of Hatboro.	Mar. 31, 2003, Apr. 7, 2003, *The Intelligencer*.	Mr. Joseph F. Pantano, Borough of Hatboro Manager, 414 South York Road, Hatboro, Pennsylvania 19040.	July 7, 2003	420697 D
Huntingdon	Borough of Huntingdon.	Mar. 17, 2003, *The Daily News*.	Mr. Daniel L. Varner, Borough of Huntingdon Manager, P.O. Box 592, 530 Washington Street, Huntingdon, Pennsylvania 16652–0592.	Mar. 7, 2003	420486 C
Huntingdon	Township of Smithfield.	Mar. 17, 2003, *The Daily News*.	Mr. Wayne W. Mateer, Chairman of the Township of Smithfield, Board of Supervisors, Mount Vernon Avenue and 13th Street, Huntingdon, Pennsylvania 16652–0592.	Mar. 7, 2003	420494 C
York	Township of York.	Mar. 14, 2003, Mar. 21, 2003, *The York Daily Record, The York Dispatch*.	Mr. Philip W. Briddell, President of the Township of York, Board of Commissioners, 25 Oak Street, York, Pennsylvania 17402–4931.	Feb. 26, 2003	421032 B
Puerto Rico	Commonwealth	Apr. 25, 2003, May 2, 2003, *The San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902–0082.	Aug. 1, 2003	720000 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
South Carolina: Berkeley.	City of Goose Creek.	Mar. 28, 2003, Apr. 4, 2003, *Post & Courier*.	The Honorable Michael J. Heitzler, Mayor of the City of Goose Creek, P.O. Drawer 1768, Goose Creek, South Carolina 29445.	July 4, 2003	450206 C
Tennessee: Lawrence.	Unincorporated Areas.	Mar. 25, 2003, Apr. 1, 2003, *The Democrat-Union*.	Ms. Ametra Bailey, Lawrence County Executive, 240 West Gaines Street, NBU–1, Lawrenceburg, Tennessee 38464.	July 1, 2003	470354 B
Virginia:					
Independent City.	City of Colonial Heights.	Apr. 4, 2003, Apr. 11, 2003, *Progress Index*.	Mr. Robert Lee Taylor, City of Colonial Heights Manager, P.O. Box 3401, Colonial Heights, Virginia 23834.	Mar. 25, 2003	510039 C
Independent City.	City of Petersburg	Apr. 4, 2003, Apr. 11, 2003, *Progress Index*.	Mr. B. David Canada, City of Petersburg Manager, 135 North Union Street, Petersburg, Virginia 23803.	Mar. 25, 2003	510112 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13642 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
FLORIDA	
Belleair (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 1,100 feet northwest of the intersection of Corbett Street and Druid Road	•105
Approximately 300 feet south of the intersection of Bellevue Boulevard and Druid Road	•12
Maps available for inspection at the Belleair Town Hall, 901 Ponce De Leon Boulevard, Belleair, Florida.	
Belleair Beach (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of Donato Drive and Altea Drive	•11
Approximately 300 feet west of the intersection of Harrison Avenue and Gulf Boulevard	•15
Maps available for inspection at the Belleair Beach City Hall, 444 Causeway Boulevard, Belleair Beach, Florida.	
Belleair Bluffs (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 300 feet west of the intersection of Renatta Drive and Bluff View Drive	•12
Approximately 1,700 feet west of the intersection of Lentz Road and Los Galos Drive	•14
Maps available for inspection at the Belleair Bluffs City Hall, 2747 Sunset Boulevard, Belleair Bluffs, Florida.	
Belleair Shore (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 300 feet west of the intersection of 13th Street and Gulf Boulevard	•15
Approximately 50 feet west of the intersection of 1st Street and Gulf Boulevard	•12
Maps available for inspection at the Belleair Shore Town Hall, 1200 Gulf Boulevard, Belleair Shore, Florida.	
Clearwater (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of Fulton Avenue and Harbor Drive	•11
Approximately 0.4 mile northwest of intersection of Bay Esplanade and Eldorado Avenue	•17
Joe's Creek:	
Approximately 500 feet downstream of 49th Street North	•24
Downstream side of 49th Street North	•25
Maps available for inspection at the City of Clearwater Public Works Administration Building, 100 South Myrtle Avenue, Clearwater, Florida.	
Collier County (Unincorporated Areas) (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 300 feet west of the intersection of Commerce Street and Gulf Shore Drive	•18
At the intersection of Seagull Avenue and Vanderbilt Drive	•13
Approximately 800 feet southwest of the intersection of Glendale Avenue and Venetian Way	•13
At the intersection of Guava Drive and Coconut Circle South	•6
Maps available for inspection at the Collier County Administrative Building, 3301 Tamiami Trail, Naples, Florida.	
Dunedin (City), Pinellas County (FEMA Docket No. D–7524)	
Curlew Creek:	
At confluence with Intracoastal Waterway	•17
Approximately 0.34 mile upstream of County Road 1	•25
Jerry Branch:	
At confluence with Curlew Creek	•25
Approximately 0.4 mile upstream of Main Street	•47
Gulf of Mexico:	
Approximately 1.0 mile northwest of the intersection of Edinburgh Drive and Causeway Boulevard	•17
Approximately 300 feet west of the intersection of Douglas Avenue and Lyndhurst Street	•11
Maps available for inspection at the City of Dunedin Engineering Department, 737 Louden Avenue, Dunedin, Florida.	
Everglades (City), Collier County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of Jasmine Street and Storter Avenue	•8
At the intersection of Evergreen Street and Copeland Avenue	•7
At end of Airport Road, where it meets Everglade Airport	•10
At intersection of Begonia Street and Buckner Avenue	•7
Maps available for inspection at the Everglades City Hall, 102 Broadway, Everglades, Florida.	
Gulfport (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico Boca Ciega Bay:	
Approximately 1,500 feet southeast of the intersection of Seabreeze Drive and Seabird Road	•15
At the intersection of Pompano Place and Dolphin Boulevard East	•12
Maps available for inspection at the City of Gulfport Public Services Department, 5330 23rd Avenue South, Gulfport, Florida.	
Indian Rocks Beach (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 200 feet west of the intersection of Gulf Boulevard and 27th Avenue	•12
At the intersection of 20th Avenue and Bay Boulevard	•10
Maps available for inspection at the Indian Rocks Beach City Hall, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.	
Indian Shores (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 200 feet east of the intersection of 200th Avenue and Gulf Boulevard	•12

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 250 feet west of the intersection of 199th Avenue and Gulf Boulevard	•13
Maps available for inspection at the Indian Shores Town Hall, 19305 Gulf Boulevard, Indian Shores, Florida.	
Kenneth City (Town), Pinellas County (FEMA Docket No. D–7524)	
Joe's Creek:	
Upstream side of 66th Street	•15
Approximately 23 miles upstream of 58th Street	•21
Maps available for inspection at the Kenneth City Town Hall, 6000 54th Avenue, North, Kenneth City, Florida.	
Largo (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of Indian Rocks Road and Dryer Avenue	•10
Approximately 1,200 feet northwest of the intersection of Indian Rocks Road and Kent Drive	•12
Maps available for inspection at the Largo City Hall, 201 Highland Avenue, Largo, Florida.	
Madeira Beach (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 100 feet east of the intersection of 154th Avenue and Second Street East	•11
Approximately 600 feet southwest of the intersection of 132nd Avenue and Gulf Boulevard	•17
Maps available for inspection at the Madeira Beach Building Department, 300 Municipal Drive, Madeira Beach, Florida.	
Marco Island (City), Collier County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At intersection of Crescent Street and Thrush Court	•8
At the intersection of Honduras Avenue and Stillwater Court	•7
Approximately 2,000 feet west of the intersection of Huron Court and Swallow Avenue	•10
Approximately 900 feet southwest of intersection of South Barfield Drive and Heights Court	•16
Maps available for inspection at the Marco Island City Hall, 50 Bald Eagle Drive, Marco Island, Florida.	
Naples (City), Collier County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 600 feet west of intersection of Yucca Road and Gulf Shore Boulevard North	•16
At the intersection of Gordon Drive and Champney Bay Court	•13
At the intersection of Yucca Road and Banyan Boulevard	•10
Maps available for inspection at the Naples City Hall, 735 8th Street South, Naples, Florida.	
North Redington Beach (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of Rosa Lee Way and 173rd Avenue	•10
Approximately 450 feet west of the intersection of 173rd Avenue and Gulf Boulevard	•16
Maps available for inspection at the North Redington Beach Town Hall, 190 173rd Avenue, North Redington Beach, Florida.	
Pinellas County (Unincorporated Areas) (FEMA Docket No. D–7524)	
Brooker Creek Tributary A:	
At East Lake Road	•6
Approximately 0.42 mile upstream of Ridgemoor Boulevard	•16
Brooker Creek Tributary B:	
At confluence with Brooker Creek Tributary A	•8
At Eastlake Woodlands Parkway	•9
Joe's Creek Tributary No. 4:	
At confluence with Joe's Creek	•10
Approximately 0.25 mile upstream of 53rd Street	•17
Joe's Creek Tributary No. 5:	
At 74th Avenue (Park Boulevard)	•10
Approximately 0.26 mile upstream of Park Boulevard	•10
Miles Creek:	
At confluence with Joe's Creek	•13
Approximately 700 feet downstream of 38th Avenue	•13
Hollin Creek Tributary A:	
Approximately 0.06 mile downstream of Old East Lake Road	•9
Approximately 0.29 mile upstream of Crescent Oaks Boulevard	•22
Hollin Creek Tributary A–2:	
At confluence with Hollin Creek Tributary A	•19
At Dirt Road	•19
Hollin Creek Tributary B:	
At confluence with Hollin Creek Tributary A	•12
At Trinity Boulevard	•21
Jerry Branch:	
At Brady Drive	•25
At the weir on north end of Indigo Drive	•47
Joe's Creek:	
Approximately 1,250 feet downstream of 54th Avenue North	•10
At 28th Street North	•45
Curlew Creek:	
Approximately 0.7 mile upstream of Pinellas Trail	•12
Approximately 750 feet upstream of County Road 1/ Palm Harbor Road	•21
Gulf of Mexico/Boca Ciega Bay:	
At the intersection of Gulfwinds Drive West and Crosswinds Drive	•12
Approximately 300 feet southwest of the intersection of Curlew Place and Florida Avenue	•18
Maps available for inspection at the Pinellas County Building Department, 310 Court Street, Clearwater, Florida.	
Pinellas Park (City), Pinellas County (FEMA Docket No. D–7524)	
Joe's Creek Tributary No. 4:	
At 62nd Avenue North	•14
Approximately 0.25 mile upstream of 53rd Street North	•17
Joe's Creek Tributary No. 5:	
Approximately 0.26 mile upstream of Park Boulevard	•10
Approximately 0.02 mile upstream of 61st Street North	•16
Maps available for inspection at the Pinellas Park City Hall, 5141 78th Avenue, Pinellas Park, Florida.	
Redington Beach (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of East 3rd Street and Redington Drive	•11
Approximately 500 feet west of the intersection of Gulf Boulevard and 164th Avenue	•16

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Maps available for inspection at the Redington Beach Town Hall, 105 164th Avenue, Redington Beach, Florida.	
Redington Shores (Town), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 100 feet north of the intersection of 1st Street and 182nd Avenue East	•10
Approximately 700 feet west of intersection of Gulf Boulevard and Coral Avenue	•16
Maps available for inspection at the Redington Shores Town Hall, 17425 Gulf Boulevard, Redington Shores, Florida.	
Seminole (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico/Boca Ciega Bay:	
Approximately 1,150 feet east of the intersection of 94th Street and 46th Avenue North	•11
Approximately 400 feet southeast of the intersection of Woodlawn Drive and Seminole Boulevard	•13
Maps available for inspection at the City of Seminole Technical Services Department, 7464 Ridge Road, Seminole, Florida.	
South Pasadena (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico/Boca Ciega Bay:	
At the intersection of Gulfport Boulevard and Pasadena Avenue	•12
Approximately 500 feet west of the intersection of Sunset Drive and Bignonia Way	•13
Maps available for inspection at the South Pasadena City Hall, 7047 Sunset Drive South, South Pasadena, Florida.	
St. Augustine Beach (City), St. Johns County (FEMA Docket No. D–7532)	
Atlantic Ocean:	
Approximately 600 feet east of 16th Street and A1A Beach Boulevard	*17
Approximately 600 feet southeast of A1A and Pope Road	*13
Approximately 600 feet northeast of 16th Street and A1A Beach Boulevard	#1
Maps available for inspection at the St. Augustine City Hall, 2200 A1A South, St. Augustine Beach, Florida.	
St. Johns County (Unincorporated Areas) (FEMA Docket No. D–7532)	
Flora Branch:	
At the upstream side of Race Track Road	*6
Approximately 3,160 feet upstream of Flora Branch Boulevard	*17
Kendall Creek:	
Approximately 4,700 feet upstream of confluence with St. Johns River	*10
Approximately 1,000 feet upstream of Roberts Road	*25
Cunningham Creek:	
Approximately 4,500 feet upstream of confluence with St. Johns River	*7
Approximately 2 miles upstream of Flora Branch Boulevard	*21
Kentucky Branch:	
Approximately 1,000 feet upstream of State Road 13	*6
Approximately 4,400 feet upstream of confluence with Kentucky Branch Tributary	*24
Kentucky Branch Tributary:	
At confluence with Kentucky Branch	*7
At upstream side of Greenbriar Road	*18
Moultrie Creek:	
At the upstream side of U.S. Route 1	*8
At downstream side of Route 214	*31
Moultrie Creek Tributary No. 1:	
Approximately 1,200 feet upstream of confluence with Moultrie Creek	*8
Approximately 80 feet upstream of Lewis Point Road	*26
Moultrie Creek Tributary No. 3:	
At confluence with Moultrie Creek	*8
Approximately 200 feet upstream of Willow Walk Place	*22
Moultrie Creek Tributary No. 4:	
At confluence with Moultrie Creek	*8
Approximately 80 feet upstream of State Route 207	*37
Orange Grove Branch:	
Approximately 600 feet upstream of State Road 13N	*14
Approximately 1.8 miles upstream of State Road 13N	*25
Petty Branch:	
Approximately 200 feet downstream of State Road 13	*6
Approximately 1.9 miles upstream of State Road 13	*27
St. Johns River Tributary No. 2:	
Approximately 300 feet downstream of State Road 13N	*6
At downstream side of Remington Forest Drive	*9
St. Johns River Tributary No. 1:	
Approximately 500 feet downstream of Grove Bluff Road	*7
Approximately 125 feet upstream of State Road 13N	*16
St. Johns River Tributary No. 5:	
Approximately 2,350 feet upstream of confluence with St. Johns River	*6
Approximately 0.7 mile upstream of State Road 13	*17
St. Johns River Tributary No. 3, Branch No. 1:	
Approximately 575 feet downstream of State Road 13	*6
Approximately 800 feet upstream of unnamed road	*21
St. Johns River Tributary No. 3, Branch No. 2:	
Approximately 75 feet upstream of confluence with St. Johns River Tributary No. 3, Branch No. 1	*14
Approximately 1,825 feet upstream of confluence with St. Johns River Tributary No. 3, Branch No. 1	*23
St. Johns River Tributary No. 4:	
Approximately 1,950 feet upstream of confluence with St. Johns River	*6
Approximately 0.6 mile upstream of State Road 13	*24
Sixmile Creek:	
Approximately 3.5 miles upstream of confluence with St. Johns River	*7
At confluence with Turnbull Creek	*15
Turnbull Creek:	
At confluence with Sixmile Creek	*15
At upstream side of Interstate 95	*29
Durbin Creek:	
At upstream side of Race Track Road	*12
Approximately 280 feet upstream of U.S. Highway 1	*15
Mill Creek No. 2:	
Approximately 1,600 feet upstream of confluence with Sixmile Creek	*6
Approximately 0.8 mile upstream of State Road 16	*26
Red House Branch:	
At confluence with San Sebastian River	*9
Approximately 100 feet upstream of Chicken Farm Road	*27
Atlantic Ocean:	
Approximately 800 feet east of intersection of Hildago Road and Costanero Road	*13

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 500 feet east of intersection of Country Route 210 and Ponte Vedra Boulevard	*17
Maps available for inspection at the St. Johns County Administration Building, Building Department, 4020 Lewis Speedway, St. Augustine, Florida.	
St. Pete Beach (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
At the intersection of 80th Way and Blind Pass Road	*12
Approximately 800 feet southwest of the intersection of 72nd Avenue and Sunset Avenue	*17
Maps available for inspection at the City of St. Pete Beach Planning and Development, 155 Cora Avenue, St. Pete Beach, Florida.	
St. Petersburg (City), Pinellas County (FEMA Docket No. D–7524)	
Miles Creek:	
Approximately 700 feet downstream of 38th Avenue	*13
Approximately 0.05 mile upstream of 22nd Avenue and 58th Street	*19
Gulf of Mexico/Boca Ciega Bay:	
Approximately 50 feet west of the intersection of Park Street and 24th Avenue North	•12
Approximately 200 feet southwest of the intersection of Sunset Drive North and 31st Terrace North	•15
Maps available for inspection at the City of St. Petersburg Municipal Services Center, Permit Division, One 4th Street North, St. Petersburg, Florida.	
Tarpon Springs (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 300 feet south of the intersection of Castleworks Lane and Coldstream Court	•12
Approximately 1,000 feet west of the intersection of Harbor Watch Circle and North Pointe Alexis Drive	•18
Maps available for inspection at the Tarpon Springs City Hall, Engineering Division, 324 East Pine Street, Tarpon Springs, Florida.	
Treasure Island (City), Pinellas County (FEMA Docket No. D–7524)	
Gulf of Mexico:	
Approximately 1,000 feet west of the intersection of Dolphin Drive and Paradise Boulevard	•12
Approximately 900 feet west of the intersection of 125th Avenue and Gulf Boulevard	•17
Maps available for inspection at the Treasure Island City Hall, Building Department, 120 108th Avenue, Treasure Island, Florida.	
ILLINOIS	
Monroe County (Unincorporated Areas) (FEMA Docket No. D–7546)	
Shallow Flooding Area:	
Approximately 500 feet west of the intersection of West Industrial Drive and Westwood Court	*408
Maps available for inspection at the Monroe County Zoning Office, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois.	
MASSACHUSETTS	
Scituate (Town), Plymouth County (FEMA Docket No. D–7528)	
Massachusetts Bay:	
Approximately 500 feet east of intersection of Crescent Avenue and Peggotty Beach Road	*27
Approximately 100 feet east of intersection of Wellesley Road and Jericho Road	*12
Approximately 500 feet east of intersection of Wampatuck Way and Turner Road	Depth 2′
Approximately 900 feet northeast of intersection of Circuit Avenue and Edward Foster Road	Depth 1′
At intersection of Baileys Causeway and Glades Road	Depth 2′
Maps available for inspection at the Scituate Town Hall, 600 Chief Justice Highway, Scituate, Massachusetts.	
MISSISSIPPI	
Monticello (Town), Lawrence County (FEMA Docket No. D–7548)	
Runnels Creek:	
At confluence with Pearl River	*192
Just downstream of Thomas E. Jolly Drive	*205
Runnels Creek Tributary A:	
At confluence with Runnels Creek	*201
Approximately 1,125 feet upstream of Graham Road	*204
Runnels Creek Tributary B:	
At confluence with Tributary A	*202
Just downstream of State Route 27	*214
Runnels Creek Tributary C:	
At confluence with Tributary B	*206
Just downstream of Thomas E. Jolly Drive	*212
Maps available for inspection at the Monticello Town Hall, 202 Jefferson Street, Monticello, Mississippi.	
Bernardsville (Borough), Somerset County (FEMA Docket No. D–7532)	
Indian Grave Brook:	
At confluence with Passaic River	*303
Approximately 475 feet upstream Washington Corner Road	*597
Tributary K:	
At confluence with Indian Grave Brook	*456
Approximately 1,672 feet upstream of Washington Corner Road	*565
Passaic River:	
At downstream corporate limit	*303
Approximately 4,940 feet above downstream corporate limits	*375
Mine Brook:	
Approximately 0.05 mile upstream Mill Street	*397
At dam	*436
Tributary MB:	
Approximately 40 feet upstream of confluence with Mine Brook	*416
Approximately 0.02 mile downstream Thompson Road bridge	*435
Maps available for inspection at the Bernardsville Borough Hall, Office of the Borough Clerk, 166 Mine Brook Road, Bernardsville, New Jersey.	
OHIO	
Gallia County (Unincorporated Areas) (FEMA Docket No. D–7556)	
Chickamauga Creek:	
At U.S. Route 35	*570
Approximately 1600 feet upstream of U.S. Route 35	*575
Tributary C:	
At confluence with Chickamauga Creek	*571
At Mitchell Extension	*600
Tributary D:	
At confluence with Tributary C	*573

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 100 feet upstream of confluence with Tributary C	*573
Maps available for inspection at the Gallia County Offices, 18 Locust Street, Gallipolis, Ohio.	
WISCONSIN	
Dane County (Unincorporated Areas) (FEMA Docket Nos. D–7504 and D–7556)	
Lake Koshkonong:	
Entire shoreline within community	*784
Koshkonong Creek:	
From approximately 0.7 mile downstream of North Jargo Road	*857
Approximately 0.4 mile downstream of Park Street	*931
Oregon Branch Badfish Creek:	
A point approximately 300 feet downstream of Jefferson Street	*937
Just downstream of Jefferson Street	*937
Nine Springs Creek:	
A point approximately 550 feet upstream of the confluence with the Yahara River	*848
A point approximately 0.33 mile upstream of the Soo Line Railroad	*848
Pheasant Branch:	
A point approximately 0.56 mile upstream of Century Avenue	*858
A point approximately 0.84 mile upstream of Century Avenue	*858
Upper Mud Lake:	
Entire shoreline of Upper Mud Lake within community	*848
Vermont Creek:	
Just upstream of the Soo Line Railroad	*810
A point approximately 0.02 mile upstream of County Highway KP	*814
Maps available for inspection at the Dane County City-County Building, Room 116, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13645 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

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The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
FLORIDA	
Polk County (FEMA Docket No. D–7554)	
Lake Myrtle No. 2:	
From the eastern shoreline to the confluence with Peace Creek Drainage Canal	*120
City of Lake Wales, Polk County (Unincorporated Areas)	
Polk County (Unincorporated Areas)	
Maps available for inspection at the County Engineer Division, 330 West Church Street, Bartow, Florida.	
City of Lake Wales	
Maps available for inspection at the Lake Wales City Administration Building, 201 West Central Avenue, Lake Wales, Florida.	
ILLINOIS	
St. Clair County (FEMA Docket No. D–7534)	
Silver Creek:	
Approximately 12,000 feet upstream of the confluence with Kaskaskia River	*396
Approximately 1.25 miles upstream of Lebanon Loyett Road	*451
St. Clair County (Unincorporated Areas), City of Mascoutah, City of Lebanon	
Hog River:	
At the confluence with Silver Creek	*418
Just upstream of Union Street	*418
St. Clair County (Unincorporated Areas), City of Mascoutah	
Loop Creek:	
At the confluence with Silver Creek	*418
Approximately 1.5 miles upstream of confluence with Silver Creek	*421
St. Clair County (Unincorporated Areas)	
Little Silver Creek:	
At the confluence with Silver Creek	*429
Approximately 1,500 feet upstream of confluence with Silver Creek	*432
St. Clair County (Unincorporated Areas)	
Ogles Creek:	
At the confluence with Silver Creek	*449
Approximately 265 feet upstream of Old Collinsville Road	*551
St. Clair County (Unincorporated Areas), City of Fairview Heights	
Wolf Branch:	
Approximately 1,700 feet upstream of confluence with Richland Creek	*500
Approximately 920 feet upstream of unnamed road	*538
St. Clair County (Unincorporated Areas), Village of Swansea	
Schoenberger Creek:	
Approximately at North 89th Street	*437
Approximately 1,500 feet upstream of State Route 161	*482
City of Belleville, City of Fairview Heights, City of East St. Louis	
Kaskaskia River:	
At downstream corporate limits of Village of New Athens	*395
Approximately 0.78 mile upstream of Illinois Central Railroad crossing	*396
Village of New Athens	
Ponding Areas:	
Between Illinois Terminal Railroad and Camp Jackson Road	*404
Approximately 20 feet south of the intersection of Fox Meadow Lane and Paris Avenue	*404
Village of Cahokia	
At intersection of Sterling Place and Bermuda Avenue	*422
At intersection of Countryside Drive and Acorde Drive	*422
North of Harding Ditch, west of Black Lane	*418
Approximately 1,000 feet northwest of intersection with Interstate Route 64 and State Route 157	*422
Village of Caseyville	
Between Interstate 255 and State Route 157	*411
Approximately 600 feet southeast of the intersection of Pocket Road and State Route 15 and Missouri Avenue	*411
Village of Alorton	
At the intersection of Lake Drive and East Side Levee and Sanitary Canal District	*414
At the intersection of Belleview Avenue and North 80th Street	*414
Approximately 1,000 feet west of the intersection of State Route 15 (New Missouri Avenue and Harding Ditch)	*411
City of Centreville	
Approximately 1,000 feet west of Collinsville Road	*403
Village of Fairmont City	
Approximately 700 feet east of the intersection of St. Clair Avenue and Louisville and Nashville Railroad	*417
Village of Washington Park	
Approximately 300 feet south of the intersection of St. Clair Avenue and Louisville and Nashville Railroad	*414
Approximately 500 feet north of the intersection of St. Clair Avenue and Louisville and Nashville Railroad	*414
Village of Washington Park, City of East St. Louis	
Approximately 500 feet northwest of intersection of Summit Avenue and Michigan Avenue	*414
Approximately 300 feet northeast of the intersection of Louisville and Nashville Railroad and Kings Highway (State Route 50)	*415
Approximately 400 feet east of intersection of Ohio Avenue and North 62nd Street	*414
Intersection of Marybelle Avenue and North 70th Street	*418
Approximately 500 feet southwest of intersection of State Street and Terrace Drive	*414
Approximately 600 feet south of intersection of St. Clair Avenue and North 47th Street	*414
City of East St. Louis	
North of Cahokia Canal, west of Madison Road, east of Industrial Avenue	*407
Approximately 1,000 feet west of the intersection of Collinsville Road and Cookson Road	*403
At intersection of Site Road and Park Road	*411
Approximately 400 feet east of intersection of Pocket Road and Site Road	*411
At intersection of Park Drive and Major Street	*418
Approximately 800 feet west of intersection of Stowers Road and Bernia Street	*421
St. Clair County (Unincorporated Areas)	
At intersection of Watts Street and Brinson Drive	*418
Approximately 0.5 mile east of intersection of Watts Street and Brinson Drive	*418

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
At intersection of Caseyville Road and Bunkum Road ...	*422
At intersection of North 82nd Street and Bunkum Road ..	*422
At intersection of Rock Springs Road and McKinley Avenue	*415
St. Clair County (Unincorporated Areas), Village of Washington Park	
North of Old Cahokia Canal and south of County Road boundary	*403
St. Clair County (Unincorporated Areas), Village of Fairmont	
Approximately 1,000 feet northeast of the intersection of Mullins Creek Road and Prairie du Pont Creek	*418
South of Cahokia Canal, north of CSX Transportation and southwest of Old Cahokia Canal	*403
Approximately 1,000 feet east of the intersection of Rock Springs Road and St. Clair Avenue	*415
Approximately 750 feet west of the intersection of Lake Drive and North 88th Street	*414
Approximately 400 feet south of the intersection of U.S. Route 255 County Route 3)	*404
St. Clair County (Unincorporated Areas)	
Ponding Areas (along Harding Ditch):	
Approximately 700 feet southeast of the intersection of State Route 157 and Carol Street	*411
St. Clair County (Unincorporated Areas)	
Village of Alorton:	
Maps available for inspection at the Alorton Village Hall, 4821 Bond Avenue, Alorton, Illinois.	
City of Belleville:	
Maps available for inspection at the Belleville Department of Economic Development & Planning, 101 South Illinois Street, Belleville, Illinois.	
Village of Cahokia:	
Maps available for inspection at the Cahokia Code Enforcement Department, 201 West 4th Street, Cahokia, Illinois.	
Village of Caseyville:	
Maps available for inspection at the Casesyville Village Hall, 10 West Morris Street, Caseyville, Illinois.	
City of Centreville:	
Maps available for inspection at the Centreville City Hall, 5800 Bond Avenue, Centreville, Illinois.	
City of East St. Louis:	
Maps available for inspection at the East St. Louis Municipal Building, 301 River Park Drive, East St. Louis, Illinois.	
Village of Fairmont City:	
Maps available for inspection at the Fairmont City Village Hall, 2601 North 41st Street, Fairmont City, Illinois.	
City of Fairview Heights:	
Maps available for inspection at the City of Fairview Heights Municipal Building, 10025 Bunkum Road, Fairview Heights, Illinois.	
City of Lebanon:	
Maps available for inspection at the Lebanon City Hall, 312 West St. Louis Street, Lebanon, Illinois.	
City of Mascoutah:	
Maps available for inspection at the Mascoutah City Hall, #3 West Main Street, Mascoutah, Illinois.	
Village of New Athens:	
Maps available for inspection at the New Athens Village Hall, 905 Spotsylvania Street, New Athens, Illinois.	
St. Clair County (Unincorporated Areas):	
Maps available for inspection at the St. Clair County Department of Building and Zoning, 10 Public Square, Belleville, Illinois.	
Village of Swansea:	
Maps available for inspection at the Swansea Government Center, 1400 North Illinois Street, Swansea, Illinois.	
Village of Washington Park:	
Maps available for inspection at the Washington Park Village Hall, 5218 North Park Drive, Washington Park, Illinois.	
NORTH CAROLINA	
Beaufort County (FEMA Docket Nos. D–7544 and D–7554)	
Acre Swamp:	
At the confluence with Pungo Swamp	•20
Approximately 0.6 mile upstream of confluence with Fork Swamp	•28
Beaufort County (Unincorporated Areas)	
Back Creek:	
Approximately 1.9 miles upstream of State Route 92 ..	•9
Approximately 3.0 miles upstream of State Route 92 ..	•10
Beaufort County (Unincorporated Areas)	
Bailey Creek:	
Approximately 1.1 mile upstream of State Route 306	•9
Approximately 150 feet upstream of railroad	•12
Beaufort County (Unincorporated Areas)	
Blounts Creek:	
At the upstream side of the railroad	•15
Approximately 1.7 miles upstream of the railroad	•23
Beaufort County (Unincorporated Areas)	
Broomfield Swamp Creek:	
Approximately 200 feet downstream of Broome Road	•7
Approximately 0.4 mile upstream of Broome Road	•11
Beaufort County (Unincorporated Areas), Town of Aurora	
Cypress Run:	
At the upstream side of Idalia Road	•10
Approximately 0.8 mile upstream of Idalia Road	•14
Beaufort County (Unincorporated Areas)	
Duck Creek:	
Approximately 0.4 mile upstream of Hawkins Beach Road	•9
Approximately 200 feet upstream of Camp Leach Road	•9
Beaufort County (Unincorporated Areas)	
Durham Creek:	
Approximately 1.2 miles downstream of Durham Creek Road	•8

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 0.8 mile upstream of Walker Road	• 37
Beaufort County (Unincorporated Areas)	
Durham Creek Tributary:	
At the confluence with Durham Creek	• 12
Approximately 50 feet downstream of Durham Creek Road	• 15
Beaufort County (Unincorporated Areas)	
Durham Creek Tributary 2:	
At the confluence with Durham Creek	• 21
Approximately 1,875 feet upstream of Fork Road	• 27
Beaufort County (Unincorporated Areas)	
Fork Swamp:	
At the confluence with Acre Swamp	• 28
Approximately 0.5 mile upstream of the railroad	• 35
Beaufort County (Unincorporated Areas)	
Gum Swamp Run East:	
Approximately 0.4 mile upstream of confluence with South Creek	• 7
Approximately 100 feet downstream of Bay City Road	• 9
Beaufort County (Unincorporated Areas)	
Harvey Creek:	
At the upstream side of Interstate Route 264	• 19
Approximately 1.0 mile upstream of Interstate Route 264	• 25
Beaufort County (Unincorporated Areas)	
Herring Run:	
Approximately 100 feet downstream of Herring Run Road	• 10
Approximately 1.0 mile upstream of Gore Point Road	• 17
Beaufort County (Unincorporated Areas)	
Porter Creek:	
Approximately 0.9 mile downstream of Louden Road	• 8
Approximately 100 feet downstream of Gray Road	• 16
Beaufort County (Unincorporated Areas)	
Poundpole Swamp Branch:	
At the confluence with Blounts Creek	• 15
Approximately 0.6 mile upstream of Little Egypt Road	• 33
Beaufort County (Unincorporated Areas)	
Pungo River Canal:	
Approximately 1.5 miles upstream of confluence with Pungo Lake Canal	• 7
Approximately 750 feet downstream of State Route 99	• 10
Beaufort County (Unincorporated Areas)	
Pungo Swamp:	
Approximately 0.5 mile upstream of Jones Bridge Road	• 12
Approximately 100 feet upstream of State Route 32	• 25
Beaufort County (Unincorporated Areas)	
Rowland Creek:	
Approximately 100 feet upstream of Post Road	• 9
Approximately 2,000 feet upstream of Jackson Swamp Road	• 11
Beaufort County (Unincorporated Areas)	
South Creek:	
Approximately 1,800 feet upstream of the confluence with Cypress Run	• 7
Approximately 2.7 miles upstream of the confluence with Cypress Run	• 15
Beaufort County (Unincorporated Areas)	
Tankard Creek:	
Approximately 100 feet upstream of Boyd Loop Road	• 13
Approximately 1.2 miles upstream of Boyd Loop Road	• 18
Upper Broad Creek:	
At the confluence with Durham Creek	• 26
At the County boundary	• 31
Beaufort County (Unincorporated Areas)	
Whitehurst Creek:	
Approximately 0.9 mile upstream of State Route 306	• 7
Approximately 0.5 mile upstream of Brantely Swamp Road	• 11
Beaufort County (Unincorporated Areas)	
Pamlico River/Pamlico Sound/ Atlantic Ocean:	
In the vicinity of the intersection of Austin Road and Cypress Swamp Road	• 7
Beaufort County (Unincorporated Areas)	
Atlantic Ocean/Pamlico Sound:	
At the intersection of 9th Street and Boston Avenue	• 10
City of Washington	
Bear Creek:	
At the upstream side of State Route 33	• 27
Approximately 650 feet downstream of Hodges Road	• 35
Beaufort County (Unincorporated Areas)	
Bear Grass Swamp:	
At the confluence with Tranters Creek	• 31
Approximately 1,000 feet upstream of the confluence with Turkey Swamp	• 31
Beaufort County (Unincorporated Areas)	
Beaverdam Swamp:	
Approximately 50 feet upstream of Slatestone Road	• 37
Approximately 1.0 mile upstream of Slatestone Road	• 46
Beaufort County (Unincorporated Areas)	
Big Swamp:	
Approximately 50 feet upstream of Market Street Ext.	• 31
Approximately 1,000 feet upstream of J and W Tram Road	• 44
Beaufort County (Unincorporated Areas)	
Broad Creek:	
At Broad Creek Road	• 10
Approximately 1.3 10 miles upstream of Broad Creek Road	• 10
Beaufort County (Unincorporated Areas)	
Broad Creek Tributary 1:	
At the upstream side of Lizard Slip Road	• 15
Approximately 1.4 miles upstream of Old Bath Highway	• 31
Beaufort County (Unincorporated Areas)	
Chicod Creek:	
Approximately 0.9 mile downstream of Dixon Road	• 31
At the confluence of Juniper Swamp	• 43
Beaufort County (Unincorporated Areas)	
Chocowinity Creek:	
Approximately 450 feet downstream of the confluence of Morris Run	• 22
Approximately 3.7 miles upstream of the confluence of Morris Run	• 40
Beaufort County (Unincorporated Areas)	
Cindy Edwards Branch:	
At the upstream side of State Route 33	• 17
Approximately 1.0 mile upstream of State Route 33	• 24
Beaufort County (Unincorporated Areas)	
Creeping Swamp:	
Approximately 0.7 mile downstream of State Route 102	• 36
At the County boundary	• 47
Beaufort County (Unincorporated Areas)	
Gum Swamp:	
At the upstream side of U.S. Interstate 17	• 38
Approximately 650 feet downstream of County boundary	• 42

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Beaufort County (Unincorporated Areas)	
Gum Swamp Run West:	
Approximately 300 feet upstream of the confluence with Morris Run	• 26
Approximately 1.5 miles upstream of the confluence with Morris Run	• 32
Beaufort County (Unincorporated Areas)	
Hall Swamp:	
Approximately 50 feet upstream of Slatestone Road	• 37
Approximately 150 feet downstream of Bluebird Lane	• 39
Beaufort County (Unincorporated Areas)	
Harding Swamp:	
At the confluence with Juniper Swamp	• 43
Approximately 0.7 mile upstream of the confluence of Juniper Swamp	• 47
Beaufort County (Unincorporated Areas)	
Hills Creek:	
At the downstream side of Gilead Shores Road	• 10
Approximately 0.8 mile upstream of Gilead Shores Road	• 13
Beaufort County (Unincorporated Areas)	
Horse Branch:	
At the confluence with White Branch	• 14
At Gray Road	• 18
Beaufort County (Unincorporated Areas)	
Horsepen Swamp:	
At the confluence with Tranters Creek	• 16
Approximately 1.4 miles upstream of Wards Bridge Road	• 40
Beaufort County (Unincorporated Areas)	
Joe Branch:	
At the upstream side of Possum Track Road	• 43
Approximately 1,500 feet upstream of Possum Track Road	• 45
Beaufort County (Unincorporated Areas)	
Maple Branch:	
At the upstream side of U.S. Highway 264	• 11
Approximately 0.6 mile upstream of Farm Path	• 21
Beaufort County (Unincorporated Areas), City of Washington	
Mitchell Branch:	
At U.S. Highway 264	• 14
Approximately 160 feet upstream of Cherry Run Road	• 21
Beaufort County (Unincorporated Areas), City of Washington	
Morris Run:	
At the confluence with Chocowinity Creek	• 22
Approximately 1.8 miles upstream of State Route 33	• 32
Beaufort County (Unincorporated Areas)	
Old Ford Swamp:	
Approximately 1,250 feet downstream of Calf Branch Road	• 26
Approximately 0.7 mile upstream of Calf Branch Road	• 36
Beaufort County (Unincorporated Areas)	
Pinelog Branch:	
At the confluence with Tranters Creek	• 29
Approximately 0.8 mile upstream of Cherry Run Road	• 30
Beaufort County (Unincorporated Areas)	
Pineygrove Branch:	
Approximately 100 feet upstream of Corsica Road	• 27
Approximately 2,000 feet upstream of Singleton Road	• 33
Beaufort County (Unincorporated Areas), City of Washington	
Snoad Branch:	
Approximately 600 feet downstream of Voa Road	• 19
Approximately 1.4 miles upstream of Voa Road	• 33
Beaufort County (Unincorporated Areas)	
Tranters Creek:	
Approximately 1,600 feet upstream of the confluence with Maple Branch	• 11
At the confluence of Bear Grass Swamp	• 31
Beaufort County (Unincorporated Areas)	
White Branch:	
At the confluence with Chocowinity Creek	• 12
At the downstream side of Gray Road	• 16
Beaufort County (Unincorporated Areas)	
Town of Aurora	
Maps available for inspection at the Aurora Town Hall, 295 Main Street, Aurora, North Carolina.	
Beaufort County (Unincorporated Areas)	
Maps available for inspection at the Beaufort County Building Inspection, 220 North Market Street, Washington, North Carolina.	
City of Washington	
Maps available for inspection at the City of Washington Building Inspection Department, 102 East Second Street, North Carolina.	
NORTH CAROLINA	
Carteret County (FEMA Docket No. D–7552)	
Cedar Swamp Creek:	
At the confluence with Newport River	• 9
Approximately 800 feet upstream of Forest Route #154	• 26
Town of Newport, Carteret County (Unincorporated Areas)	
Cypress Drain:	
At the confluence with Newport River	• 17
Approximately 1,400 feet upstream of Lake Road	• 21
Carteret County (Unincorporated Areas)	
Hadnot Creek:	
Approximately 350 feet upstream of Old Church Road	• 9
Approximately 2.0 miles upstream of Forest Route #176	• 33
Carteret County (Unincorporated Areas)	
Hadnot Creek Tributary:	
At the confluence with Hadnot Creek	•14
Approximately 1.3 miles upstream of confluence with Hadnot Creek	•30
Carteret County (Unincorporated Areas)	
Hunters Creek:	
At the confluence with White Oak River	•9
Approximately 750 feet upstream of confluence of Wolf Swamp	•24
Carteret County (Unincorporated Areas)	
Juniper Branch:	
At the confluence with Southwest Prong Newport River	•23
Approximately 0.4 mile upstream of Forest Route #177	•30
Carteret County (Unincorporated Areas)	
Main Prong:	
At the confluence with Black Creek	•9

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 2.0 miles upstream of confluence with Black Creek	•23
Carteret County (Unincorporated Areas)	
Newport River:	
At upstream side of Highway 70	•9
Approximately 800 feet upstream of confluence of Cypress Drain	•18
Town of Newport, Carteret County (Unincorporated Areas)	
Pettiford Creek:	
At the confluence with Pettiford Creek Bay	•7
Approximately 2.0 miles upstream of Millis Road	•35
Carteret County (Unincorporated Areas)	
Pettiford Creek Tributary 1:	
At the confluence with Pettiford Creek	•13
Approximately 1.8 miles upstream of confluence with Pettiford Creek	•26
Carteret County (Unincorporated Areas)	
Shoe Branch:	
At the confluence with Newport River	•10
Approximately 0.8 mile upstream of Tom Mann Road	•27
Town of Newport, Carteret County (Unincorporated Areas)	
Southwest Prong of Newport River:	
At the confluence with Newport River	•11
Approximately 1,050 feet upstream of confluence of Millis Swamp	•26
Town of Newport, Carteret County (Unincorporated Areas)	
Wolfse Swamp:	
At the confluence with Hunters Creek	•23
Approximately 430 feet upstream of Forest Route #174	•34
Town of Newport	
Maps available for inspection at the Newport Town Hall, 200 Howard Boulevard, Newport, North Carolina.	
Carteret County (Unincorporated Areas)	
Maps available for inspection at the Carteret County Planning and Inspection, Court House Square, Beaufort, North Carolina.	

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
NORTH CAROLINA	
Scotland County (Unincorporated Areas) (FEMA Docket No. D–7540)	
Beaverdam Creek:	
At the confluence with Juniper Creek	•246
Approximately 1.5 miles upstream of Nashville Church Road	•263
Scotland County (Unincorporated Areas)	
Big Branch:	
At the confluence with Bridge Creek	•155
Approximately 0.5 mile upstream of Interstate 74	•214
City of Laurinburg, Scotland County (Unincorporated Areas)	
Big Muddy Creek:	
At the confluence with the Lumber River	•266
At the County boundary	•311
Scotland County (Unincorporated Areas)	
Bridge Creek:	
At the confluence with Leith Creek	•146
Approximately 1,640 feet upstream of Andrew Jackson Highway/Interstate 74–Business	•229
City of Laurinburg, Scotland County (Unincorporated Areas)	
Crawford Branch:	
At the confluence with Gum Swamp Creek	• 242
Approximately 1.3 miles upstream of Crawford Lake Road	• 271
Scotland County (Unincorporated Areas)	
Crooked Creek:	
Approximately 700 feet downstream of the State boundary	• 225
Approximately 100 feet downstream of County Line Road	• 243
Scotland County (Unincorporated Areas)	
Gum Swamp Creek:	
At the confluence with Richmond Mill Lake/Gum Swamp Creek	• 210
Approximately 0.7 mile upstream of Gillis Road	• 223
Scotland County (Unincorporated Areas)	
Joes Creek:	
At the confluence with Gum Swamp Creek	• 178
Approximately 1,000 feet downstream of CSX Transportation	• 258
Scotland County (Unincorporated Areas)	
Joes Creek Tributary:	

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
At the confluence with Joes Creek	• 219
Approximately 100 feet downstream of Scotland County Line Road	• 261
Scotland County (Unincorporated Areas)	
Jordan Creek:	
At the confluence with Juniper Creek	• 192
Approximately 950 feet downstream of Timmons Road	• 300
Scotland County (Unincorporated Areas)	
Juniper Creek:	
At the confluence with Shoe Heel Creek	• 179
Approximately 1.8 miles upstream of Nashville Church Road	• 259
Scotland County (Unincorporated Areas)	
Juniper Creek Tributary 1:	
At the confluence with Juniper Creek	• 180
Approximately 750 feet upstream of Lee Lane	• 221
Scotland County (Unincorporated Areas)	
Leith Creek:	
At the County boundary	• 136
Approximately 1,500 feet upstream of Old Wire Road	• 248
Town of East Laurinburg, City of Laurinburg, Scotland County (Unincorporated Areas)	
Leith Creek Tributary 1:	
At the confluence with Leith Creek	• 137
Approximately 50 feet downstream of Pea Bridge Road	• 157
Scotland County (Unincorporated Areas)	
Leith Creek Tributary 2:	
At the confluence with Leith Creek	• 175
Approximately 325 feet downstream of Andrew Jackson Highway/Interstate 74-Business	• 189
Scotland County (Unincorporated Areas)	
Little Creek:	
At the confluence with Leith Creek	• 186
Approximately 125 feet downstream of Aberdeen Road/Interstate 501–15	• 233
City of Laurinburg, Scotland County (Unincorporated Areas)	
Little Juniper Creek:	
At the confluence with Juniper Creek	• 197
Approximately 280 feet upstream of Aberdeen Road/Interstate 501–15	• 256
Scotland County (Unincorporated Areas)	

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Little Juniper Creek Tributary:	
At the confluence with Little Juniper Creek	• 227
Approximately 0.7 mile upstream of Aberdeen Road/Interstate 501–15	• 264
Scotland County (Unincorporated Areas)	
Little Shoe Heel Creek:	
At the confluence with Shoe Heel Creek	• 213
Approximately 1.7 miles upstream of North Turnpike Road	• 331
Scotland County (Unincorporated Areas)	
Little Shoe Heel Creek Tributary:	
At the confluence with Little Shoe Heel Creek	• 223
Approximately 150 feet downstream of Arch McLean Road	• 257
Scotland County (Unincorporated Areas)	
Lower Beaverdam Creek:	
At the confluence with Gum Swamp Creek	•180
Approximately 1,900 feet upstream of Old Wire Road	•215
Scotland County (Unincorporated Areas)	
Lumber River:	
Approximately 3.0 miles upstream of McGirts Bridge Road	•205
At the County boundary	•268
Scotland County (Unincorporated Areas), Town of Wagram	
Shoe Heel Creek:	
Approximately 700 feet downstream of Old Maxton Road	•164
Approximately 1.6 miles upstream of Jane Shaw Road	•268
Scotland County (Unincorporated Areas)	
Steer Branch:	
At the confluence with Leith Creek	•144
Approximately 50 feet downstream of CSX Transportation	•169
Scotland County (Unincorporated Areas)	
Towers Fork:	
At the confluence with Big Muddy Creek	.....
Approximately 1.3 miles upstream of the confluence with Big Muddy Creek	.....
Scotland County (Unincorporated Areas)	
Upper Beaverdam Creek:	
At the confluence with Richmond Mill Lake/Gum Swamp Creek	•210
Approximately 800 feet upstream of Marston Road	•225
Scotland County (Unincorporated Areas)	
Water Creek:	
At the confluence with Gum Swamp Creek	•153
Approximately 1.4 miles upstream of Fox Crossings	•178
Scotland County (Unincorporated Areas)	
Maps available for inspection at the Scotland County Governmental Annexation Building, 231 East Cronly Street, Laurinburg, North Carolina.	
Town of East Laurinburg	
Maps available for inspection at the East Laurinburg Municipal Building, 28 Fourth Street, Laurinburg, North Carolina.	
City of Laurinburg	
Maps available for inspection at the Laurinburg City Hall, 305 West Church Street, Laurinburg, North Carolina.	
Town of Wagram	
Maps available for inspection at the Wagram Town Offices, 24341 Riverton Road, Wagram, North Carolina.	
OHIO	
Gallia County (FEMA Docket No. D–7518)	
Ohio River:	
Approximately 1.7 miles upstream of county boundary	•560
Approximately 3.2 miles downstream of county boundary	•572
Unincorporated Areas of Gallia County, Village of Crown City, City of Gallipolis, Village of Cheshire	
City of Gallipolis	
Maps available for inspection at the Gallipolis City Building, 518 Second Avenue, Gallipolis, Ohio.	
Village of Crown City	
Maps available for inspection at the Crown City Village Hall, 156 Charles Street, Crown City, Ohio.	
Village of Cheshire	
Maps available for inspection at the Cheshire Village Office, 1828 Eastern Avenue, Gallipolis, Ohio.	
Gallia County (Unincorporated Areas)	
Maps available for inspection at the Gallia County Offices, 18 Locust Street, Gallipolis, Ohio.	
SOUTH CAROLINA	
Berkeley County (FEMA Docket No. D–7540)	
Lake Marion:	
Entire shoreline within Berkeley County	•77
Berkeley County (Unincorporated Areas)	
Atlantic Ocean (Wambaw Creek):	
From confluence with South Santee River to Forest Road 204	•8
Berkeley County (Unincorporated Areas)	
Atlantic Ocean (South Santee River):	
From confluence with Wambaw Creek to confluence with Santee River	* 9
Berkeley County (Unincorporated Areas)	
Atlantic Ocean (Santee River):	
At confluence of South Santee River	* 9
Approximately 8.1 miles upstream of confluence of South Santee River	* 8
Berkeley County (Unincorporated Areas)	
Atlantic Ocean (Clouter Creek):	
At the confluence of Cooper River and Clouter Creek	* 16
Approximately 500 feet east of Cooper River Levee along Mark Clark Expressway (I–526)	* 12
Berkeley County (Unincorporated Areas), City of Charleston	
Wando River:	
Approximately 1,000 feet northeast of intersection of Bluffview Lane and Cainhoy Village Road	* 11
Approximately 650 feet southeast of intersection of Ashmont Drive and Jamesbury Road	* 9
Berkeley County (Unincorporated Areas)	
Beresford Creek:	
Approximately 1,000 feet south of intersection of Legrand Boulevard and Clements Ferry Road	* 12
Approximately 0.871 mile southeast of intersection of Greenann Court and Clements Ferry Road	* 14
Berkeley County (Unincorporated Areas)	
Atlantic Ocean (Goose Creek):	

Source of Flooding and Location	#Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 1,000 feet north of intersection of Yeamans Hall Road and North Rhett Avenue	*11
Approximately 4,500 feet south of intersection of Wilkinson Way and Torpedo Road	*13
City of Hanahan, City of Goose Creek	
Atlantic Ocean (Cooper River):	
Approximately 1 mile east of intersection of Missile Haul Road and Bushy Park Road	*13
Approximately 1,000 feet south of intersection of Wilkinson Way and Red Bank Road	*11
City of Goose Creek	
Back River:	
At confluence of Cooper River approximately 1 mile downstream of confluence of Chicken Creek	*13
Berkeley County (Unincorporated Areas), City of Goose Creek	
Foster Creek:	
At confluence with Back River	*7
Approximately 0.5 mile downstream of Pearl Street	*11
City of Goose Creek	
Berkeley County (Unincorporated Areas)	
Maps available for inspection at the Berkeley County Office Building, 223 North Live Oak Drive, Moncks Corner, South Carolina.	
City of Charleston	
Maps available for inspection at the Charleston City Hall, 80 Broad Street, Charleston, South Carolina.	
City of Goose Creek	
Maps available for inspection at the Goose Creek City Hall, 519 North Goose Creek Boulevard, Goose Creek, South Carolina.	
City of Hanahan	
Maps available for inspection at the Hanahan City Administration Building, 1255 Yeamans Hall Road, Hanahan, South Carolina.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 74, 80, 90, and 97

[ET Docket No. 02–16; FCC 03–39]

Below 28 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On May 13, 2003 (68 FR 25512), the Commission published final rules in the Report and Order, which amended the rules to implement domestically various allocation decisions from ITU World Radiocommunication Conferences. This document contains a correction to § 90.35(c)(82), which was inadvertently added.

DATES: Effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Shameeka Parrott, Office of Engineering and Technology, (202) 418–2062, e-mail: *Shameeka.Parrott@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending parts 2, 73, 74, 80, 90, and 97 of the Commission's rules in the **Federal Register** of May 13, 2003 (68 FR 25512). This document corrects the **Federal Register** as it appeared. In FR Doc. 03–11723, published on May 13, 2003 (68 FR 25512), the Commission is correcting § 90.35(c)(82) with § 90.35(c)(89).

In rule FR Doc. 03–11723 published on May 13, 2003 (68 FR 25512), the Commission is correcting § 90.35(c)(82) to read as § 90.35(c)(89):

On page 25540, in the third column, in amendatory instruction 18.e., paragraph (c)(82) is corrected to read as paragraph (c)(89).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–13583 Filed 5–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80, 87 and 95

[WT Docket No. 99–366; FCC 02–271]

Amendment of of the Commission's Rules To Authorize the Use of 406.025 MHz for Personal Locator Beacons

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission authorizes the use of 406.0–406.1 MHz for personal locator beacons (PLBs). This was in response to a petition for rulemaking filed by the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA). This will increase the safety of the general public by providing a new means to alert others of an emergency situation and to aid search and rescue personnel locate those in distress.

DATES: Effective July 1, 2003, the incorporation by reference of certain publication listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

FOR FURTHER INFORMATION CONTACT: James Shaffer via phone at (202) 418–0680, via e-mail at *jshaffer@fcc.gov,* via TTY (202) 418–7233, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 02–271, adopted on September 27, 2002, and released on October 8, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In the Report and Order in this proceeding, the Commission established a new subpart K—Personal Locator Beacons (PLB) under part 95 of the Commission's rules, to permit the use of frequency 406.0–406.1 MHz for personal locator beacons. We amended our rules to provide for licensing individual 406

MHz PLBs by rule, require mandatory registration of 406 MHz PLB with the NOAA, and require manufacturers of 406 MHz PLBs to comply with the Radio Technical Commission for Maritime Services (RTCM) Recommended Standards for 406 MHz Satellite PLBs. The 406 MHz PLB is primarily intended to provide a distress and alerting capacity for use by the general public in life threatening situations in a remote environment after all other means of notifying SAR responders (*e.g.*, telephone, radio) have been exhausted. In addition, we dismiss as moot requests by ACR Electronics Inc. (ACR) and McMurdo Limited (McMurdo) for waiver of the Commission's rules to permit the type certification of a new 406 MHz personal emergency position indicating radiobeacon (EPIRB), for the reason that the rule changes we adopt today appear to permit the equipment proposed by ACR and McMurdo.

I. Procedural Matters

A. Alternative Formats

2. Alternative formats (computer diskette, large print, audio cassette and Braille) of this Report and Order are available to persons with disabilities by contacting Brian Millin at (202) 418–0260, TTY (202) 418–2555, or at *bmillin@fcc.gov.* This Report and Order can also be downloaded at *http://www.fcc.gov/dtf/.*

II. Final Regulatory Flexibility Analysis (FRFA)

3. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM, 65 FR 4935, February 2, 2000, prepared in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comments on the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

4. In this proceeding, we amend part 95 of the Commission's rules to authorize the use of the frequency 406 MHz for personal locator beacons (PLBs) to provide individuals in remote areas a means to alert others of an emergency situation and help search and rescue personnel locate those in distress.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. No comments were submitted specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The adopted rules would apply to small businesses that manufacturer, design, import, sell, rent, or use radiobeacon equipment designed for distress alerting and location. PLBs will be used to provide a distress and alerting capacity for use by the general public in a life-threatening condition in a remote environment after all other means of notifying search and rescue responders have been used. These beacons will be manufactured, designed, imported and sold by companies of all sizes operating in the U.S. We concluded that these small businesses are classified in Communications Equipment, N.E.C., (Standard Identification Code 3669) as entities employing less than 750 employees as defined in 13 CFR 121.201. The size data provided by the SBA shows that 469 firms out of 498 firms in the Communications Equipment, NEC classification have less than 750 employees but did not enable us to make a meaningful estimate of the number of potential manufacturers which are small businesses. No comments were received on the number of small businesses which could be impacted by the proposed rule changes.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

7. This proceeding contains a reporting requirement to require businesses renting and owners of 406 MHz Personal Locator Beacons (PLBs) to register information such as name, address, type of vessel with the National Oceanic and Atmospheric Administration (NOAA). The information would be used by search and rescue personnel to identify the persons in distress and to select the proper rescue units and search methods.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

8. The Commission in this proceeding has considered comments on making frequency spectrum available to authorize the use of personal locator beacons. It has adopted alternatives which minimize burdens placed on small entities. The adopted rules will have a beneficial economic impact on small business entities that manufacturer, design, import, sell, or use radiobeacon equipment designed for distress alerting and location. This approach promotes technological innovations in radiobeacon equipment. This approach will allow the states to help manage its terrestrial search and rescue resources and assure that these radiobeacons will operate properly thus enhancing protection of life and property.

9. To minimize any negative impact on search and rescue responders receiving distress alerts, we have offered the option of utilizing the existing procedures. These procedures are that with prior coordination and mutual agreement, land-based alerts will be relayed by the United States Air Force Rescue Coordination Center to a point of contact designated by the state. In addition, the Commission declined to require businesses renting PLBs to the public to notify NOAA each time a beacon is rented; instead, such business must register once with NOAA and provide a 24-hour point of contact.

F. Report to Congress

10. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

III. Ordering Clauses

11. Pursuant to the authority of sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332(a)(2), parts 80, 87 and 95 of the Commission's rules, that 47 CFR parts

80, 87 and 95 are amended as set forth in the attached Rule Changes.

12. The Commission's Reference Information Center, Consumer Information Bureau, *shall send* a copy of this Report and Order, WT Docket No. 99–366, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

13. *It is further ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.925 of the Commission's rules, ACR's request for waiver of § 80.1061 of the Commission's rules, filed on January 10, 2001, and McMurdo's request for waiver of § 80.1061 of the Commission's rules, filed on August 23, 2002, to permit type certification of ACR's personal EPIRB, FCC Identification Number B66ACR–PLB–100, and McMurdo's personal EPRIB, FCC identification number KLS85860, respectively, are *dismissed as moot.*

14. *It is further ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that this proceeding *is terminated.*

List of Subjects in 47 CFR Parts 80, 87 and 95

Communications equipment, Incorporation by reference, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 80, 87 and 95 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

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

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 2. Section 80.1061 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, RM 3320, FB–4, 5200 Auth Road, Suitland, MD 20746–4304. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and include the following statement: ''WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406.025 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.025 MHz EPIRB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406.025 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA), whose address is: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, RM 3320, FB–4, 5200 Auth Road, Suitland, MD 20746–4304.'' Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 87—AVIATION SERVICES

■ 3. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

■ 4. Section 87.199 is amended by revising paragraphs (e) and (f) to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee must include a postage pre-paid registration card printed with the ELT identification code addressed to: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, RM 3320, FB–4, 5200 Auth Road, Suitland, MD 20746–4304. The registration card must request the owner's name, address, telephone number, type of aircraft, alternate emergency contact and include the following statement: ''WARNING—failure to register this ELT with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406.025 MHz ELT must be registered with NOAA before installation and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.025 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406.025 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA), whose address is: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, RM 3320, FB–4, 5200 Auth Road, Suitland, MD 20746–4304.'' Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, or any other change in registration information. Fleet operators must notify NOAA upon transfer of ELT to another aircraft outside of the owner's control, or an other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 5. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 6. Add Subpart K to part 95 to read as follows:

Subpart K—Personal Locator Beacons (PLB).

Sec.
95.1400 Basis and purpose.
95.1401 Frequency.
95.1402 Special requirements for 406 MHz PLBs.

§ 95.1400 Basis and purpose.

The rules in this subpart are intended to provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel locate those in distress. The effective date for the rules in this subpart will be July 1, 2003.

§ 95.1401 Frequency.

The frequency band 406.0–406.1 MHz is an emergency and distress frequency band available for use by Personal Locator Beacons (PLBs). Personal Locator Beacons that transmit on the frequency band 406.0–406.1 MHz must use G1D emission. Use of these frequencies must be limited to transmission of distress and safety communications.

§ 95.1402 Special requirements for 406 MHz PLBs.

(a) All 406 MHz PLBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime (RTCM) Service document ''RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs),'' Version 1.1, RTCM Paper 76–2002/SC110–STD, dated June 19, 2002. This RTCM document is incorporated by reference in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. Copies of the document are available and may be obtained from the Radio Technical Commission for Maritime Services, 1800 Diagonal Road, Suite 600, Alexandria, Virginia 22314–2840. The document is available for inspection at Commission headquarters at 445 12th Street SW., Washington, DC 20554. Copies may also be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(b) The 406 MHz PLB must contain, as an integral part, a homing beacon operating only on 121.500 MHz and meeting all requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz homing beacon must have a continuous duty cycle that can be interrupted only during the transmission of the 406 MHz signal. The 406 MHz PLB shall transmit a unique identifier (Morse code ''P'') on the 121.500 MHz signals.

(c) Before a 406 MHz PLB certification application is submitted to the Commission, the applicant must have obtained certification from a test facility, recognized by one of the COSPAS/SARSAT Partners that the PLB satisfies the standards contained in the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007). Additionally, an independent test facility must certify that the PLB complies with the electrical and environmental standards associated with the RTCM Recommended Standards.

(d) The procedures of Notification by the equipment manufacturer and Certification from either the Commission or designated Telecommunications Certification Body are contained in subpart J of part 2 of this chapter.

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406 MHz COSPAS/SARSAT satellite system, must be programmed in each PLB unit to establish a unique identification for each PLB station. With each marketable PLB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the PLB identification code addressed to: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4303. The registration card must request the owner's name, address, telephone number, alternate emergency contact and include the following statement: ''WARNING'' failure to register this PLB with NOAA could result in a monetary forfeiture order being issued to the owner.''

(f) To enhance protection of life and property, it is mandatory that each 406 MHz PLB be registered with NOAA and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406 MHz PLB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this 406 MHz PLB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: SARSAT Beacon Registration, NOAA, NESDIS, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4303.'' Owners shall advise NOAA in writing upon change of PLB ownership, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

(g) For 406 MHz PLBs with identification codes that can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

[FR Doc. 03–13468 Filed 5–30–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 173, 177, and 180

[Docket No. RSPA–01–10373 (HM–220D)]

RIN 2137–AD58

Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Correction of Compliance Dates

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final rule compliance dates.

SUMMARY: This document corrects several compliance dates in a final rule published May 8, 2003 (68 FR 24653) that made revisions to certain cylinder requirements. The compliance date for the final rule is corrected to permit immediate voluntary compliance. The delayed compliance dates for two other requirements in the final rule are corrected.

DATES: *Effective Date:* This rule is effective June 2, 2003. *Compliance Date:* Voluntary compliance is authorized immediately. Delayed compliance dates for certain regulatory provisions are set forth in the regulatory text.

FOR FURTHER INFORMATION CONTACT: Sandra Webb, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2003, the Research and Special Programs Administration (we, us) published a final rule that responds to appeals submitted by persons affected by an August 8, 2002 final rule. The August 8, 2002 final rule amended certain requirements in the Hazardous Materials Regulations (49 CFR parts 171–180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. To allow us additional time to review the issues

raised in the appeals, we published a final rule on September 30, 2002 (67 FR 51626), extending the compliance dates for certain provisions to May 30, 2003.

Need for Correction

The May 8, 2003 final rule further delays compliance with certain provisions in the August 8, 2002 final rule beyond May 30, 2003. However, the effective date of the May 8, 2003 final rule is June 9, 2003. This leaves a 9-day gap in which companies may be in technical non-compliance with certain provisions.

In addition, we are correcting an error in amendatory item 14, paragraph b of the May 8, 2003 final rule. In that item we indicated that we were revising paragraph (h)(2)(iv) and the beginning of the first sentence in paragraph (h)(3) introductory text of § 173.301. However, the revision to paragraph (h)(3) introductory text incorrectly appeared as paragraph (h)(2) introductory text.

Correction

■ In rule document 03–11334, on page 24653 in the issue of Thursday, May 8, 2003, make the following correction:

■ On page 24653 in the third column, in the **DATES** section, the Compliance Date is corrected to read as set forth above in the **DATES** section of this document.

PART 173—[CORRECTED]

■ On page 24661, in the first column, the beginning of the first sentences in paragraphs (h)(2) introductory text and (h)(3) introductory text are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(h) * * *

(2) For cylinders manufactured before October 1, 2007, * * *

* * * * *

(3) For cylinders manufactured on or after October 1, 2007, * * *

* * * * *

Issued in Washington, DC on May 27, 2003 under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–13682 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02 I.D. 052103A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments to the trawl rockfish conservation area boundaries; request for comments.

SUMMARY: NMFS announces changes to the closed areas affecting the limited entry trawl fleet and open access exempted trawl fleet, also known as the trawl Rockfish Conservation Areas (trawl RCAs). For the trawl ''B'' platoon, the closed areas for the cumulative limit period beginning May 16 through June 30, 2003, will be the same for the ''A'' platoon. For the remainder of the ''B'' platoon cumulative limit period, from July 1 through July 15, 2003, the ''B'' platoon will be subject to the closed areas that were in place for the ''A'' platoon through June 30, 2003. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours local time May 28, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this action will be accepted through June 17, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov* or *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), and at 68 FR 23924 (May 6, 2003).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its April 7–11, 2003, meeting in Vancouver, WA.

The NMFS West Coast Groundfish Observer Program (Observer Program) released observer data collected from September 2001 through August 2002 at a bycatch workshop in January 2003. At the Pacific Council's April meeting, the Scientific and Statistical Committee (SSC) reported that they considered bycatch rates based on observer data in the groundfish trawl fishery to be the best available scientific data for use in the bycatch model. Both the SSC and the Groundfish Management Team (GMT) supported incorporating trawl bycatch rates from the Observer Program into the bycatch model as soon as possible. Following the SSC and GMT recommendations, the Pacific Council decided to use the preliminary observer-

based trawl bycatch rates in the bycatch model to develop inseason adjustments to trip limits and area closures that were effective May 1, 2003, in addition, it was decided to shift the trawl RCA as soon as new boundaries could be developed.

Based on the new Observer Program information on bycatch rates in the trawl fishery for groundfish, the Pacific Council recommended changes to the boundaries for the trawl RCA (the area that is closed to fishing for groundfish with trawl gear) along with trip limit changes. In particular, new estimates of canary rockfish bycatch in the trawl fishery north of 40°10′ N. lat. and bocaccio bycatch in the trawl fishery south of 40°10′ N. lat. are higher than previously estimated. At these higher bycatch rates, the OYs for canary rockfish and bocaccio would be reached before the end of the year. In order to slow the rate of interception for these overfished rockfish species, the trawl RCA is being shifted to better align with the observed interception rates of these species. Prior to May 1, 2003, the trawl RCA north of 40°10′ N. lat. was scheduled to extend between boundaries approximating the 100 fm (183 m) and 250 fm (457 m) depth contours. Trip limit changes and, north of 40°10′ N. lat., a change in the trawl RCA were announced previously in the **Federal Register** (68 FR 23901, May 6, 2003) and were effective May 1, 2003. The trawl RCA north of 40°10′ N. lat. was temporarily extended from the shoreline to a boundary approximating the 250 fm (457 m) depth contour until new boundaries could be put in place. Implementation of the new boundaries was delayed beyond the inseason adjustments that were effective May 1, 2003, until coordinates for the new boundaries were developed and reviewed by Federal and state management and enforcement agencies.

Trawl RCA Restrictions North of 40°10′ N. lat.

Because data from the Observer Program showed that canary rockfish tend to be intercepted in trawl gear further inshore than previously expected, the trawl RCA north of 40°10′ N. lat. is being shifted with the intention of protecting canary rockfish, an overfished species. In evaluating the observer data, the Pacific Council's GMT recommended that the trawl RCA's eastern boundary be shifted from approximating the 100–fm (183–m) depth contour to approximating the 50–fm (91–m) depth contour to protect areas where canary are intercepted in the trawl fishery. Additionally, the GMT recommended that the western boundary be shifted from approximating the 250–fm (457–m) depth contour to approximating the 200–fm (366–m) depth contour to allow fishery access to more abundant deepwater groundfish stocks while still protecting areas with high rates of canary bycatch. Thus, for the remainder of the year, the trawl RCA north of 40°10′ N. lat. will extend from approximately the 50–fm (91–m) to 200–fm (366–m) depth contours. During November - December, the western trawl RCA boundary is to be modified to allow petrale fishing. In the interest of time, this new 200–fm (366–m) western boundary was not modified to allow petrale fishing but it will be modified by a subsequent inseason action that will be published in the **Federal Register** prior to November.

Trawl Restrictions South of 40°10′ N. lat.

The Pacific Council's GMT also recommended moving the trawl RCA south of 40°10′ N. lat. to protect overfished species while allowing fishery access to more abundant groundfish stocks. This move entails the trawl RCA's western boundary being shifted to approximate the 200–fm (266–m) depth contour, thus, creating a coastwide western boundary for the trawl RCA that approximates the 200–fm (266–m) depth contour. Between 40°10′ N. lat. and 34°27′ N. lat., the western boundary for the trawl RCA will shift from approximating the 250–fm (457–m) depth contour to approximating the 200–fm (366–m) depth contour in order to allow fishery access to more abundant deepwater stocks while protecting areas where both bocaccio and canary are intercepted. Between 34°27′ N. lat. and the U.S./Mexico border, the western boundary for the trawl RCA will shift from either approximating the 100–fm (183–m) or 150–fm (274–m) depth contour to approximating the 200- fm (266–m) contour to better align with depths where there is a high interception of bocaccio. Around southern California islands and seamounts, the trawl RCA outer boundary will also shift from approximating the 150–fm (274–m) depth contour to approximating the 200–fm (266–m) depth contour, again to protect bocaccio. Therefore, for the remainder of May through June and from September through December, the trawl RCA boundaries south of 40°10′ N. lat. will approximate the following depth contours: (1) between 40°10′ N. lat. and 34°27′ N. lat., the trawl RCA will extend from 60–fm (110–m) to 200–fm (266–m); (2) between 34°27′ N. lat. and the U.S./Mexico border, the trawl RCA will extend from 100–fm (183–m) to 200–fm (266–m); and (3) around California islands and seamounts south of 34°27′ N. lat., the trawl RCA will extend from the shoreline to 200–fm (266–m). During November - December, the western trawl RCA boundary is to be modified to allow petrale fishing. In the interest of time, this new 200–fm (366–m) western boundary was not modified to allow petrale fishing but it will be modified by a subsequent inseason action that will be published in the **Federal Register** prior to November 2003.

Additional measures to slow the incidental catch of bocaccio rockfish inshore of the trawl RCA have been implemented by prohibiting trawling inshore of 200–fm (366–m) during period 4 (July-August) from 40°10′ N. lat. to the U.S./Mexico border. This prohibition was implemented through the inseason adjustments published on May 6, 2003 (68 FR 23901).

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2003 specifications and management measures (68 FR 11182, March 7, 2003, as amended at 68 FR 18166, April 15, 2003, at 68 FR 23901, May 6, 2003, and at 68 FR 23925, May 6, 2003) to read as follows:

* * * * *

1. On page 11205, in section IV., under A. General Definitions and Provisions, in the third column, paragraphs (19)(c)(ii)and(iii) are revised to read as follows:

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the location of the trawl RCA (i.e., the approximate depth contours that generally describe the eastern and western trawl RCA boundaries) throughout the year is provided in section IV.,(B), Table 3 (North). The specific latitude and longitude coordinates that define the eastern and western boundaries for the trawl RCA are provided below at paragraph (e) of this section.

(iii) Between 40°10′ N. lat. and the U.S. border with Mexico, the location of the trawl RCA (i.e., the approximate depth contours that generally describe the eastern and western trawl RCA boundaries) throughout the year is provided in section IV.,(B), Table 3 (South). The specific latitude and longitude coordinates that define the eastern and western boundaries for the trawl RCA are provided below at paragraph (e) of this section.

* * * * *

2. On page 11205, in section IV., under A. General Definitions and Provisions, in the third column, paragraphs (19)(d)(ii)and (iii) are revised to read as follows:

(ii) Between the U.S. border with Canada and 40°10′ N. lat., the location of the non-trawl RCA (i.e., the approximate depth contours that generally describe the eastern and western non-trawl RCA boundaries) throughout the year is provided in section IV.,(B), Table 4 (North) for the limited entry fishery and Table 5 (North) for the open access fishery. The specific latitude and longitude coordinates that define the eastern and western boundaries for the non-trawl RCA are provided below at paragraph (e) of this section.

(iii) Between 40°10′ N. lat. and the U.S. border with Mexico, the location of the non-trawl RCA (i.e., the approximate depth contours that generally describe the eastern and western non-trawl RCA boundaries) throughout the year is provided in section IV.,(B), Table 4 (South) for the limited entry fishery and Table 5 (South) for the open access fishery. The specific latitude and longitude coordinates that define the eastern and western boundaries for the trawl RCA are provided below at paragraph (e) of this section.

* * * * *

3. On page 11206, in section IV., under A. General Definitions and Provisions, paragraph (19)(e)(ii) is revised to read as follows:

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

* * * * *

4. On page 11209, in section IV., under A. General Definitions and Provisions, in the third column, paragraph (19)(e)(iv) is revised to read as follows:

(iv) The 250–fm (457–m) depth contour used north of 38°N. lat. as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

* * * * *

5. On page 11212, in section IV., under A. General Definitions and Provisions, in the first column, paragraph (19)(e)(vi) is revised to read as follows:

(vi) The 50–fm (91–m) depth contour used between the U.S. border with Canada and the Swiftsure Bank as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°30.15′ N. lat., 124°56.12′ W. long.;
(2) 48°28.29′ N. lat., 124°56.30′ W. long.;
(3) 48°29.23′ N. lat., 124°53.63′ W. long.; and
(4) 48°30.31′ N. lat., 124°51.73′ W. long.

* * * * *

6. On page 11212, in section IV., under A. General Definitions and Provisions, paragraph (19)(e)(vii) is revised to read as follows:

(vii) The 60 fm (110 m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

* * * * *

7. On page 11214, in section IV., under A. General Definitions and Provisions, in the second column, paragraph (19)(e)(xi) is revised to read as follows:

(xi) The 50–fm (91–m) depth contour used between the U.S. border with Canada and 34°27′ N. lat. as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°22.15′ N. lat., 124°43.15′ W. long.;
(2) 48°22.15′ N. lat., 124°49.10′ W. long.;
(3) 48°20.03′ N. lat., 124°51.18′ W. long.;
(4) 48°16.61′ N. lat., 124°53.72′ W. long.;
(5) 48°14.68′ N. lat., 124°54.50′ W. long.;
(6) 48°12.02′ N. lat., 124°55.29′ W. long.;
(7) 48°03.14′ N. lat., 124°57.02′ W. long.;
(8) 47°56.05′ N. lat., 124°55.60′ W. long.;
(9) 47°52.58′ N. lat., 124°54.00′ W. long.;
(10) 47°50.18′ N. lat., 124°52.36′ W. long.;
(11) 47°45.34′ N. lat., 124°51.07′ W. long.;
(12) 47°40.96′ N. lat., 124°48.84′ W. long.;
(13) 47°34.59′ N. lat., 124°46.24′ W. long.;
(14) 47°27.86′ N. lat., 124°42.12′ W. long.;
(15) 47°22.34′ N. lat., 124°39.43′ W. long.;
(16) 47°17.66′ N. lat., 124°38.75′ W. long.;
(17) 47°06.25′ N. lat., 124°39.74′ W. long.;
(18) 47°00.43′ N. lat., 124°38.01′ W. long.;
(19) 46°52.00′ N. lat., 124°32.44′ W. long.;
(20) 46°35.41′ N. lat., 124°25.51′ W. long.;
(21) 46°25.43′ N. lat., 124°23.46′ W. long.;
(22) 46°13.71′ N. lat., 124°16.90′ W. long.;
(23) 45°50.88′ N. lat., 124°09.68′ W. long.;
(24) 45°12.99′ N. lat., 124°06.71′ W. long.;
(25) 44°52.48′ N. lat., 124°11.22′ W. long.;
(26) 44°42.41′ N. lat., 124°19.70′ W. long.;
(27) 44°38.80′ N. lat., 124°26.58′ W. long.;
(28) 44°24.99′ N. lat., 124°31.22′ W. long.;
(29) 44°18.11′ N. lat., 124°43.74′ W. long.;
(30) 44°15.23′ N. lat., 124°40.47′ W. long.;
(31) 44°18.80′ N. lat., 124°35.48′ W. long.;
(32) 44°19.62′ N. lat., 124°27.18′ W. long.;
(33) 43°56.65′ N. lat., 124°16.86′ W. long.;
(34) 43°34.95′ N. lat., 124°17.47′ W. long.;
(35) 43°12.60′ N. lat., 124°35.80′ W. long.;
(36) 43°08.96′ N. lat., 124°33.77′ W. long.;
(37) 42°59.66′ N. lat., 124°34.79′ W. long.;
(38) 42°54.29′ N. lat., 124°39.46′ W. long.;
(39) 42°46.50′ N. lat., 124°39.99′ W. long.;
(40) 42°41.00′ N. lat., 124°34.92′ W. long.;
(41) 42°36.29′ N. lat., 124°34.70′ W. long.;
(42) 42°28.36′ N. lat., 124°37.90′ W. long.;
(43) 42°25.53′ N. lat., 124°37.68′ W. long.;
(44) 42°18.64′ N. lat., 124°29.47′ W. long.;
(45) 42°12.95′ N. lat., 124°27.34′ W. long.;
(46) 42°03.04′ N. lat., 124°25.81′ W. long.;
(47) 42°00.00′ N. lat., 124°26.21′ W. long.;
(48) 41°57.60′ N. lat., 124°27.35′ W. long.;
(49) 41°52.53′ N. lat., 124°26.51′ W. long.;
(50) 41°50.17′ N. lat., 124°25.63′ W. long.;
(51) 41°46.01′ N. lat., 124°22.16′ W. long.;
(52) 41°26.50′ N. lat., 124°21.78′ W. long.;
(53) 41°15.66′ N. lat., 124°16.42′ W. long.;

(54) 41°05.45′ N. lat., 124°16.89′ W. long.;
(55) 40°54.55′ N. lat., 124°19.53′ W. long.;
(56) 40°42.22′ N. lat., 124°28.29′ W. long.;
(57) 40°39.68′ N. lat., 124°28.37′ W. long.;
(58) 40°36.76′ N. lat., 124°27.39′ W. long.;
(59) 40°34.44′ N. lat., 124°28.89′ W. long.;
(60) 40°32.57′ N. lat., 124°32.43′ W. long.;
(61) 40°30.95′ N. lat., 124°33.87′ W. long.;
(62) 40°28.90′ N. lat., 124°34.59′ W. long.;
(63) 40°24.36′ N. lat., 124°31.42′ W. long.;
(64) 40°22.38′ N. lat., 124°24.41′ W. long.;
(65) 40°21.21′ N. lat., 124°24.94′ W. long.;
(66) 40°21.37′ N. lat., 124°25.58′ W. long.;
(67) 40°20.62′ N. lat., 124°26.61′ W. long.;
(68) 40°19.19′ N. lat., 124°26.14′ W. long.;
(69) 40°18.27′ N. lat., 124°24.69′ W. long.;
(70) 40°18.64′ N. lat., 124°23.67′ W. long.;
(71) 40°18.64′ N. lat., 124°22.81′ W. long.;
(72) 40°15.31′ N. lat., 124°25.28′ W. long.;
(73) 40°15.37′ N. lat., 124°26.82′ W. long.;
(74) 40°11.91′ N. lat., 124°22.68′ W. long.;
(75) 40°10.01′ N. lat., 124°19.97′ W. long.;
(76) 40°10.00′ N. lat., 124°19.97′ W. long.;
(77) 40°09.20′ N. lat., 124°15.81′ W. long.;
(78) 40°07.51′ N. lat., 124°15.29′ W. long.;
(79) 40°05.22′ N. lat., 124°10.06′ W. long.;
(80) 40°06.51′ N. lat., 124°08.01′ W. long.;
(81) 40°00.72′ N. lat., 124°08.45′ W. long.;
(82) 39°56.60′ N. lat., 124°07.12′ W. long.;
(83) 39°52.58′ N. lat., 124°03.57′ W. long.;
(84) 39°50.65′ N. lat., 123°57.98′ W. long.;
(85) 39°40.16′ N. lat., 123°52.41′ W. long.;
(86) 39°30.12′ N. lat., 123°52.92′ W. long.;
(87) 39°24.53′ N. lat., 123°55.16′ W. long.;
(88) 39°11.58′ N. lat., 123°50.93′ W. long.;
(89) 38°55.13′ N. lat., 123°51.14′ W. long.;
(90) 38°28.58′ N. lat., 123°22.84′ W. long.;
(91) 38°14.60′ N. lat., 123°09.92′ W. long.;
(92) 38°01.84′ N. lat., 123°09.75′ W. long.;
(93) 37°55.24′ N. lat., 123°08.30′ W. long.;
(94) 37°52.06′ N. lat., 123°09.19′ W. long.;
(95) 37°50.21′ N. lat., 123°14.90′ W. long.;
(96) 37°35.67′ N. lat., 122°55.43′ W. long.;
(97) 37°03.06′ N. lat., 122°24.22′ W. long.;
(98) 36°50.20′ N. lat., 122°03.58′ W. long.;
(99) 36°51.46′ N. lat., 121°57.54′ W. long.;
(100) 36°44.14′ N. lat., 121°58.10′ W. long.;
(101) 36°36.76′ N. lat., 122°01.16′ W. long.;
(102) 36°15.62′ N. lat., 121°57.13′ W. long.;
(103) 36°10.60′ N. lat., 121°43.65′ W. long.;
(104) 35°40.38′ N. lat., 121°22.59′ W. long.;
(105) 35°24.35′ N. lat., 121°02.53′ W. long.;
(106) 35°02.66′ N. lat., 120°51.63′ W. long.;
(107) 34°39.52′ N. lat., 120°48.72′ W. long.;
(108) 34°31.26′ N. lat., 120°44.12′ W. long.; and
(109) 34°27.00′ N. lat., 120°36.00′ W. long.

* * * * *

8. In section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xiii) is added to read as follows:

(xiii) The 200 fm (366 m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.75′ N. lat., 125°41.73′ W. long.;
(2) 48°12.85′ N. lat., 125°38.06′ W. long.;
(3) 48°11.52′ N. lat., 125°39.45′ W. long.;
(4) 48°10.14′ N. lat., 125°42.81′ W. long.;
(5) 48°08.96′ N. lat., 125°42.08′ W. long.;
(6) 48°08.33′ N. lat., 125°44.91′ W. long.;
(7) 48°07.19′ N. lat., 125°45.87′ W. long.;
(8) 48°05.66′ N. lat., 125°44.79′ W. long.;
(9) 48°05.91′ N. lat., 125°42.16′ W. long.;
(10) 48°04.11′ N. lat., 125°40.17′ W. long.;
(11) 48°04.07′ N. lat., 125°36.96′ W. long.;
(12) 48°03.05′ N. lat., 125°36.38′ W. long.;
(13) 48°01.98′ N. lat., 125°37.41′ W. long.;
(14) 48°01.46′ N. lat., 125°39.61′ W. long.;
(15) 47°57.28′ N. lat., 125°36.87′ W. long.;
(16) 47°55.11′ N. lat., 125°36.92′ W. long.;
(17) 47°54.09′ N. lat., 125°34.98′ W. long.;
(18) 47°54.50′ N. lat., 125°32.01′ W. long.;
(19) 47°56.07′ N. lat., 125°30.17′ W. long.;
(20) 47°55.65′ N. lat., 125°28.46′ W. long.;
(21) 47°57.88′ N. lat., 125°25.61′ W. long.;
(22) 48°01.63′ N. lat., 125°23.75′ W. long.;
(23) 48°02.21′ N. lat., 125°22.43′ W. long.;
(24) 48°03.60′ N. lat., 125°21.84′ W. long.;
(25) 48°03.98′ N. lat., 125°20.65′ W. long.;
(26) 48°03.26′ N. lat., 125°19.76′ W. long.;
(27) 48°01.49′ N. lat., 125°18.80′ W. long.;
(28) 48°01.03′ N. lat., 125°20.12′ W. long.;
(29) 48°00.04′ N. lat., 125°20.26′ W. long.;
(30) 47°58.10′ N. lat., 125°18.91′ W. long.;
(31) 47°58.17′ N. lat., 125°17.50′ W. long.;
(32) 47°52.28′ N. lat., 125°16.06′ W. long.;
(33) 47°51.92′ N. lat., 125°13.89′ W. long.;
(34) 47°49.20′ N. lat., 125°10.67′ W. long.;
(35) 47°48.69′ N. lat., 125°06.50′ W. long.;
(36) 47°46.54′ N. lat., 125°07.68′ W. long.;
(37) 47°47.24′ N. lat., 125°05.38′ W. long.;
(38) 47°45.95′ N. lat., 125°04.61′ W. long.;
(39) 47°44.58′ N. lat., 125°07.12′ W. long.;
(40) 47°42.24′ N. lat., 125°05.15′ W. long.;
(41) 47°38.54′ N. lat., 125°06.76′ W. long.;
(42) 47°34.86′ N. lat., 125°04.67′ W. long.;

(43) 47°30.75′ N. lat., 124°57.52′ W. long.;
(44) 47°28.51′ N. lat., 124°56.69′ W. long.;
(45) 47°29.15′ N. lat., 124°54.10′ W. long.;
(46) 47°28.43′ N. lat., 124°51.58′ W. long.;
(47) 47°24.13′ N. lat., 124°47.51′ W. long.;
(48) 47°18.31′ N. lat., 124°46.17′ W. long.;
(49) 47°19.57′ N. lat., 124°51.01′ W. long.;
(50) 47°18.12′ N. lat., 124°53.66′ W. long.;
(51) 47°17.59′ N. lat., 124°52.94′ W. long.;
(52) 47°17.71′ N. lat., 124°51.63′ W. long.;
(53) 47°16.90′ N. lat., 124°51.23′ W. long.;
(54) 47°16.10′ N. lat., 124°53.67′ W. long.;
(55) 47°14.24′ N. lat., 124°53.02′ W. long.;
(56) 47°12.16′ N. lat., 124°56.77′ W. long.;
(57) 47°13.35′ N. lat., 124°58.70′ W. long.;
(58) 47°09.53′ N. lat., 124°58.32′ W. long.;
(59) 47°09.54′ N. lat., 124°59.50′ W. long.;
(60) 47°05.87′ N. lat., 124°59.29′ W. long.;
(61) 47°3.65′ N. lat., 124°56.26′ W. long.;
(62) 47°00.91′ N. lat., 124°59.73′ W. long.;
(63) 46°58.74′ N. lat., 124°59.40′ W. long.;
(64) 46°58.55′ N. lat., 125°00.70′ W. long.;
(65) 46°55.57′ N. lat., 125°01.61′ W. long.;
(66) 46°55.77′ N. lat., 124°55.04′ W. long.;
(67) 46°53.16′ N. lat., 124°53.69′ W. long.;
(68) 46°52.39′ N. lat., 124°55.24′ W. long.;
(69) 46°44.88′ N. lat., 124°51.97′ W. long.;
(70) 46°33.28′ N. lat., 124°36.96′ W. long.;
(71) 46°33.20′ N. lat., 124°30.64′ W. long.;
(72) 46°27.85′ N. lat., 124°31.95′ W. long.;
(73) 46°18.16′ N. lat., 124°39.39′ W. long.;
(74) 46°16.48′ N. lat., 124°27.41′ W. long.;
(75) 46°16.73′ N. lat., 124°23.20′ W. long.;
(76) 46°14.13′ N. lat., 124°26.26′ W. long.;
(77) 46°12.81′ N. lat., 124°33.73′ W. long.;
(78) 46°12.86′ N. lat., 124°38.65′ W. long.;
(79) 46°10.81′ N. lat., 124°39.54′ W. long.;
(80) 46°09.78′ N. lat., 124°41.27′ W. long.;
(81) 46°06.44′ N. lat., 124°41.08′ W. long.;
(82) 46°03.79′ N. lat., 124°47.94′ W. long.;
(83) 46°02.31′ N. lat., 124°48.59′ W. long.;
(84) 45°59.01′ N. lat., 124°44.40′ W. long.;
(85) 45°46.91′ N. lat., 124°43.57′ W. long.;
(86) 45°44.05′ N. lat., 124°45.85′ W. long.;
(87) 45°39.96′ N. lat., 124°40.10′ W. long.;
(88) 45°38.27′ N. lat., 124°40.47′ W. long.;
(89) 45°34.80′ N. lat., 124°32.25′ W. long.;
(90) 45°13.00′ N. lat., 124°21.98′ W. long.;
(91) 45°09.59′ N. lat., 124°23.33′ W. long.;
(92) 45°11.35′ N. lat., 124°38.37′ W. long.;
(93) 45°00.22′ N. lat., 124°29.24′ W. long.;
(94) 44°55.28′ N. lat., 124°31.70′ W. long.;
(95) 44°41.42′ N. lat., 124°49.13′ W. long.;
(96) 44°21.46′ N. lat., 124°49.29′ W. long.;
(97) 44°12.43′ N. lat., 124°56.56′ W. long.;
(98) 43°58.92′ N. lat., 124°54.42′ W. long.;
(99) 43°50.76′ N. lat., 124°52.75′ W. long.;
(100) 43°47.22′ N. lat., 124°45.70′ W. long.;
(101) 43°43.11′ N. lat., 124°39.85′ W. long.;
(102) 43°20.19′ N. lat., 124°43.28′ W. long.;
(103) 43°13.29′ N. lat., 124°47.09′ W. long.;
(104) 43°13.17′ N. lat., 124°52.77′ W. long.;
(105) 43°05.65′ N. lat., 124°52.96′ W. long.;
(106) 43°00.03′ N. lat., 124°53.71′ W. long.;
(107) 42°53.90′ N. lat., 124°54.49′ W. long.;
(108) 42°49.50′ N. lat., 124°53.15′ W. long.;
(109) 42°47.50′ N. lat., 124°50.28′ W. long.;
(110) 42°46.21′ N. lat., 124°44.55′ W. long.;
(111) 42°41.30′ N. lat., 124°44.38′ W. long.;
(112) 42°38.83′ N. lat., 124°43.02′ W. long.;
(113) 42°31.92′ N. lat., 124°46.17′ W. long.;
(114) 42°32.11′ N. lat., 124°43.49′ W. long.;
(115) 42°31.03′ N. lat., 124°43.75′ W. long.;
(116) 42°28.42′ N. lat., 124°49.08′ W. long.;
(117) 42°20.36′ N. lat., 124°42.43′ W. long.;
(118) 42°15.35′ N. lat., 124°38.86′ W. long.;
(119) 42°09.59′ N. lat., 124°38.13′ W. long.;
(120) 42°04.56′ N. lat., 124°38.86′ W. long.;
(121) 42°04.45′ N. lat., 124°36.72′ W. long.;
(122) 41°59.98′ N. lat., 124°36.70′ W. long.;
(123) 41°47.85′ N. lat., 124°30.41′ W. long.;
(124) 41°43.34′ N. lat., 124°29.89′ W. long.;
(125) 41°23.47′ N. lat., 124°30.29′ W. long.;
(126) 41°21.30′ N. lat., 124°29.36′ W. long.;
(127) 41°13.53′ N. lat., 124°24.41′ W. long.;
(128) 41°06.72′ N. lat., 124°23.3′ W. long.;
(129) 40°54.67′ N. lat., 124°28.13′ W. long.;
(130) 40°49.02′ N. lat., 124°28.52′ W. long.;
(131) 40°40.45′ N. lat., 124°32.74′ W. long.;
(132) 40°34.17′ N. lat., 124°42.77′ W. long.;
(133) 40°24.99′ N. lat., 124°36.37′ W. long.;
(134) 40°22.23′ N. lat., 124°31.78′ W. long.;
(135) 40°16.95′ N. lat., 124°31.93′ W. long.;
(136) 40°17.59′ N. lat., 124°45.23′ W. long.;
(137) 40°13.41′ N. lat., 124°33.44′ W. long.;
(138) 40°06.39′ N. lat., 124°19.49′ W. long.;
(139) 40°02.35′ N. lat., 124°16.57′ W. long.;
(140) 40°0.64′ N. lat., 124°10.37′ W. long.;
(141) 39°58.28′ N. lat., 124°13.51′ W. long.;
(142) 39°56.60′ N. lat., 124°12.02′ W. long.;
(143) 39°55.20′ N. lat., 124°07.96′ W. long.;
(144) 39°52.55′ N. lat., 124°09.40′ W. long.;
(145) 39°42.68′ N. lat., 124°02.52′ W. long.;
(146) 39°35.96′ N. lat., 123°59.49′ W. long.;
(147) 39°34.62′ N. lat., 123°59.59′ W. long.;

(148) 39°33.78′ N. lat., 123°56.82′ W. long.;
(149) 39°33.02′ N. lat., 123°57.07′ W. long.;
(150) 39°32.21′ N. lat., 123°59.13′ W. long.;
(151) 39°7.85′ N. lat., 123°59.07′ W. long.;
(152) 39°00.90′ N. lat., 123°57.88′ W. long.;
(153) 38°59.95′ N. lat., 123°56.99′ W. long.;
(154) 38°56.82′ N. lat., 123°57.74′ W. long.;
(155) 38°56.40′ N. lat., 123°59.41′ W. long.;
(156) 38°50.23′ N. lat., 123°55.48′ W. long.;
(157) 38°46.77′ N. lat., 123°51.49′ W. long.;
(158) 38°45.28′ N. lat., 123°51.56′ W. long.;
(159) 38°42.76′ N. lat., 123°49.76′ W. long.;
(160) 38°41.54′ N. lat., 123°47.76′ W. long.;
(161) 38°40.98′ N. lat., 123°48.07′ W. long.;
(162) 38°38.03′ N. lat., 123°45.78′ W. long.;
(163) 38°37.20′ N. lat., 123°44.01′ W. long.;
(164) 38°33.44′ N. lat., 123°41.75′ W. long.;
(165) 38°29.45′ N. lat., 123°38.42′ W. long.;
(166) 38°27.89′ N. lat., 123°38.38′ W. long.;
(167) 38°23.68′ N. lat., 123°35.40′ W. long.;
(168) 38°19.63′ N. lat., 123°33.98′ W. long.;
(169) 38°16.23′ N. lat., 123°31.83′ W. long.;
(170) 38°14.79′ N. lat., 123°29.91′ W. long.;
(171) 38°14.12′ N. lat., 123°26.29′ W. long.;
(172) 38°10.85′ N. lat., 123°25.77′ W. long.;
(173) 38°13.15′ N. lat., 123°28.18′ W. long.;
(174) 38°12.28′ N. lat., 123°29.81′ W. long.;
(175) 38°10.19′ N. lat., 123°29.04′ W. long.;
(176) 38°07.94′ N. lat., 123°28.45′ W. long.;
(177) 38°06.51′ N. lat., 123°30.89′ W. long.;
(178) 38°04.21′ N. lat., 123°31.96′ W. long.;
(179) 38°02.07′ N. lat., 123°31.3′ W. long.;
(180) 38°00.00′ N. lat., 123°29.55′ W. long.;
(181) 37°58.13′ N. lat., 123°27.21′ W. long.;
(182) 37°55.01′ N. lat., 123°27.46′ W. long.;
(183) 37°51.40′ N. lat., 123°25.18′ W. long.;
(184) 37°43.97′ N. lat., 123°11.49′ W. long.;
(185) 37°36.00′ N. lat., 123°02.25′ W. long.;
(186) 37°13.65′ N. lat., 122°54.18′ W. long.;
(187) 37°00.66′ N. lat., 122°37.84′ W. long.;
(188) 36°57.40′ N. lat., 122°28.25′ W. long.;
(189) 36°59.25′ N. lat., 122°25.54′ W. long.;
(190) 36°56.88′ N. lat., 122°25.42′ W. long.;
(191) 36°57.40′ N. lat., 122°22.62′ W. long.;
(192) 36°55.43′ N. lat., 122°22.43′ W. long.;
(193) 36°52.29′ N. lat., 122°13.18′ W. long.;
(194) 36°47.12′ N. lat., 122°07.56′ W. long.;
(195) 36°47.10′ N. lat., 122°02.11′ W. long.;
(196) 36°43.76′ N. lat., 121°59.11′ W. long.;
(197) 36°38.85′ N. lat., 122°02.20′ W. long.;
(198) 36°23.41′ N. lat., 122°00.11′ W. long.;
(199) 36°19.68′ N. lat., 122°06.93′ W. long.;
(200) 36°14.75′ N. lat., 122°01.51′ W. long.;
(201) 36°09.74′ N. lat., 121°45.00′ W. long.;
(202) 36°06.67′ N. lat., 121°41.06′ W. long.;
(203) 35°57.07′ N. lat., 121°34.32′ W. long.;
(204) 35°52.31′ N. lat., 121°32.45′ W. long.;
(205) 35°51.21′ N. lat., 121°30.91′ W. long.;
(206) 35°46.32′ N. lat., 121°30.30′ W. long.;
(207) 35°33.74′ N. lat., 121°20.10′ W. long.;
(208) 35°31.37′ N. lat., 121°15.23′ W. long.;
(209) 35°23.32′ N. lat., 121°11.44′ W. long.;
(210) 35°15.28′ N. lat., 121°04.45′ W. long.;
(211) 35°07.08′ N. lat., 121°00.3′ W. long.;
(212) 34°57.46′ N. lat., 120°58.23′ W. long.;
(213) 34°44.25′ N. lat., 120°58.29′ W. long.;
(214) 34°32.30′ N. lat., 120°50.22′ W. long.;
(215) 34°19.08′ N. lat., 120°31.21′ W. long.;
(216) 34°17.72′ N. lat., 120°19.26′ W. long.;
(217) 34°22.45′ N. lat., 120°12.81′ W. long.;
(218) 34°21.36′ N. lat., 119°54.88′ W. long.;
(219) 34°09.95′ N. lat., 119°46.18′ W. long.;
(220) 34°09.08′ N. lat., 119°57.53′ W. long.;
(221) 34°07.53′ N. lat., 120°06.35′ W. long.;
(222) 34°10.54′ N. lat., 120°19.07′ W. long.;
(223) 34°14.68′ N. lat., 120°29.48′ W. long.;
(224) 34°09.51′ N. lat., 120°38.32′ W. long.;
(225) 34°03.06′ N. lat., 120°35.54′ W. long.;
(226) 33°56.39′ N. lat., 120°28.47′ W. long.;
(227) 33°50.25′ N. lat., 120°09.43′ W. long.;
(228) 33°37.96′ N. lat., 120°00.08′ W. long.;
(229) 33°34.52′ N. lat., 119°51.84′ W. long.;
(230) 33°35.51′ N. lat., 119°48.49′ W. long.;
(231) 33°42.76′ N. lat., 119°47.77′ W. long.;
(232) 33°53.62′ N. lat., 119°53.28′ W. long.;
(233) 33°57.61′ N. lat., 119°31.26′ W. long.;
(234) 33°56.34′ N. lat., 119°26.4′ W. long.;
(235) 33°57.79′ N. lat., 119°26.85′ W. long.;
(236) 33°58.88′ N. lat., 119°20.06′ W. long.;
(237) 34°02.65′ N. lat., 119°15.11′ W. long.;
(238) 33°59.02′ N. lat., 119°02.99′ W. long.;
(239) 33°57.61′ N. lat., 118°42.07′ W. long.;
(240) 33°50.76′ N. lat., 118°37.98′ W. long.;
(241) 33°38.41′ N. lat., 118°17.03′ W. long.;
(242) 33°37.14′ N. lat., 118°18.39′ W. long.;
(243) 33°35.51′ N. lat., 118°18.03′ W. long.;
(244) 33°30.68′ N. lat., 118°10.35′ W. long.;
(245) 33°32.49′ N. lat., 117°51.85′ W. long.;
(246) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(247) 32°35.53′ N. lat., 117°29.67′ W. long.

* * * * *

9. In section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xiv) is added to read as follows:

(xiv) The 200 fm (366 m) depth contour used around islands/seamounts off the state of California is defined by

straight lines around each island/seamount connecting all of the following points in the order stated:

San Nicholas Island

(1) 33°33.55′ N. lat., 119°46.40′ W. long.;
(2) 33°13.88′ N. lat., 119°13.86′ W. long.;
(3) 33°11.39′ N. lat., 119°16.95′ W. long.;
(4) 33°10.59′ N. lat., 119°28.53′ W. long.;
(5) 33°12.19′ N. lat., 119°53.99′ W. long.;
(6) 33°33.25′ N. lat., 119°53.35′ W. long.; and
(7) 33°33.55′ N. lat., 119°46.40′ W. long.

Santa Catalina Island

(1) 33°32.06′ N. lat., 118°44.52′ W. long.;
(2) 33°31.36′ N. lat., 118°35.28′ W. long.;
(3) 33°30.10′ N. lat., 118°30.82′ W. long.;
(4) 33°27.91′ N. lat., 118°26.83′ W. long.;
(5) 33°26.27′ N. lat., 118°21.35′ W. long.;
(6) 33°21.34′ N. lat., 118°15.24′ W. long.;
(7) 33°13.66′ N. lat., 118°08.98′ W. long.;
(8) 33°17.15′ N. lat., 118°28.35′ W. long.;
(9) 33°20.94′ N. lat., 118°34.34′ W. long.;
(10) 33°23.32′ N. lat., 118°32.60′ W. long.;
(11) 33°28.68′ N. lat., 118°44.93′ W. long.; and
(12) 33°32.06′ N. lat., 118°44.52′ W. long.

San Clemente Island

(1) 33°05.89′ N. lat., 118°39.45′ W. long.;
(2) 33°02.68′ N. lat., 118°33.14′ W. long.;
(3) 32°57.32′ N. lat., 118°29.12′ W. long.;
(4) 32°47.51′ N. lat., 118°17.88′ W. long.;
(5) 32°41.22′ N. lat., 118°23.78′ W. long.;
(6) 32°46.83′ N. lat., 118°32.10′ W. long.;
(7) 33°01.61′ N. lat., 118°40.64′ W. long.; and
(8) 33°5.89′ N. lat., 118°39.45′ W. long.

Santa Barbara Island

(1) 33°47.03′ N. lat., 119°13.65′ W. long.;
(2) 33°35.80′ N. lat., 118°57.48′ W. long.;
(3) 33°28.80′ N. lat., 118°57.48′ W. long.;
(4) 33°20.36′ N. lat., 118°59.96′ W. long.;
(5) 33°22.11′ N. lat., 119°08.50′ W. long.;
(6) 33°32.41′ N. lat., 119°13.96′ W. long.;
(7) 33°44.35′ N. lat., 119°16.84′ W. long.; and
(8) 33°47.03′ N. lat., 119°13.65′ W. long.

Orange County Seamount

(1) 33°25.91′ N. lat., 117°59.44′ W. long.;
(2) 33°23.37′ N. lat., 117°56.97′ W. long.;
(3) 33°22.82′ N. lat., 117°59.50′ W. long.;
(4) 33°25.24′ N. lat., 118°01.68′ W. long.; and
(5) 33°25.91′ N. lat., 117°59.44′ W. long.

Mira's San Diego Rise

(1) 32°50.30′ N. lat., 117°50.18′ W. long.;
(2) 32°44.01′ N. lat., 117°44.46′ W. long.;
(3) 32°41.34′ N. lat., 117°45.86′ W. long.;
(4) 32°45.45′ N. lat., 117°50.09′ W. long.;
(5) 32°50.10′ N. lat., 117°50.76′ W. long.; and
(6) 32°50.30′ N. lat., 117°50.18′ W. long.

* * * * *

10. On pages 11218–11219, in section IV., under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 (North) and Table 3 (South) are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

* * * * *

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	100 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	100 fm - 250 fm	50 fm - 200 fm			50 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**						
1 **Minor slope rockfish[3/]**	1,800 lb/ 2 months					
2 **Pacific ocean perch**	3,000 lb/ 2 months					
3 **DTS complex**						
4 Sablefish	6,000 lb/ 2 months		10,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 3,000 lb/2 mo.			
5 Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/ 2 months	14,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then retention of thornyheads prohibited.			
6 Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months	2,800 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then retention of thornyheads prohibited.			
7 Dover sole	26,000 lb/ 2 months		31,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 12,500 lb/2 mo.			
8 **Flatfish**						
9 All other flatfish[4/]	100,000 lb/ 2 months	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 20,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.				100,000 lb/ 2 months
10 Petrale sole	Not limited					Not limited
11 Rex sole	Included in all other flatfish					
12 Arrowtooth flounder	30,000 lb/ trip	200,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 5,000 lb/2 mo.				
13 **Whiting[5/]**	20,000 lb/ trip		Primary Season (only mid-water trawl permitted in the RCA)		10,000 lb/ trip	
14 **Other Fish[9/]**	Not limited					
15 **Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
16 **Minor shelf rockfish and widow rockfish[3/]**	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
17 **Widow rockfish**						
18 mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month		CLOSED[6/]	12,000 lb/ 2 months
19 **Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
20 **Yellowtail**						
21 mid-water trawl - permitted within the RCA	CLOSED[6/]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			18,000 lb/ 2 months
22 small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb of which may be landed without flatfish.					
23 **Minor nearshore rockfish**	300 lb/ month					
24 **Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):						
40°10' - 38° N. lat.	50 fm - 250 fm (line modified to incorporate petrale sole fishing grounds)	60 fm - 250 fm	60 fm - 200 fm	shoreline - 200 fm	60 fm - 200 fm	60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm	60 fm - 200 fm	shoreline - 200 fm	60 fm - 200 fm	60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	shoreline - 200 fm	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**						
1 **Minor slope rockfish[3/]**						
2 40°10' - 38° N. lat.	1,800 lb/ 2 months					
3 South of 38° N. lat.	30,000 lb/ 2 months					
4 **Splitnose**						
5 40°10' - 38° N. lat.	1,800 lb/ 2 months					
6 South of 38° N. lat.	30,000 lb/ 2 months					
7 **DTS complex**						
8 Sablefish	6,000 lb/ 2 months		10,000 lb/ 2 months	12,000 lb/ 2 months	10,000 lb/ 2 months	
9 Longspine thornyhead	8,000 lb /2 months	9,000 lb/ 2 months	14,000 lb/ 2 months	16,000 lb/ 2 months	14,000 lb/ 2 months	
10 Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/ 2 months	2,800 lb/ 2 months	3,100 lb/ 2 months	2,800 lb/ 2 months	
11 Dover sole	26,000 lb/ 2 months		31,000 lb/ 2 months	35,000 lb/ 2 months	31,000 lb/ 2 months	
12 **Flatfish**						
13 All other flatfish[4/]	70,000 lb/ 2 months	All other flatfish plus petrale & rex sole: 70,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole				70,000 lb/ 2 months
14 Petrale sole	No limit					No limit
15 Rex sole	Included in all other flatfish					
16 Arrowtooth flounder	No limit	1,000 lb/ 2 months				No limit
17 **Whiting[5/]**	20,000 lb/ trip		Primary Season (only mid-water trawl permitted within the RCA)		10,000 lb/ trip	
18 **Other Fish[9/]**	Not limited					
19 **Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**						
20 **Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month					
21 **Widow rockfish**						
22 mid-water trawl - permitted within the RCA	CLOSED[6/]					12, 000 lb/ 2 months
23 **Canary rockfish**	100 lb/ month		300 lb/ month		100 lb/ month	
24 **Bocaccio**	CLOSED[6/]					
25 **Cowcod**	CLOSED[6/]					
26 **Minor nearshore rockfish**	300 lb/ month					
27 **Lingcod[8/]**	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

11. On page 11225, in section IV., under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 (South) is revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	South of 40°10' N. lat.	20 fm - 150 fm			20 fm - 150 fm (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	20 fm - 150 fm	
1	Minor slope rockfish[2/]						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	Splitnose	200 lb/ month					
5	Sablefish						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	Thornyheads						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
11	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	Arrowtooth flounder						
13	Petrale sole						
14	Rex sole						
15	All other flatfish[3/]						
16	Whiting	300 lb/ month					
17	Minor shelf rockfish, widow and chilipepper rockfish[2/]	100 lb/ 2 month	CLOSED[5/]	200 lb/ 2 months	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	Canary rockfish	CLOSED[5/]					
19	Yelloweye rockfish	CLOSED[5/]					
20	Cowcod	CLOSED[5/]					
21	Bocaccio	CLOSED[5/]					
22	Minor nearshore rockfish						
23	Shallow nearshore	200 lb/ 2 months	CLOSED[5/]	400 lb/ 2 months	500 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months
24	Deep nearshore	200 lb/ 2 months		200 lb/ 2 months	400 lb/ 2 months	200 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	CLOSED[5/]		800 lb/ 2 months		CLOSED[5/]	
26	Lingcod[4/]	CLOSED[5/]		300 lb/ month, when nearshore open			CLOSED[5/]
27	Other Fish[6/]	Not limited					
28	PINK SHRIMP EXEMPTED TRAWL GEAR *(not subject to RCAs)*						
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
30	PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL						
31	EXEMPTED TRAWL Rockfish Conservation Area[8/] (RCA):						
32	40°10' - 38° N. lat.	50 fm - 250 fm	60 fm - 250 fm	60 fm - 200 fm	shoreline - 200 fm	60 fm - 200 fm	60 fm - 200 fm
33	38° - 34°27' N. lat.	50 fm - 150 fm	60 fm - 150 fm	60 fm - 200 fm	shoreline - 200 fm	60 fm - 200 fm	60 fm - 200 fm
34	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	shoreline - 200 fm	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).					

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except all rockfish and lingcod, with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because it would delay the implementation of the new trawl RCA boundaries along the West Coast to better align with the interception of certain overfished species, specifically canary rockfish and bocaccio. Implementation of the new trawl RCA boundaries will allow opportunity to harvest healthy groundfish stocks in areas where overfished species are less likely to occur. The West Coast groundfish fleet has endured cutbacks in harvest limits and areas fished over the last few years. Delaying implementation of the new trawl RCA boundaries would result in continued closure of large areas north of 40°10′ N. lat., with adverse economic effects on the trawl fleet. In addition, the affected public had the opportunity to comment on these actions at the April 7–11, 2003, Pacific Council meeting. For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). In addition, most provisions being implemented relieve restrictions and for that reason are not subject to a 30–day delay in effectiveness under 5 U.S.C. 553(d)(1).

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13704 Filed 5–28–03; 3:45pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 105
Monday, June 2, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires modification of the number 3 left and right emergency exit doors. This action would require a new, improved modification of the number 3 left and right emergency exit doors, which would terminate the requirements in the existing AD. The actions specified by the proposed AD are intended to prevent the number 3 emergency exit doors from jamming, which could impede the safe evacuation of passengers and crew during an emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–95–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: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; 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 2002–NM–95–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 13, 1990, the FAA issued AD 91–01–05, amendment 39–6850 (55 FR 52967, December 26, 1990), applicable to certain Boeing Model 757 series airplanes, to require modification of the number 3 left and right emergency exit doors. That action was prompted by reports of doors becoming jammed during attempted operation. The requirements of that AD are intended to prevent the potential for reduced passenger evacuation capability during an emergency.

Actions Since Issuance of Previous Rule

Since the issuance of AD 91–01–05, we have received several reports from operators of difficulty in opening the number 3 emergency exit door on Boeing Model 757–200 series airplanes having a four-door configuration. The reports indicate that, as the door handle was pulled and the door raised, the small hinged panel above the door did not release from its latched position. In each case, as the door raised, it jammed against the hinged panel. In some cases the door would not open, and in other cases the door opened, but a great amount of exertion had to be used. In light of these incidents, the manufacturer has developed a new, improved modification that will prevent jamming of the number 3 left and right emergency exit doors. The FAA approved this modification as an alternative method of compliance and as an option to the terminating action requirements of AD 91–01–05.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 2002, which describes

procedures for modification of the number 3 left and right emergency exit doors. The modification involves replacing the header panel assemblies of the number 3 left and right emergency exit doors (includes replacing the double hinged panels above the doors with new single panels), trimming the top portion of the door liner seal, and installing a new seal, retainer, and support angle. The service bulletin references the procedures for an operational test specified in the Boeing 757 Airplane Maintenance Manual after the modification has been done. 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 supersede AD 91–01–05 to require a new, improved modification of the number 3 left and right emergency exit doors, which would terminate the requirements in the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 398 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

The FAA has reviewed the figures it has used in the past in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations to $60 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

The modification that is currently required by AD 91–01–05 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $95 per airplane. Based on these figures, the cost impact of the currently required modification is estimated to be $275 per airplane.

The new modification that is proposed in this AD action would take approximately 6 work hours per airplane (3 work hours per door) to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $8,000 per kit, per airplane. Based on these figures, the cost impact of the proposed new modification on U.S. operators is estimated to be $978,120, or $8,360 per airplane.

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

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 removing amendment 39–6850 (55 FR 52967, December 26, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–95–AD. Supersedes AD 91–01–05, Amendment 39–6850.

Applicability: Model 757–200 series airplanes having a four-door configuration, as listed in Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the number 3 emergency exit doors from jamming, which could impede the safe evacuation of passengers and crew during an emergency, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Modify the number 3 left and right emergency exit doors per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0237, Revision 2, dated December 12, 2002. The modification involves replacing the header panel assemblies of the number 3 left and right emergency exit doors (includes replacing the double hinged panels above the doors with new single panels), trimming the top portion of the door liner seal, and installing a new seal, retainer, and support angle. Accomplishment of the modification required by this paragraph terminates the requirements of AD 91–01–05, amendment 39–6850.

Credit for Actions Done per Previous Issue of Service Bulletin

(b) Modifications done before the effective date of this AD per Boeing Special Attention Service Bulletin 757–25–0237 dated October 18, 2001, or Revision 1, dated January 24, 2002, are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

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

Special Flight Permits

(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 May 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13657 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–30–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes. That action would have required repetitive inspections for cracking of the floor beam structure located at body station 246; and repair, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate that the unsafe condition does not exist on the airplanes identified in the proposed rule. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 19, 2002 (67 FR 41640). The NPRM would have required repetitive inspections for cracking of the floor beam structure located at body station 246; and repair, if necessary. That action was prompted by numerous reports of fatigue cracking of the floor beam structure located at body station (BS) 246 on several Boeing Model 777 series airplanes. The proposed actions were intended to find and fix such cracking, which could extend and sever the floor beam, resulting in rapid depressurization of the airplane and consequent collapse of the floor structure.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has received new information as a comment from the airplane manufacturer (Boeing). The manufacturer indicated that even though the BS 246 floor beam cracking is not desirable, it did not result in an unsafe condition. As a result, we met with the manufacturer on December 5, 2002, and the manufacturer presented additional supporting data and analysis results.

We have reviewed the data and concur with the manufacturer's conclusion that operators continue to find cracks, and that the type and extent of the floor beam cracking remains unchanged since the original findings. The analysis also showed that the cracked beam is prevented from deflecting to the point of affecting critical flight control.

Based on these facts, we agree with the manufacturer's assessment that the cracking will not result in an unsafe condition, and the critical structural elements in the floor beam will continue to retain the required structural integrity throughout the life of the airplane.

FAA's Conclusions

Upon further consideration, the FAA has determined that the unsafe condition does not exist on the airplanes identified in the NPRM. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–30–AD, published in the **Federal Register** on June 19, 2002 (67 FR 41640), is withdrawn.

Issued in Renton, Washington, on May 27, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13647 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–387–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 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 McDonnell Douglas airplane models. This proposal would require a one-time inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, follow-on actions, and corrective actions if necessary. This action is necessary to prevent shorted wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power, or a fire in the wheel well of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–387–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–387–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

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–387–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–387–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of shorted wires and evidence of arcing on the power cables of the auxiliary hydraulic pump on several McDonnell Douglas Model DC–9–83 airplanes. One incident of arcing resulted in a fire in the airplane wheel well. Investigation revealed that the backshell connector assembly was damaged from sharp bending of the wires and chafed wires in the wheel well. This condition, if not corrected, could lead to shorted wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power, or a fire in the wheel well of the airplane.

The wire bundle for the auxiliary hydraulic pump on certain Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–87 (MD–87), and MD–88 airplanes is identical to that installed on the affected Model DC–9–83 (MD–83) airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD80–29A068, Revision 02, dated November 19, 2002. (That service bulletin ''supersedes and cancels'' McDonnell Douglas Service Bulletins MD80–29–042 and MD80–29–048.) Boeing Alert Service Bulletin MD80–29A068, Revision 02, describes procedures for a one-time inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, follow-on actions, and corrective action if necessary. Follow-on actions include rerouting the wire bundle, replacing the existing straight connector backshell assembly with a new 90-degree backshell connector assembly, replacing an existing bracket with a new improved bracket, replacing existing connector contacts with new contacts, and installing protective sleeving. Corrective actions, depending on conditions found during the inspection, include repairing chafing damage or replacing any damaged wire with a new wire. 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.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 1,063 Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 732 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $43,920, or $60 per airplane.

It would take approximately 3 work hours per airplane to accomplish the proposed follow-on actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $48 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $166,896, or $228 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–387–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; as listed in Boeing Alert Service Bulletin MD80–29A068, Revision 02, dated November 19, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent shorted wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power, or a fire in the wheel well of the airplane, accomplish the following:

One-Time Inspection

(a) Within 18 months after the effective date of this AD, do a one-time general visual inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–29A068, Revision 02, dated November 19, 2002. Start inspecting at the P1–32 plug and end at the fuel tank bulkhead. Before further flight after the inspection, do paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Accomplishment Instructions of the service bulletin.

Note 1: 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.''

Note 2: Boeing Alert Service Bulletin MD80–29A068, Revision 02, dated November 19, 2002, ''supersedes and cancels'' McDonnell Douglas Service Bulletins MD80–29–042 and MD80–29–048.

Corrective Actions

(1) If any chafing or sign of arcing is found, repair chafing damage or replace any damaged wire with a new wire, as applicable.

Follow-On Actions

(2) Perform all applicable follow-on actions specified in the service bulletin, including, but not limited to, rerouting the wire bundle, replacing the existing straight connector backshell assembly with a new 90-degree connector backshell assembly, replacing an existing bracket with a new improved bracket, replacing existing connector contacts with new contacts, and installing protective sleeving.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on May 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13659 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes; Model DHC–8–201 and –202 Airplanes; and Model DHC–8–301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; that would have required replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. Among other actions, this new action revises the proposed rule by incorporating revised replacement intervals for the elevator stop bumpers into the applicable airworthiness limitation. This action is necessary to prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–109–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–109–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 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–109–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–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as ''the original NPRM'') in the **Federal Register** on December 2, 2002 (67 FR 71503). The original NPRM would have required replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. The original NPRM was prompted by a report indicating that an elevator trim problem was detected on a Model DHC–8–100 series airplane due to a broken or missing elevator stop bumper. That condition, if not corrected, could result in damage to the elevator trailing edge, which could result in jamming of the spring tab and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the original NPRM:

Two commenters request that the service information listed in ''Table—Bombardier Service Information'' of paragraph (a) of the original NPRM be revised. One commenter suggests referencing the revision number of the airworthiness limitation (AWL) at which the applicable temporary revisions (TR) were incorporated into the applicable product support manual (PSM) on a permanent basis. The other commenter suggests referencing de Havilland, Inc., task cards. Both commenters state that the TRs referenced in the original NPRM have been incorporated into the PSM and no longer exist. One commenter states that incorporating the AWL will relieve operators from having to immediately request approval for an alternative method of compliance.

The FAA partially agrees. We agree with the commenters that the service information specified in the original NPRM needs to be revised. We have confirmed with both Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, and the airplane manufacturer that, once TRs are incorporated into the PSM of an airplane, they are voided and no longer exist. However, we do not agree with the commenter to reference the revision number of the AWL. Neither TCCA nor we know the revision levels at which the new TRs AWL–84, AWL 2–24, and AWL 3–91 will be incorporated into the PSM.

Since the issuance of the original NPRM, TCCA issued Canadian airworthiness directive CF–2001–08R1, effective January 10, 2003 (supersedes Canadian airworthiness directive CF–2001–08 issued on February 7, 2001, which was referenced in the original NPRM), in order to assure the continued airworthiness of the affected airplanes in Canada. The Canadian airworthiness directive requires revising the Transport Canada-approved maintenance schedule by incorporating revised replacement intervals for the elevator stop bumpers into the applicable AWL per the applicable de Havilland, Inc., TRs (which reference de Havilland, Inc., Dash 8 Maintenance Task Cards 2730/22) in the following table:

TABLE.—TEMPORARY REVISIONS

For model—	de Havilland, Inc., TR—	Dated—	Of maintenance PSM—
DHC–8–102, –103, and –106 airplanes	AWL–84	December 20, 2002	1–8–7
DHC–8–201 and –202 airplanes	AWL 2–24	December 20, 2002	1–82–7
DHC–8–301, –311, and –315 airplanes	AWL 3–91	December 20, 2002	1–83–7

The life-limit for the elevator stop bumpers specified in these new TRs (*i.e.,* 6,000 flight hours or 3 years, whichever occurs first) is lower than that specified in the TRs referenced in the original NPRM (*i.e.,* 12,000 flight hours or 5 years, whichever occurs first). Therefore, we have revised this supplemental NPRM to incorporate the applicable TRs, which specify replacement intervals for the elevator stop bumpers, into the AWL section of the Instructions for Continued Airworthiness.

In addition, the Canadian airworthiness directive requires a phase-in schedule for replacement of certain elevator stop bumpers, but does not specify service information for accomplishment of the replacement. Therefore, this supplemental NPRM would require the replacement of those elevator stop bumpers per the Procedures specified in de Havilland, Inc., Dash 8 Maintenance Task Cards 2730/22, dated April 25, 2001 (for series 100, 200, and 300).

Accomplishment of the actions specified in the applicable TR and task card is intended to adequately address the identified unsafe condition.

Explanation of Changes to 14 Code of Federal Regulations (CFR) Part 39

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, Note 1 and paragraph (c) of the original NPRM have been removed from this supplemental NPRM and paragraph (b) of the original NPRM has been revised accordingly.

Conclusion

Since the AWL change expands the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Cost Impact

We estimate that 195 Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, 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 $23,400, or $120 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 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–109–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 and subsequent.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane, accomplish the following:

Revision of Airworthiness Limitation (AWL) Section

(a) For all airplanes: Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the following applicable de Havilland, Inc., temporary revision into the AWL section:

TABLE.—TEMPORARY REVISIONS.

For model—	de Havilland, Inc., TR—	Dated—	Of maintenance program support manual (PSM)—
DHC–8–102, –103, and –106 airplanes	AWL–84	December 20, 2002	1–8–7
DHC–8–201 and –202 airplanes	AWL 2–24	December 20, 2002	1–82–7
DHC–8–301, –311, –314, and –315 airplanes	AWL 3–91	December 20, 2002	1–83–7

(b) Thereafter, except as provided in paragraphs (c) and (d) of this AD, no alternative replacement intervals may be approved for the elevator stop bumpers.

Phase-In Replacement

(c) For elevator stop bumpers that have accumulated more than 5,000 total flight hours or have more than 30 months total time-in-service as of the effective date of this AD: Within 6 months or 1,000 flight hours after the effective date of this AD, whichever occurs first, replace the left and right upper and lower elevator stop bumpers of the horizontal stabilizer with new bumpers having the same part numbers as the existing bumpers, per the Procedures specified in the applicable de Havilland, Inc., Dash 8 Maintenance Task Card 2730/22, dated April 25, 2001 (for series 100, 200, and 300). Repeat the replacement thereafter per the intervals specified in the AWL revision required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d) Per 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approved alternative methods of compliance for this AD.

Note: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–08R1, effective January 10, 2003.

Issued in Renton, Washington, on May 23, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13658 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[REG–139768–02]

RIN–1545–BB14

Excise Tax Relating to Structured Settlement Factoring Transactions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 5891 of the Internal Revenue Code relating to the manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction.

DATES: The public hearing originally scheduled for June 12, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, February 19, 2003, (68 FR 7956), announced that a public hearing was scheduled for June 12, 2003, at 10 a.m., in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 5891 of the Internal Revenue Code.

The public comment period for these regulations expired on May 20, 2003. The outlines of oral testimony were due on May 22, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, May 28, 2003, no one has requested to speak. Therefore, the public hearing scheduled for June 12, 2003, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 03–13735 Filed 5–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 7 and 25

[Notice No. 10; Ref: TTB Notice No. 4]

RIN 1513–AA11

Flavored Malt Beverages and Related Proposals (2001R–136P); Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to an industry request, TTB extends the comment period for Notice No. 4, Flavored Malt Beverages and Related Proposals, a notice of proposed rulemaking published in the **Federal Register** on March 24, 2003, for an additional 120 days.

DATES: Written comments must be received on or before October 21, 2003.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: TTB Notice No. 4);
- 202–927–8525 (Facsimile);
- *nprm@ttb.treas.gov* (E-mail);
- *http://www.ttb.gov* (Online-A comment form is available with Notice No. 4).

You may view copies of the proposed regulations, the notice of proposed rulemaking, the request for extension, and any comments received on Notice No. 4 by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226 (telephone 202–927–7890), or online at *http://www.ttb.gov*, under Notice No. 4.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Program Manager, Regulations and Procedures Division, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617–557–1323; e-mail *Charles.Bacon@ttb.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2003, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 4, Flavored Malt Beverages and Related Proposals, in the **Federal Register** (68 FR 14292). In this notice of proposed rulemaking, we propose to amend our beer and malt beverage production, labeling, advertising, and formula requirements. The comment period for TTB Notice No. 4 is scheduled to close on June 23, 2003.

Before the close of the comment period, E. & J. Gallo Winery (''Gallo'') submitted a request to TTB to extend the comment period for an additional 120 days beyond the June 23, 2003, closing date. In their request, Gallo notes that Notice No. 4 seeks comments on how the proposed alcohol source standard for malt beverages would affect taste, stability, and other characteristics of flavored malt beverages. They further note that TTB requests data, facts, or studies that support public comments on these topics.

Gallo states they require additional time to substantiate their comments with supporting data. Specifically, Gallo states they need additional time to age reformulated products under normal conditions to determine the impact of the proposed changes to the malt beverage alcohol source standards on their products.

We believe that additional time will assist Gallo and other producers of flavored malt beverages in developing new or reformulated products and will provide them with sufficient time to study the effects on taste, stability, and other characteristics that might result from a reformulated product. Therefore, TTB extends the comment period for Notice No. 4 for the additional 120 days that Gallo requests. The comment period will now close on October 21, 2003.

Drafting Information

Charles N. Bacon of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 25

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: May 22, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–13670 Filed 5–30–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7562]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
FLORIDA **Leon County**				
Alford Arm Tributary	Approximately 500 feet downstream of State Route 146.	*65	*66	Leon County (Unincorporated Areas), City of Tallahassee.
	At downstream side of Thomasville Road	*93	*92	
Northeast Drainage Ditch	Approximately 100 feet upstream of Weems Road	*53	*52	City of Tallahassee.
	Approximately 1 mile upstream of Lonnbladh Road	*125	*126	
McCord Park Pond Drainage Ditch.	At the confluence with Northeast Drainage Ditch	*70	*69	City of Tallahassee.
	Approximately 1,350 feet upstream of the confluence with Northeast Drainage Ditch.	*70	*69	
Park Avenue Ditch	At the confluence with Northeast Drainage Ditch	*56	*59	City of Tallahassee.
	At the CSX Transportation	*64	*66	
Royal Oaks Creek	At the confluence with Lake Kinsale	*84	*81	City of Tallahassee.
	At a point approximately 680 feet upstream of Foxcroft Drive.	*87	*90	
Goose Pond Tributary	At the confluence with Goose Pond	*74	*76	City of Tallahassee.
	Approximately 0.80 mile upstream of the confluence with Goose Pond.	None	*120	
Northeast Drainage Ditch Tributary 1.	At the confluence with Northeast Drainage Ditch	*89	*91	City of Tallahassee.
	At the downstream side of Oleson Road	None	*137	
Northeast Drainage Ditch Tributary 2.	At the confluence with Northeast Drainage Ditch	*57	*60	City of Tallahassee.
	Approximately 250 feet upstream of Brewster Drive	None	*110	
CMC Pond	Entire shoreline within community	None	*103	City of Tallahassee.
Phillips Road Pond	Entire shoreline within community	None	*95	City of Tallahassee.
Harriman Circle Pond	Entire shoreline within community	None	*86	City of Tallahassee.
Ponding Area 282–1	Entire shoreline within community	None	*136	City of Tallahassee.
Ponding Area 301–1	Entire shoreline within community	None	*144	Leon County (Unincorporated Areas), City of Tallahassee.
Ponding Area 301–2	Entire shoreline within community	None	*141	City of Tallahassee.
Ponding Area 301–3	Entire shoreline within community	None	*143	City of Tallahassee.
Ponding Area 301–4	Entire shoreline within community	None	*161	Leon County (Unincorporated Areas), City of Tallahassee.
Ponding Area 301–5	Entire shoreline within community	None	*180	City of Tallahassee.
Ponding Area 301–6	Entire shoreline within community	None	*85	City of Tallahassee.
Ponding Area 301–7	Entire shoreline within community	None	*109	City of Tallahassee.
Ponding Area 303–1	Entire shoreline within community	None	*91	City of Tallahassee.
Ponding Area 303–2	Entire shoreline within community	None	*110	City of Tallahassee.
Northeast Drainage Ditch Overland Flow.	At Lonnbladh Road	*94	*96	City of Tallahassee.
	Approximately 4,150 feet upstream of Lonnbladh Road.	*119	*122	

Leon County (Unincorporated Areas)

Maps available for inspection at the Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida.

Send comments to Mr. Parwez Alam, Leon County Administrator, 301 South Monroe Street, Tallahassee, Florida 32301.

City of Tallahassee

Maps available for inspection at the Tallahassee City Hall, 300 South Adams Street, Tallahassee, Florida.

Send comments to The Honorable John Marks, Mayor of the City of Tallahassee, City Hall, 300 South Adams Street, Tallahassee, Florida 32301–1731.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
MINNESOTA **Hennepin County**				
North Branch Bassett Creek	Approximately 35 feet upstream of the confluence with Bassett Creek.	*849	*850	City of Crystal, City of New Hope.
	At Louisiana Avenue	*879	*883	
Bassett Creek	At conduit entrance approximately 1,500 feet downstream of Irving Avenue.	*811	*807	Cities of Golden Valley, Medicine Lake, Minneapolis, and Plymouth.
	Approximately 100 feet downstream of South Shore Drive.	*888	*889	
Twin Lakes	Entire shoreline within the county	None	*856	Cities of Brooklyn Center, Crystal and Robbinsdale.
Ryan Lake	Entire shoreline within the county	None	*856	Cities of Brooklyn Center, Minneapolis, and Robbinsdale.
Lake Minnetonka	Entire shoreline within the county	None	*931	Cities of Deephaven, Greenwood, and Minnetrista.
Gleason Creek	Approximately 450 feet downstream of the confluence of Gleason Lake.	None	*945	City of Plymouth.
	Approximately 175 feet downstream of the confluence of Gleason Lake.	None	*945	
Unnamed Ponding Area Southwest of Hadley Lake.	Entire shoreline within the county	None	*952	City of Wayzata.
Pioneer Creek	Approximately 0.6 mile upstream of County Highway 90.	None	*958	City of Maple Plain.
	Approximately 400 feet downstream of Pagenkopf Road.	None	*958	
Lake Sarah	Entire shoreline within the county	None	*981	City of Greenfield.
North Fork Rush Creek	Approximately 400 feet upstream of the downstream crossing of 109th Avenue North (County Route 117).	None	*926	Township of Hassan.
	Approximately 75 feet downstream of the upstream crossing of 109th Avenue North (County Route 117).	None	*927	
Crystal Bay	Entire shoreline within the county	None	*931	City of Minnetonka Beach.
Lafayette Bay	Entire shoreline within the county	None	*931	City of Minnetonka Beach.
Halstead Bay	Entire shoreline within the county	None	*931	City of Minnetrista.
Dutch Lake	Entire shoreline within the county	None	*940	City of Minnetrista.
Jennings Bay	Entire shoreline within the county	None	*931	City of Minnetrista.
Six Mile Creek	At the confluence with Halstead Bay	None	*931	City of Minnetrista.
	Approximately 200 feet upstream of Highland Road	None	*931	

City of Brooklyn Center

Maps available for inspection at the Brooklyn Center City Hall, 6301 Shingle Creek Parkway, Brooklyn Center, Minnesota.

Send comments to the Honorable Myrna Kragness, Mayor of the City of Brooklyn Center, 6301 Shingle Creek Parkway, Brooklyn Center, Minnesota 55430.

City of Crystal

Maps available for inspection at the Crystal City Hall, 4141 Douglas Drive, Crystal, Minnesota.

Send comments to the Honorable Peter Meintsma, Mayor of the City of Crystal, 4141 Douglas Drive, Crystal, Minnesota 55422.

City of Deephaven

Maps available for inspection at the Deephaven City Hall, 20225 Cottagewood Road, Deephaven, Minnesota.

Send comments to the Honorable Tom Anderson, Mayor of the City of Deephaven, 20225 Cottagewood Road, Deephaven, Minnesota 55331.

City of Golden Valley

Maps available for inspection at the Golden Valley City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota.

Send comments to the Honorable Linda Loomis, Mayor of the City of Golden Valley, 7800 Golden Valley Road, Golden Valley, Minnesota 55427.

City of Greenfield

Maps available for inspection at the Greenfield City Hall, 6390 Town Hall Drive, Loretto, Minnesota.

Send comments to the Honorable Thomas Swanson, Mayor of the City of Greenfield, 6390 Town Hall Drive, Loretto, Minnesota 55357.

City of Greenwood

Maps available for inspection at the Greenwood City Hall, Zoning Office, 20225 Cottagewood Road, Deephaven, Minnesota.

Send comments to the Honorable Terry Nagel, Mayor of the City of Greenwood, 20225 Cottagewood Road, Deephaven, Minnesota.

Township of Hassan

Maps available for inspection at the Hassan Township Hall, 25000 Hassan Parkway, Rogers, Minnesota.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to Mr. Clark Linn, Chairman of the Township of Hassan Board of Supervisors, 25000 Hassan Parkway, Rogers, Minnesota 55374.

City of Maple Plain

Maps available for inspection at the Maple Plain City Hall, 1620 Maple Avenue, Maple Plain, Minnesota.

Send comments to the Honorable Jack Vigoren, Mayor of the City of Maple Plain, P.O. Box 97, Maple Plain, Minnesota 55359.

City of Medicine Lake

Maps available for inspection at the Medicine Lake City Hall, 10609 South Shore Drive, Medicine Lake, Minnesota.

Send comments to Mr. Ted Hoshal, Medicine Lake Councilmember, 10609 South Shore Drive, Medicine Lake, Minnesota 55441.

City of Minneapolis

Maps available for inspection at the Minneapolis City Hall, Public Works Office, 350 South Fifth Street, Minneapolis, Minnesota.

Send comments to the Honorable R. T. Rybak, Mayor of the City of Minneapolis, 350 South Fifth Street, Room 331, Minneapolis, Minnesota 55415.

City of Minnetonka Beach

Maps available for inspection at the Minnetonka Beach City Hall, 2945 West Wood Road, Minnetonka Beach, Minnesota.

Send comments to the Honorable James Gasch, Mayor of the City of Minnetonka Beach, P.O. Box 146, Minnetonka Beach, Minnesota 55361.

City of Minnetrista

Maps available at the Minnetrista City Hall, 7701 County Road 110 West, Minnetrista, Minnesota.

Send comments to the Honorable Cheryl Fischer, Mayor of the City of Minnetrista, 7701 County Road 110 West, Minnetrista, Minnesota 55364.

City of New Hope

Maps available for inspection at the New Hope City Hall, 4401 Xylon Avenue North, New Hope, Minnesota.

Send comments to the Honorable W. Peter Enck, Mayor of the City of New Hope, 4401 Xylon Avenue North, New Hope, Minnesota 55428.

City of Plymouth

Maps available for inspection at the Plymouth City Hall, 3400 Plymouth Boulevard, Plymouth, Minnesota.

Send comments to the Honorable Judy Johnson, Mayor of the City of Plymouth, 3400 Plymouth Boulevard, Plymouth, Minnesota 55447.

City of Robbinsdale

Maps available for inspection at the Robbinsdale City Hall, 4100 Lakeview Avenue North, Robbinsdale, Minnesota.

Send comments to the Honorable Michael Holtz, Mayor of the City of Robbinsdale, 4100 Lakeview Avenue North, Robbinsdale, Minnesota 55422.

City of Wayzata

Maps available for inspection at the Wayzata City Hall, 600 Rice Street, Wayzata, Minnesota.

Send comments to the Honorable Barry Petit, Mayor of the City of Wayzata, 600 Rice Street, Wayzata, Minnesota 55391.

NEW YORK
Schoharie County

Cobleskill Creek	At the confluence with Schoharie Creek	•594	•596	Town of Schoharie, Town and Village of Cobleskill, Town of Richmondville, Town of Esperance.
	Approximately 0.51 mile upstream of State Route 7	None	•927	
Fly Creek	At the confluence with Schoharie Creek	•585	•591	Town of Esperance.
	Approximately 1,870 feet upstream of U.S. Route 20	None	•710	
Fox Creek	Approximately 0.6 mile upstream of the confluence with Schoharie Creek.	•605	•606	Town of Schoharie, Village of Schoharie, Town of Wright.
	Approximately 1,850 feet downstream of Debritko Road.	None	•653	
Line Creek	At the confluence with Schoharie Creek	•643	•642	Town of Middleburgh, Town of Fulton.
	Approximately 1,655 feet upstream of West Middleburgh Road.	None	•788	
Mill Creek	At the confluence with Cobleskill Creek	•900	•899	Town and Village of Cobleskill.
	Approximately 0.63 mile upstream of Quarry Street	None	•1,067	
Schoharie Creek	At downstream Schoharie County boundary	•531	•541	Town and Village of Esperance, Town of Fulton, Town and Village of Middleburgh Town, and Village of Schoharie.
	Approximately 0.45 mile upstream of Town of Fulton and Middleburgh corporate limits.	None	•668	
School House Creek	At confluence with Stoney Creek	•639	•638	Village and Town of Middleburgh.
	Approximately 0.61 mile upstream of Straub Lane	None	•792	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Stoney Creek	At confluence with Schoharie Creek	•639	•638	Village and Town of Middleburgh.
	Approximately 1,620 feet upstream of U.S. Route 145	None	•758	

Town of Cobleskill

Maps available for inspection at the Cobleskill Town Office, 2668 State Route 7, Suite 37, Cobleskill, New York.

Send comments to Mr. Frank Reilly, Cobleskill Town Supervisor, 2668 State Route 7, Suite 37, Cobleskill, New York 12043.

Village of Cobleskill

Maps available for inspection at the Cobleskill Village Planning Department, 378 Mineral Springs Road, Suite 5, Cobleskill, New York.

Send comments to The Honorable William Gilmore, Mayor of the Village of Cobleskill, 378 Mineral Springs Road, Suite 5, Cobleskill, New York 12043.

Town of Esperance

Maps available for inspection at the Esperance Town Hall, 104 Charleston Street, Esperance, New York.

Send comments to The Honorable Earl Van Wormer, Esperance Town Supervisor, 104 Charleston Street, Esperance, New York 12066.

Village of Esperance

Maps available for inspection at the Esperance Village Hall, Church Street, Esperance, New York.

Send comments to The Honorable Lawrence Rockwell, Mayor of the Village of Esperance, P.O. Box 108, Esperance, New York 12066.

Town of Fulton

Maps available for inspection at the Fulton Town Office, 1168 Bear Ladder Road, West Fulton, New York.

Send comments to Mr. Phillip Skowfoe, Fulton Town Supervisor, 126 Chapman Road, Fultonham, New York 12071.

Town of Middleburgh

Maps available for inspection at the Middleburgh Town Hall, 146 Railroad Avenue, Middleburgh, New York.

Send comments to Mr. Dennis Richards, Middleburgh Town Supervisor, 136 Railroad Avenue, Middleburgh, New York 12122.

Village of Middleburgh

Maps available for inspection at the Middleburgh Village Municipal Building, 309 Main Street, Middleburgh, New York.

Send comments to The Honorable Gary Hayes, Mayor of the Village of Middleburgh, P.O. Box 789, Middleburgh, New York 12122.

Town of Richmondville

Maps available for inspection at the Richmondville Town Clerk's Office, 340 Main Street, Richmondville, New York.

Send comments to Mr. Frederick Guay, Richmondville Town Supervisor, 115 Popadic Road, Richmondville, New York 12149.

Town of Schoharie

Maps available for inspection at the Schoharie Town Office, 289 Main Street, Schoharie, New York.

Send comments to Mr. Martin Shrederis, Schoharie Town Supervisor, 289 Main Street, Suite 2, Schoharie, New York 12157.

Village of Schoharie

Maps available for inspection at the Schoharie Village Office, 256 Main Street, Schoharie, New York.

Send comments to The Honorable John Borst, Mayor of the Village of Schoharie, 256 Main Street, Schoharie, New York 12157–0219.

Town of Wright

Maps available for inspection at the Wright Town Hall, 105 School Street, Suite 1, Gallupville, New York.

Send comments to Ms. Susan Loden, Wright Town Supervisor, P.O. Box 130, Gallupville, New York 12073.

NORTH CAROLINA
Franklin County

Basin 10, Stream 14	Approximately 150 feet downstream of the County boundary.	None	•306	Franklin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the County boundary.	None	•379	
Beaverdam Creek (Basin 11, Stream 3).	At the confluence with Moccasin Creek	None	•226	Franklin County (Unincorporated Areas).
	Approximately 200 feet upstream of the confluence with Moccasin Creek.	None	•226	
Cypress Creek	At the confluence with the Tar River	None	•170	Franklin County (Unincorporated Areas), Town of Youngsville.
	Approximately 1.2 miles upstream of the confluence with the Tar River.	None	•170	
Hattles Branch	At the confluence with Richland Creek	None	•314	Franklin County (Unincorporated Areas).
	Approximately 100 feet downstream of South College Street.	None	•396	
Horse Creek	At the downstream County boundary	None	•342	Franklin County (Unincorporated Areas).
	Approximately 225 feet upstream of Nottingham Court	None	•387	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Little River	At the downstream County boundary	None	•325	Franklin County (Unincorporated Areas), Town of Youngsville.
	Approximately 900 feet upstream of Martindale Drive	None	•430	
Moccasin Creek	At Interstate 264	None	•219	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Henry Baker Road.	None	•307	
Moccasin Creek Tributary 3	At the confluence with Moccasin Creek	None	•269	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Old Halifax Road	None	•368	
Press Prong Tributary 1	At the County boundary	None	•241	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Tant Road	None	•273	
Richland Creek	At the County boundary	None	•301	Franklin County (Unincorporated Areas), Town of Youngsville.
	Approximately 1.0 mile upstream of the confluence of Hattles Branch.	None	•358	
Tar River	Approximately 390 feet downstream of the confluence of Cypress Creek.	None	•170	Franklin County (Unincorporated Areas).
	Approximately 600 feet upstream of the confluence of Cypress Creek.	•171	•170	
Turkey Creek	Approximately 800 feet upstream of the confluence of Turkey Creek Tributary 1.	None	•253	Franklin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Interstate 64	None	•320	
Turkey Creek Tributary 1	Approximately 450 feet upstream of the confluence with Turkey Creek.	None	•253	Franklin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Interstate 64	None	•319	
Wolfharbor Branch	At the confluence with Turkey Creek	None	•261	Franklin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Carlyle Road	None	•335	

Unincorporated Areas of Franklin County (Unincorporated Areas)

Maps available for inspection at the Franklin County (Unincorporated Areas) GIS Department, 215 East Nash Street, Louisburg, North Carolina.

Send comments to Dr. John R. Ball, Chairman of the Franklin County (Unincorporated Areas) Board of Commissioners, 113 Market Street, Louisburg, North Carolina 27549.

Town of Youngsville

Maps available for inspection at the Youngsville Town Hall, 118 North Cross Street, Youngsville, North Carolina.

Send comments to The Honorable Samuel K. Hardwick, Mayor of the Town of Youngsville, P.O. Box 190, 118 North Cross Street, Youngsville, North Carolina 27596.

NORTH CAROLINA
Greene County

Contentnea Creek	At the Greene/Pitt County boundary	•29	•31	Towns of Hookerton and Snow Hill, Greene County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Hugo Road	•32	•33	
Appletree Swamp	At 1 Arm Edwards Road	None	•75	Greene County (Unincorporated Areas).
	At the Greene/Wayne County boundary	None	•86	
Appletree Swamp Tributary	At the confluence with Appletree Swamp	None	•83	Greene County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Appletree Swamp.	None	•88	
Button Branch	At the Greene/Wayne County boundary	None	•69	Greene County (Unincorporated Areas).
	Approximately 1,500 feet upstream of Wayne Road	None	•84	
Fort Run	Approximately 0.8 mile upstream of the confluence with Contentnea Creek.	None	•51	Greene County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Gurganus Road	None	•87	
Lewis Branch	At the confluence with Fort Run	None	•64	Greene County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Fort Run.	None	•75	
Middle Swamp	At the upstream side of U.S. Route 258	None	•63	Greene County (Unincorporated Areas).
	Approximately 2.0 miles upstream of U.S. Route 258	None	•68	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Rainbow Creek	Approximately 0.6 mile upstream of the confluence with Contentnea Creek.	None	•38	Greene County (Unincorporated Areas).
	Approximately 0.6 mile upstream of U.S. Route 258	None	•76	
Reeders Fork	At the confluence with Tyson Marsh	None	•56	Greene County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Burrfield Road	None	•86	
Reedy Branch	At the confluence with Tyson Marsh	None	•60	Greene County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Tyson Marsh.	None	•77	
Sandy Run	Approximately 0.5 mile upstream of Sterfarm Road	None	•44	Greene County (Unincorporated Areas).
	Approximately 800 feet downstream of State Route 1324.	None	•74	
Tyson Marsh	Approximately 1,600 feet upstream of Highway 58	None	•49	Town of Snow Hill, Greene County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Gray Turnage Road.	None	•78	
Watery Branch	Approximately 0.5 mile upstream of the confluence with Contentnea Creek.	None	•62	Greene County (Unincorporated Areas).
	At the Greene/Wayne County boundary	None	•74	
Wheat Swamp	Approximately 0.5 mile upstream of the confluence with Contentnea Creek.	None	•36	Greene County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Sugg Road	None	•77	
Wheat Swamp Tributary	At the confluence with Wheat Swamp	None	•40	Greene County (Unincorporated Areas).
	At the Greene/Lenoir County boundary	None	•40	

Town of Hookerton

Maps available for inspection at the Hookerton Town Hall, 227 East Main Street, Hookerton, North Carolina.

Send comments to The Honorable Lewis K. Garris, Mayor of the Town of Hookerton, P.O. Box 296, Hookerton, North Carolina 28538.

Town of Snow Hill

Maps available for inspection at the Snow Hill Town Hall, 201 North Greene Street, Snow Hill, North Carolina.

Send comments to The Honorable Donald Davis, Mayor of the Town of Snow Hill, 201 North Greene Street, Snow Hill, North Carolina 28580.

Unincorporated Areas of Greene County

Maps available for inspection at the Greene County Inspections Office, 229 Kingold Boulevard, Snow Hill, North Carolina.

Send comments to Mr. E. Lee Worsley, Jr., Greene County Manager, 229 Kingold Boulevard, Suite D, Snow Hill, North Carolina 28580.

NORTH CAROLINA
Jones County

Crooked Run	At the confluence with Trent River	None	•24	Township of Trenton, Jones County (Unincorporated Areas).
	Approximately 2.8 miles upstream of Francks Field Road.	None	•45	
Trent River	Approximately 2.8 miles downstream of the confluence of Mill Creek.	•8	•9	Town of Pollockville, Township of Trenton, Jones County (Unincorporated Areas).
	At the Jones/Lenoir County boundary	None	•63	
Ash Branch	At the confluence with Vine Swamp	None	•56	Jones County (Unincorporated Areas).
	Approximately 0.5 mile upstream of State Highway 58	None	•61	
Beaver Creek	At the confluence with Trent River	None	•29	Jones County (Unincorporated Areas).
	Just downstream of Copeland Farm Road	None	•50	
Beaverdam Branch 2	At the confluence with Mill Run	None	•16	Jones County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Davis Field Road	None	•30	
Beaverdam Creek 3	At the confluence with Trent River	None	•19	Jones County (Unincorporated Areas).
	Approximately 2.8 miles upstream of Ten Mile Fork Road.	None	•42	
Black Swamp	At the confluence with Trent River	None	•49	Jones County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Foley Branch Lane.	None	•58	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Chinquapin Branch	At the confluence with Trent River	None	•30	Jones County (Unincorporated Areas).
	Approximately 3.2 miles upstream of Chinquapin Chapel Road.	None	•39	
Island Branch Swamp	At the confluence with Resolution Branch	None	•27	Jones County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Henderson Road	None	•30	
Island Creek	Approximately 0.3 mile downstream of the confluence of Long Branch.	None	•8	Jones County (Unincorporated Areas).
	Approximately 1.2 mile upstream of Island Creek Road.	None	•20	
Joshua Creek	At the confluence with Trent River	None	•58	Jones County (Unincorporated Areas).
	At the Jones/Lenoir County boundary	None	•64	
Jumping Creek	At the confluence with Trent River	None	•20	Jones County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Ten Mile Fork Road.	None	•32	
Little Chinquapin Branch	At the confluence with Trent River	None	•36	Jones County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Pleasant Hill Road.	None	•49	
Little Hall Creek	At the confluence with Trent River	None	•15	Jones County (Unincorporated Areas).
	Approximately 1.7 miles upstream of State Highway 58.	None	•28	
Long Branch	At the confluence with Trent River	None	•18	Jones County (Unincorporated Areas).
	Approximately 500 feet upstream of Ben Banks Road	None	•34	
Mill Branch	At the confluence with Trent River	None	•40	Jones County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence of Trent River.	None	•44	
Holston Creek	At the confluence with White Oak River	None	•10	Jones County (Unincorporated Areas).
	Approximately 2.6 miles upstream of State Highway 58.	None	•23	
Cypress Creek	At the confluence with Trent River	None	•43	Jones County (Unincorporated Areas).
	Approximately 2.9 miles upstream of Old Comfort Highway.	None	•54	
Deep Bottom Branch	At the confluence with Beaver Creek	None	•29	Jones County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Wyse Fork Road	None	•54	
Flat Swamp	At the confluence with Beaver Creek	None	•44	Jones County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Flat Swamp Tributary 1.	None	•50	
Flat Swamp Tributary	At the confluence with Flat Swamp	None	•49	Jones County (Unincorporated Areas).
	Approximately 1,300 feet upstream of the confluence with Flat Swamp.	None	•49	
Goshen Branch	At the confluence with Trent River	•8	•14	Jones County (Unincorporated Areas).
	Approximately 475 feet upstream of Bell Loop Road	None	•23	
Grape Branch	At the confluence with Tuckahoe Swamp	None	•62	Jones County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence of Grape Branch Tributary.	None	•73	
Grape Branch Tributary 1	At the confluence with Grape Branch	None	•64	Jones County (Unincorporated Areas).
	Approximately 1,300 feet upstream of the confluence with Grape Branch.	None	•67	
Heath Mill Run	At the confluence with Beaver Creek	None	•31	Jones County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Wyse Fork Road	None	•51	
Mill Creek	At the confluence with Trent River	•8	•13	Township of Pollockville, Jones County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 2.3 miles upstream of Bender Road	None	•37	
Mill Creek Tributary 1	At the confluence with Mill Creek	None	•13	Jones County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Tributary to Mill Creek Tributary 1.	None	•24	
Mill Run	At the confluence with Trent River	None	•16	Jones County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence of Beaverdam Branch 2.	None	•28	
Musselshell Creek	At the confluence with Trent River	None	•26	Jones County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence of Musselshell Creek Tributary 2.	None	•43	
Pocoson Branch	At the confluence with Trent River	None	•33	Jones County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Highway 41	None	•50	
Poplar Branch	At the confluence with Trent River	None	•33	Jones County (Unincorporated Areas).
	Approximately 1.0 mile upstream of State Route 41	None	•47	
Raccoon Creek	Approximately 0.59 mile upstream of the confluence with Trent River.	None	•8	Jones County (Unincorporated Areas).
	Approximately 650 feet downstream of Island Creek Road.	None	•21	
Rattlesnake Branch	At the confluence with Beaver Creek	None	•43	Jones County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Moore Road	None	•50	
Reedy Branch 1	At the confluence with Trent River	None	•48	Jones County (Unincorporated Areas).
	Approximately 1.3 miles upstream of State Route 41	None	•58	
Resolution Branch	At the confluence with Trent River	None	•27	Jones County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Wyse Fork Road	None	•45	
Hunters Creek	At the confluence with White Oak River	None	•9	Jones County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence of South Canal.	None	•39	
Tributary to Mill Creek Tributary 1.	At the confluence with Mill Creek Tributary 1	None	•18	Jones County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Mill Creek Tributary 1.	None	•27	
Tuckahoe Creek	At the confluence with Trent River	None	•51	Jones County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Lee Mills Road	None	•59	
Tuckahoe Swamp	At the confluence of Tuckahoe Creek	None	•57	Jones County (Unincorporated Areas).
	At the Jones/Lenoir County boundary	None	•81	
Vine Swamp	At the confluence with Beaver Creek	None	•49	Jones County (Unincorporated Areas).
	At the Jones/Lenoir County boundary	None	•56	
Black Swamp Creek	At the confluence with White Oak River	None	•11	Jones County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Catfish Lake Road.	None	•37	
Chinkapin Branch	At the confluence with White Oak River	None	•38	Jones County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with White Oak River.	None	•38	
Tracey Swamp	At downstream limit of County boundary	None	•43	Jones County (Unincorporated Areas).
	Approximately 400 feet upstream of Burkett Road	None	•54	
Tracey Swamp Tributary	At the confluence with Tracey Swamp	None	•47	Jones County (Unincorporated Areas).
	Approximately 1.1 miles upstream with the confluence of Tracey Swamp.	None	•53	
White Oak River	At the confluence of Hunters Creek	None	•9	Jones County (Unincorporated Areas).
	Approximately 2.8 miles upstream of the confluence of Chinkapin Branch.	None	•50	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
White Oak River Tributary 1	At the confluence with White Oak River	None	•15	Town of Maysville, Jones County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Eighth Street/State Highway 58.	None	•36	
White Oak River Tributary 2	At the confluence with White Oak River Tributary 1	None	•22	Town of Maysville, Jones County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Eighth Street/State Highway 58.	None	•35	

Town of Maysville

Maps available for inspection at the Town of Maysville Public Works Department, 404 Main Street, Maysville, North Carolina.

Send comments to The Honorable James Harper, Mayor of the Town of Maysville, P.O. Box 265, Maysville, North Carolina 28555.

Town of Pollocksville

Maps available for inspection at the Pollocksville Town Hall, 215 Foy Street, Pollocksville, North Carolina.

Send comments to The Honorable James Bender, Mayor of the Town of Pollocksville, P.O. Box 97, Pollocksville, North Carolina 28573.

Township of Trenton

Maps available for inspection at the Trenton Town Hall, 119 Jones Street, Trenton, North Carolina.

Send comments to The Honorable Sylvia Willis, Mayor of the Town of Trenton, P.O. Box 397, Maysville, North Carolina 28585.

Unincorporated Areas of Jones County

Maps available for inspection at the Jones County Building and Inspections Department, 101 Market Street, Trenton, North Carolina.

Send comments to Mr. Larry Meadows, Jones County Manager, P.O. Box 340, Trenton, North Carolina 28585.

NORTH CAROLINA
Nash County

Beech Branch	At the upstream side of the railroad	None	•96	Nash County (Unincorporated Areas), City of Rocky Mount.
	Approximately 250 feet downstream of Red Oak Battleboro Road.	None	•111	
Compass Branch Creek	At the upstream side of the railroad	•87	•85	Nash County (Unincorporated Areas), City of Rocky Mount.
	Approximately 350 feet upstream of Red Oak Battleboro Road.	None	•139	
Goose Branch	At the confluence with Tar River	•84	•85	City of Rocky Mount.
	Approximately 250 feet downstream of Country Club Road.	•95	•97	
Hornbeam Branch	At the upstream side of the railroad	•82	•85	City of Rocky Mount.
	Approximately 450 feet upstream of Peele Road	None	•104	
Maple Creek	At the confluence with Tar River	•99	•101	Nash County (Unincorporated Areas), City of Rocky Mount.
	Approximately 0.7 mile downstream of Bethlehem Road.	•106	•107	
Stony Creek	At the confluence with Tar River	•94	•97	Nash County (Unincorporated Areas), City of Rocky Mount, Town of Nashville.
	At the confluence with Big Peachtree Creek	None	•182	
Tar River	At the downstream side of Leggett Road	•73	•71	Nash County (Unincorporated Areas), City of Rocky Mount.
	At the Franklin County boundary	•168	•170	
Big Peachtree Creek	At the confluence with Stony Creek	None	•182	Nash County (Unincorporated Areas).
	At the Nash-Franklin County boundary	None	•204	
Fishing Creek	Approximately 50 feet downstream of Ward Road	None	•129	Nash County (Unincorporated Areas).
	At the Nash-Warren County boundary	None	•165	
Grape Branch	At the confluence with Tar River	•103	•107	Nash County (Unincorporated Areas), City of Rocky Mount.
	Approximately 1,200 feet upstream of Redman Road	None	•135	
Jacobs Branch	Approximately 400 feet upstream of the confluence with Tar River.	None	•135	Nash County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of Gandy Road	None	•152	
Big Basket Creek	At the confluence with Stony Creek	•122	•127	Nash County (Unincorporated Areas), Town of Red Oak.
	Approximately 0.4 mile upstream of Taylors Store Road.	None	•156	
Polecat Branch	Approximately 550 feet upstream of the confluence with Maple Creek.	None	•111	Nash County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence of Unnamed Tributary to Polecat Branch.	None	•120	
Unnamed Tributary to Polecat Branch.	At the confluence with Polecat Branch	None	•115	Nash County (Unincorporated Areas).
	Approximately 250 feet downstream of Allison Lane	None	•140	
Red Bird Creek	At the confluence with Sandy Creek	None	•172	Nash County (Unincorporated Areas).
	At the Nash-Franklin County boundary	None	•194	
Sandy Creek	At the confluence with Swift Creek	None	•155	Nash County (Unincorporated Areas).
	At the Nash-Franklin County boundary	None	•183	
Swift Creek	At Red Oak Road	None	•130	Nash County (Unincorporated Areas), Town of Red Oak.
	Approximately 0.4 mile upstream of the confluence of Sandy Creek.	None	•158	
Stony Creek Tributary	At the confluence with Stony Creek	None	•123	Nash County (Unincorporated Areas), Town of Dortches.
	Approximately 1.2 miles upstream of I–95	None	•155	
Little Creek	At the confluence with Moccasin Creek	None	•208	Nash County (Unincorporated Areas).
	Approximately 300 feet upstream of the confluence with Moccasin Creek.	None	•208	
Press Prong	At the confluence with Turkey Creek	None	•223	Nash County (Unincorporated Areas).
	At the confluence of Press Prong Tributary	None	•231	
Press Prong Tributary 1	At the confluence with Press Prong	None	•231	Nash County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Wiley Road	None	•241	
Turkey Creek	Approximately 1.1 miles downstream of U.S. 264	None	•168	Nash County (Unincorporated Areas).
	Approximately 2,100 feet upstream of Rossie Jones Road.	None	•255	
Turkey Creek Tributary 1	Approximately 100 feet upstream of Rossie Jones Road.	None	•253	Nash County (Unincorporated Areas).
	Approximately 840 feet upstream of Rossie Jones Road.	None	•253	
Moccasin Creek	Approximately 0.9 mile downstream of N.C. 231	None	•158	Nash County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Interstate 264	None	•220	

Town of Dortches

Maps available for inspection at the Dortches Town Hall, 3057 Town Hall Road, Rocky Mount, North Carolina.

Send comments to The Honorable John F. Griffin, Mayor of the Town of Dortches, 3057 Town Hall Road, Rocky Mount, North Carolina 27804.

Nash County (Unincorporated Areas)

Maps available for inspection at the Nash County Planning Department, 120 West Washington Street, Suite 2110, Nashville, North Carolina.

Send comments to Mr. Bob Murphy, Nash County Manager, 120 West Washington Street, Suite 3072, Nashville, North Carolina 27856.

Town of Nashville

Maps available for inspection at the Nashville Town Hall, 200 West Washington Street, Nashville, North Carolina.

Send comments to The Honorable Warren Evans, Mayor of the Town of Nashville, P.O. Box 987, Nashville, North Carolina 27856.

Town of Red Oak

Maps available for inspection at the Red Oak Town Hall, 8406 Red Oak Boulevard, Nashville, North Carolina.

Send comments to The Honorable Al Wester, Mayor of the Town of Red Oak, P.O. Box A, Red Oak, North Carolina 27868.

City of Rocky Mount

Maps available for inspection at the City of Rocky Mount Planning Department, One Government Plaza, Rocky Mount, North Carolina.

Send comments to Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA Pitt County				
Contentnea Creek	At the confluence with Neuse River	•19	•24	Town of Grifton, Pitt County (Unincorporated Areas).
	At the confluence of Little Contentnea Creek	•29	•31	
Fork Swamp	At the confluence with Swift Creek	None	•34	City of Greenville, Town of Winterville, Pitt County (Unincorporated Areas).
	Approximately 1,770 feet upstream of Fire Tower Road.	None	•59	
Fork Swamp Tributary 1	At the confluence with Fork Swamp	None	•52	City of Greenville, Town of Wintervile, Pitt County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Old Tar Road	None	•61	
Fork Swamp Tributary 2	At the confluence with Fork Swamp	None	•53	City of Greenville, Pitt County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Fork Swamp.	None	•58	
Back Swamp	At the confluence with Swift Creek	None	•40	Town of Grifton, Town of Ayden, Pitt County (Unincorporated Areas).
	Approximately 1,600 feet upstream of Hanrahan Road	None	•63	
Buckleberry Canal	Approximately 0.5 mile upstream of Neuse River	None	•23	Pitt County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Stokestown-St. Johns Road.	None	•27	
Clayroot Swamp	At the confluence with Swift Creek	None	•19	Pitt County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Voa Site B Road.	None	•42	
Clayroot Swamp Tributary 1	At the confluence with Clayroot Swamp	None	•34	Pitt County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Stokestown-St. Johns Road.	None	•46	
Creeping Swamp	At the confluence with Clayroot Swamp	None	•21	Pitt County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Cayton Road	None	•47	
Gum Swamp	At the confluence with Swift Creek	None	•56	City of Greenville, Pitt County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Swift Creek.	None	•63	
Horse Swamp	At the confluence with Swift Creek	None	•49	Pitt County (Unincorporated Areas).
	Approximately 1,375 feet upstream of Jolly Road	•171	•52	
Indian Well Swamp	At the confluence with Clayroot Swamp	None	•31	Pitt County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Grover Hardee Road.	None	•38	
Indian Well Swamp Tributary.	At the confluence with Indian Well Swamp	None	•37	Pitt County (Unincorporated Areas)
	Approximately 800 feet upstream of Stanley Road	None	•42	
Jacob Branch	Approximately 0.1 mile downstream of Stantonsburg Road.	•63	•64	Pitt County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Hog Market Road	None	•83	
Langs Mill Run	Approximately 125 feet upstream of Stantonsburg Road.	•63	•64	Town of Fountain, Town of Farmville, Pitt County (Unincorporated Areas).
	At County boundary	None	•95	
Little Contentnea Creek	At the confluence of Contentnea Creek	•29	•31	Pitt County (Unincorporated Areas).
	Approximately 500 feet upstream of Highway 264	None	•73	
Little Contentnea Creek Tributary 1.	Approximately 0.5 mile upstream of the confluence with Little Contentnea Creek.	None	•33	Pitt County (Unincorporated Areas).
	Approximately 1,275 feet upstream of North Carolina State Route 102.	None	•42	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Little Contentnea Creek Tributary 2.	At the confluence with Little Contentnea Creek	None	•50	Pitt County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Nash Joyner Road.	None	•68	
Little Contentnea Creek Tributary 3.	At the confluence with Little Contentnea Creek Tributary 2.	None	•61	Pitt County (Unincorporated Areas).
	Approximately 200 feet downstream of Bell Arthur Road.	None	•68	
Middle Swamp Creek	Approximately 0.5 mile downstream of U.S. Highway 258.	None	•59	Town of Farmville, Pitt County (Unincorporated Areas).
	Approximately 175 feet upstream of U.S. 264 Alternate.	None	•76	
Neuse River	Approximately 1,500 feet southwest of Cannon Price Road along the Pitt/Craven County boundary.	None	•22	Pitt County (Unincorporated Areas).
	At the confluence with Contentnea Creek	None	•24	
Swift Creek	At the confluence of Clayroot Swamp	None	•19	City of Greenville, Towns of Winterville and Ayden, Pitt County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Davenport Farm Road.	None	•59	
Swift Creek Tributary 1	At the confluence with Swift Creek	None	•47	Town of Ayden, Pitt County (Unincorporated Areas).
	Approximately 525 feet upstream of Jolly Road	None	•56	
Swift Creek Tributary 2	At the confluence with Swift Creek	None	•53	Town of Winterville, Pitt County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Red Forbes Road	None	•61	
Thorofare Swamp	At the confluence with Clayroot Swamp	None	•37	Pitt County (Unincorporated Areas).
	Approximately 1.3 miles upstream of confluence with Clayroot Swamp.	None	•41	
Tributary to Little Contentnea Creek Tributary 1.	At confluence with Little Contentnea Creek Tributary 1	None	•33	Pitt County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Little Contentnea Creek Tributary 1.	None	•39	
Ward Run	At the confluence with Little Contentnea Creek	None	•81	Pitt County (Unincorporated Areas).
	At County boundary	None	•92	
Pinelog Branch	At the confluence with Little Contentnea Creek	None	•52	Pitt County (Unincorporated Areas).
	At the downstream side of Railroad	None	•52	

Town of Ayden

Maps available for inspection at the Ayden Town Planning Department, 4061 East Avenue, Ayden, North Carolina.

Send comments to The Honorable Michael House, Mayor of the Town of Ayden, P.O. Box 219, Ayden, North Carolina 28513.

Town of Farmville

Maps available for inspection at the Farmville Town Hall, 200 North Main Street, Farmville, North Carolina.

Send comments to Mr. Richard Hicks, Farmville Town Manager, P.O. Box 86, Farmville, North Carolina 27828.

Town of Fountain

Maps available for inspection at the Fountain Town Hall, 6777 West Wilson Street, Fountain, North Carolina.

Send comments to The Honorable Shirley Mitchell, Mayor of the Town of Fountain, P.O. Box 134, Fountain, North Carolina 27829.

City of Greenville

Maps available for inspection at the Greenville Division of Public Works, 1500 Beatty Street, Greenville, North Carolina.

Send comments to Mr. Marvin Davis, Greenville City Manager, P.O. Box 7207, Greenville, North Carolina 27835.

Town of Grifton

Maps available for inspection at the Grifton Town Hall, 528 Queen Street Grifton, North Carolina.

Send comments to The Honorable Tim Bright, Mayor of the Town of Grifton, P.O. Box 579, Grifton, North Carolina 28530.

Pitt County Unincorporated Areas

Maps available for inspection at the Pitt County Planning Department Development Services Building, 1717 West 5th Street, Greenville, North Carolina.

Send comments to Mr. Scott Elliot, Pitt County Manager, 1717 West 5th Street, Greenville, North Carolina 27834.

Town of Winterville

Maps available for inspection at the Winterville Planning Department, 2571 Railroad Street, Winterville, North Carolina.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to The Honorable Doug Jackson, Mayor of the Town of Winterville, P.O. Box 1459, Winterville, North Carolina 28590.				
OHIO **Hamilton County**				
Congress Run	Approximately 0.7 mile upstream of Ridgeway Avenue	None	*623	City of Wyoming.
	Approximately 0.9 mile upstream of Ridgeway Avenue	None	*630	
Duck Creek	Approximately 0.4 mile downstream of Redbank Road	*502	*510	Hamilton County (Unincorporated Areas), Village of Fairfax.
	Approximately 0.5 mile upstream of Railroad	None	*549	
East Fork Mill Creek	At the confluence with Mill Creek	*582	*584	City of Sharonville.
	At the City of Sharonville corporate limits	*586	*587	
Little Miami River	Approximately 0.9 mile downstream of Railroad	None	*501	Village of Mariemont, City of Loveland.
	Approximately 0.6 mile upstream of Railroad	*590	*593	
Mill Creek	Just upstream of the Barrier Dam	*481	*480	Cities of Cincinnati, Reading, Sharonville, and St. Bernard, Villages of Elmwood Place, Evendale, and Lockland.
	At the City of Sharonville corporate limits	*585	*586	
North Branch Sycamore Creek.	Approximately 0.61 mile downstream of U.S. Route 22.	None	*696	Village of Indian Hill.
	Approximately 0.6 mile downstream of U.S. Route 22	None	*697	
Polk Run/Lake Chetak Creek.	Approximately 0.8 mile downstream of East Kemper Road.	None	*586	Hamilton County (Unincorporated Areas).
	Approximately 1,390 feet upstream of East Kemper Road.	None	*690	
Sharon Creek	At the confluence with Mill Creek	*570	*571	City of Evendale.
	Approximately 320 feet upstream of confluence with Mill Creek.	*570	*571	
Sycamore Creek	Approximately 550 feet downstream of Railroad	None	*729	Village of Indian Hill.
	Approximately 250 feet downstream of Carmargo Road.	None	*742	
West Fork Mill Creek	Approximately 1.6 miles upstream of Riddle Road	*621	*614	Village of Woodlawn.
	Approximately 0.9 mile upstream of Riddle Road	*595	*594	
O'Bannon Creek	At the confluence with Little Miami River	*588	*591	City of Loveland.
	At the Hamilton County corporate limits	*590	*591	

Hamilton County (Unincorporated Areas)

Maps available for inspection at the Hamilton County Department of Public Works, 138 East Court Street, Cincinnati, Ohio.

Send comments to Mr. David J. Krings, Hamilton County Administrator, 138 East Court Street, Room 600, Cincinnati, Ohio 45202.

City of Cincinnati

Maps available for inspection at the Cincinnati City Hall, 801 Plum Street, Cincinnati, Ohio.

Send comments to The Honorable Charlie Luken, Mayor of the City of Cincinnati, City Hall, 801 Plum Street, Cincinnati, Ohio 45202.

Village of Elmwood Place

Maps available for inspection at the Elmwood Place Village Hall, 6118 Vine Street, Elmwood Place, Ohio.

Send comments to The Honorable Jim Toles, Mayor of the Village of Elmwood Place, 6118 Vine Street, Elmwood Place, Ohio 45216–2104.

Village of Evendale

Maps available for inspection at the Evendale Village Hall, 10500 Reading Road, Evendale, Ohio.

Send comments to The Honorable Doug Lohmeier, Mayor of the Village of Evendale, 10500 Reading Road, Evendale, Ohio 45241.

Village of Fairfax

Maps available for inspection at the Fairfax Village Hall, 5903 Hawthorne Street, Fairfax, Ohio.

Send comments to The Honorable Theodore W. Shannon, Jr., Mayor of the Village of Fairfax, 5903 Hawthorne Street, Fairfax, Ohio 45227.

Village of Lockland

Maps available for inspection at the Lockland Village Hall, 101 North Cooper Avenue, Lockland, Ohio.

Send comments to Ms. Evonne Kovach, Lockland Village Administrator, 101 North Cooper Avenue, Lockland, Ohio 45215.

City of Loveland

Maps available for inspection at the Loveland Building and Zoning Department, 120 West Loveland Avenue, Loveland, Ohio.

Send comments to The Honorable Donna Lajcak, Mayor of the City of Loveland, 120 West Loveland Avenue, Loveland, Ohio 45140.

Village of Mariemont

Maps available for inspection at the Mariemont Village Hall, 6907 Wooster Pike, Mariemont, Ohio.

Send comments to The Honorable Don Policastro, Mayor of the Village of Mariemont, 6907 Wooster Pike, Mariemont, Ohio 45227.

City of Reading

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the Reading City Hall, 1000 Market Street, Reading, Ohio.

Send comments to The Honorable Earl J. Schmidt, Mayor of the City of Reading, 1000 Market Street, Reading, Ohio 45215.

City of Sharonville

Maps available for inspection at the Sharonville City Hall, 10900 Reading Road, Sharonville, Ohio.

Send comments to The Honorable Virgil Lovitt, II, Mayor of the City of Sharonville, 10900 Reading Road, Sharonville, Ohio 45241.

City of St. Bernard

Maps available for inspection at the St. Bernard City Hall, 110 Washington Avenue, St. Bernard, Ohio.

Send comments to The Honorable Barbara Siegel, Mayor of the City of St. Bernard, 110 Washington Avenue, St. Bernard, Ohio 45217.

Village of Woodlawn

Maps available for inspection at the Woodlawn Village Hall, 10141 Woodlawn Boulevard, Woodlawn, Ohio.

Send comments to The Honorable Susan Upton-Farley, Mayor of the Village of Woodlawn, 10141 Woodlawn Boulevard, Woodlawn, Ohio 45215.

Village of Wyoming

Maps available for inspection at the Wyoming City Hall, 800 Oak Avenue, Wyoming, Ohio.

Send comments to The Honorable David J. Savage, Mayor of the City of Wyoming, 800 Oak Avenue, Wyoming, Ohio 45215.

PENNSYLVANIA
Bucks County

East Branch Perkiomen Creek.	Approximately 550 feet upstream of County Line Road.	*277	*278	Township of West Rockhill, Borough of Sellersville, Borough of Perkasie, Township of East Rockhill.
	Approximately 600 feet of upstream of East Callowhill Road.	*317	*318	
Pleasant Spring Creek	At the confluence with East Branch Perkiomen Creek	*309	*311	Borough of Perkasie.
	Approximately 240 feet upstream Dam No. 2	*310	*311	

Township of East Rockhill

Maps available for inspection at the East Rockhill Township Building, 1622 Ridge Road, Perkasie, Pennsylvania.

Send comments to Mr. David Nyman, Chairman of the Township of East Rockhill Board of Supervisors, 1622 Ridge Road, Perkasie, Pennsylvania 18944.

Borough of Perkasie

Maps available for inspection at Perkasie Borough Hall, 620 West Chestnut Street, Perkasie, Pennsylvania.

Send comments to The Honorable J. Robert Hunsciker, Mayor of the Borough of Perkasie, P.O. Box 96, Perkasie, Pennsylvania 18944.

Borough of Sellersville

Maps available for inspection at the Sellersville Borough Hall, 140 East Church Street, Sellersville, Pennsylvania.

Send comments to The Honorable Howard W. Eckert, Jr., Mayor of the Borough of Sellersville, 140 East Church Street, Sellersville, Pennsylvania 18960.

Township of West Rockhill

Maps available for inspection at the West Rockhill Township Building, 1028 Ridge Road, West Rockhill, Pennsylvania.

Send comments to Mr. Fred Diseroad, Chairman of the Township of West Rockhill Board of Supervisors, 1028 Ridge Road, Sellersville, Pennsylvania 18960.

PENNSYLVANIA
Lycoming County

Dougherty Run	At the confluence with Lycoming Creek	*641	*644	Township of Lewis.
	Approximately 185 feet upstream of confluence with Lycoming Creek.	*643	*644	
Grays Run	At the confluence with Lycoming Creek	*717	*719	Township of Lewis.
	Approximately 5 feet upstream of the abandoned railroad bridge.	*718	*719	
Hoagland Run	At the confluence with Lycoming Creek	*596	*603	Township of Lycoming.
	Approximately 1,250 feet upstream of confluence with Lycoming Creek.	*602	*603	
Little Muncy Creek	At the confluence with Muncy Creek	*514	*512	Township of Muncy Creek.
	Approximately 0.63 mile downstream of Laidecker Road.	None	*593	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Loyalsock Creek	Approximately 30 feet upstream of CONRAIL	*525	*524	Township of Gamble, Township of Plunketts Creek, Township of Eldred, Township of Upper Fairfield, Township of Fairfield, Borough of Montoursville, Township of Loyalsock.
	Approximately 0.56 mile upstream of Dunwoody Road	*746	*747	
Lycoming Creek	At upstream side of Memorial Avenue	*535	*534	Township of McIntyre, Township of Lewis, Township of McNett, Township of Hepburn, Township of Lycoming, Township of Old Lycoming, Township of Loyalsock, City of Williamsport.
	Approximately 100 feet downstream of County boundary.	*921	*922	
Mill Creek No. 1	At the confluence with Lycoming Creek	*574	*576	Township of Hepburn.
	Approximately 1,100 feet upstream of confluence with Lycoming Creek.	*575	*576	
Mill Creek No. 2	At the confluence with Loyalsock Creek	*542	*540	Township of Fairfield.
	Approximately 150 feet upstream of State Route 87	*544	*543	
Mosquito Creek	Approximately 25 feet downstream of Edgewood Avenue.	None	*568	Borough of Duboistown.
	Approximately 300 feet upstream of Edgewood Avenue.	None	*574	
Muncy Creek	At the confluence with West Branch Susquehanna River.	*504	*505	Township of Shrewsbury, Borough of Picture Rocks, Township of Penn, Township of Wolf, Borough of Hughesville, Township of Muncy Creek.
	Approximately 1.6 miles upstream of Boston Road	*681	*680	
Rock Run	At the confluence with Lycoming Creek	*844	*849	Township of McIntyre.
	Approximately 600 feet upstream of the confluence with Lycoming Creek.	*848	*849	
Shoemaker Run	At the confluence with Lycoming Creek	*737	*740	Township of Lewis.
	At Bodines Road	*739	*740	
Stroehmann Overland Flow	At the confluence with Lycoming Creek	*566	*568	Township of Lycoming, Township of Old Lycoming.
	Approximately 325 feet upstream of Pleasant Hill Road.	*580	*583	
Sugar Run	At the confluence with Muncy Creek	*546	*542	Township of Wolf.
	Approximately 125 feet downstream of confluence of Gregs Run.	*558	*559	
Trout Run	At the confluence with Lycoming Creek	*672	*674	Township of Lewis.
	Approximately 425 feet downstream of State Route 14	*673	*674	
Wallis Run	At the confluence with Loyalsock Creek	*638	*635	Township of Gamble.
	Approximately 650 feet upstream of Wallis Run Road/ Legislative Route 41050.	*638	*639	
Wolf Run No. 2	At the confluence with Lycoming Creek	*658	*657	Township of Lewis.
	Approximately 15 feet downstream of abandoned railroad bridge.	*664	*663	
Wolf Run No. 1	Approximately 1,710 feet upstream of John Brady Drive.	None	*505	Township of Muncy.
	Approximately 1,760 feet upstream of John Brady Drive.	None	*505	
Wallis Run	Approximately 3.3 miles upstream of Wallis Run Road	None	*896	Township of Cascade.
	Approximately 3.46 miles upstream of Wallis Run Road.	None	*910	
Little Muncy Creek	Approximately 0.86 mile upstream of Tome Road	None	*705	Township of Franklin.
	Approximately 1.1 miles upstream of Tome Road	None	*712	
Pine Creek	Approximately 1.66 miles upstream of confluence with West Branch Susquehanna River.	*555	*554	Townships of Porter, Cummings, and Watson.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,950 feet upstream of State Route 44	*627	*628	
Nichols Run	At the confluence with Pine Creek	*556	*555	Township of Porter, Borough of Jersey Shore.
	Approximately 1,510 feet upstream of Algonquin Trail	*556	*557	
Little Pine Creek	At the confluence with Pine Creek	*618	*622	Township of Cummings.
	Approximately 2,450 feet upstream of confluence with Pine Creek.	*621	*622	

Township of Cascade

Maps available for inspection at the Cascade Township Office, 33 Kelly Road, Trout Run, Pennsylvania.

Send comments to Mr. James Brown, Chairman of the Township of Cascade Board of Supervisors, 33 Kelly Road, Trout Run, Pennsylvania 17771.

Township of Cummings

Maps available for inspection at the Cummings Township Office, 10978 North Route 44 Highway, Waterville, Pennsylvania.

Send comments to Mr. W.E. Toner Hollick, Chairman of the Township of Cummings Board of Supervisors, P.O. Box 117, Waterville, Pennsylvania 17776.

Borough of Duboistown

Maps available for inspection at the Duboistown Borough Office, 2651 Euclid Avenue, Duboistown, Pennsylvania.

Send comments to The Honorable Louis Plankenhorn, Mayor of the Borough of Duboistown, 2651 Euclid Avenue, Duboistown, Pennsylvania 17702.

Township of Eldred

Maps available for inspection at the Eldred Township Fire Department, 5556 Warrensville Road, Montoursville, Pennsylvania.

Send comments to Mr. John Harvey, Chairman of the Township of Eldred Board of Supervisors, P.O. Box 419, Montoursville, Pennsylvania 17754–0419.

Township of Fairfield

Maps available for inspection at the Fairfield Township Office, 238 Fairfield Church Road, Montoursville, Pennsylvania.

Send comments to Mr. Robert Wein, Chairman of the Township of Fairfield Board of Supervisors, 141 Signal Hill Road, Montoursville, Pennsylvania 17754.

Township of Franklin

Maps available for inspection at the Franklin Township Office, 61 School Lane, Lairdsville, Pennsylvania.

Send comments to Mr. Terry Fenstermaker, Chairman of the Township of Franklin Board of Supervisors, P.O. Box 85, Lairdsville, Pennsylvania 17742.

Township of Gamble

Maps available for inspection at the Gamble Township Office, 7670 Wallis Run Road, Trout Run, Pennsylvania.

Send comments to Mr. Joseph Reighard, Chairman of the Township of Gamble Board of Supervisors, 7670 Wallis Run Road, Trout Run, Pennsylvania 17771.

Township of Hepburn

Maps available for inspection at the Hepburn Township Office, 615 Route 973 East, Williamsport, Pennsylvania.

Send comments to Mr. Randy Lepley, Chairman of the Township of Hepburn Board of Supervisors, 4350 Bloomingrove Road, Williamsport, Pennsylvania 17701.

Borough of Hughesville

Maps available for inspection at the Hughesville Borough Office, 147 South Fifth Street, Hughesville, Pennsylvania.

Send comments to The Honorable William Edner, Mayor of the Borough of Hughesville, P.O. Box E, Hughesville, Pennsylvania 17737.

Borough of Jersey Shore

Maps available for inspection at the Jersey Shore Borough Office, 232 Smith Street, Jersey Shore, Pennsylvania.

Send comments to Mr. Thomas Gordon, Borough of Jersey Shore Council President, P.O. Box 526, Jersey Shore, Pennsylvania 17740.

Township of Lewis

Maps available for inspection at the Lewis Township Office, 69 Main Street, Trout Run, Pennsylvania.

Send comments to Mr. David P. Swift, Chairman of the Township of Lewis Board of Supervisors, 533 Upper Powys Road, Cogan Station, Pennsylvania 17728.

Township of Loyalsock

Maps available for inspection at the Loyalsock Township Building, 2501 East Third Street, Williamsport, Pennsylvania.

Send comments to Mr. Richard C. Haas, Chairman of the Township of Loyalsock Board of Supervisors, 2501 East Third Street, Williamsport, Pennsylvania 17701.

Township of Lycoming

Maps available for inspection at the Lycoming Township Office, 328 Dauber Road, Cogan Station, Pennsylvania.

Send comments to Mr. Robert Wagner, Chairman of the Township of Lycoming Board of Supervisors, 328 Dauber Road, Cogan Station, Pennsylvania 17728.

Township of McIntyre

Maps available for inspection at the McIntyre Township Office, 47 Thompson Street, Roaring Branch, Pennsylvania.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to Mr. Albert Boyer, Chairman of the Township of McIntyre Board of Supervisors, 12286 Route 14 Highway, Roaring Branch, Pennsylvania 17765.

Township of McNett

Maps available for inspection at the McNett Township Office, 385 Yorktown Road, Roaring Branch, Pennsylvania.

Send comments to Mr. Willard Kuser, Chairman of the Township of McNett Board of Supervisors, 255 Bridge Street, Roaring Branch, Pennsylvania 17765.

Borough of Montoursville

Maps available for inspection at the Montoursville Borough Office, 617 North Loyalsock Avenue, Montoursville, Pennsylvania.

Send comments to The Honorable John Dorin, Mayor of the Borough of Montoursville, 617 North Loyalsock Avenue, Montoursville, Pennsylvania 17754.

Township of Muncy

Maps available for inspection at the Muncy Township Office, 1922 Pond Road, Pennsdale, Pennsylvania.

Send comments to Mr. Paul O. Wentzler, Chairman of the Township of Muncy Board of Supervisors, 1922 Pond Road, Pennsdale, Pennsylvania 17756.

Township of Muncy Creek

Maps available for inspection at the Muncy Creek Township Office, 575 Route 442 Highway, Muncy, Pennsylvania.

Send comments to Mr. Richard Bitler, Chairman of the Township of Muncy Creek Board of Supervisors, 575 Route 442 Highway, Muncy, Pennsylvania 17756.

Township of Old Lycoming

Maps available for inspection at the Old Lycoming Township Office, 1951 Green Avenue, Williamsport, Pennsylvania.

Send comments to Mr. Robert Markle, Chairman of the Township of Old Lycoming Board of Supervisors, 1951 Green Avenue, Williamsport, Pennsylvania 17701.

Township of Penn

Maps available for inspection at the Penn Township Office, 4600 Beaver Lake Road, Hughesville, Pennsylvania.

Send comments to Mr. Kenneth Stackhouse, Chairman of the Township of Penn Board of Supervisors, 4600 Beaver Lake Road, Hughesville, Pennsylvania 17737.

Borough of Picture Rocks

Maps available for inspection at the Picture Rocks Borough Office, 113 Main Street, Picture Rocks, Pennsylvania.

Send comments to The Honorable David L. Bender, Mayor of the Borough of Picture Rocks, 55 Main Street, Picture Rocks, Pennsylvania 17762.

Township of Plunketts Creek

Maps available for inspection at the Plunketts Creek Township Office, 179 Dunwoody Road, Williamsport, Pennsylvania.

Send comments to Mr. John Anstadt, Chairman of the Township of Plunketts Creek Board of Supervisors, Williamsport, Pennsylvania 17701.

Township of Porter

Maps available for inspection at the Porter Township Office, 5 Shaffer Lane, Jersey Shore, Pennsylvania.

Send comments to Mr. William Buttorff, Chairman of the Township of Porter Board of Supervisors, 453 Oliver Street, Jersey Shore, Pennsylvania 17740.

Township of Shrewsbury

Maps available for inspection at the Shrewsbury Township Office, 143 Point Bethel Road, Hughesville, Pennsylvania.

Send comments to Ms. Cheryl A. Young, Chairman of the Township of Shrewsbury Board of Supervisors, 143 Point Bethel Road, Hughesville, Pennsylvania 17737.

Township of Upper Fairfield

Maps available for inspection at the Upper Fairfield Township Building, 4090 Route 87 Highway, Montoursville, Pennsylvania.

Send comments to Mr. Luther Lunt, Township of the Upper Fairfield Board of Supervisors, 2099 Kaiser Hollow Road, Montoursville, Pennsylvania 17754.

Township of Watson

Maps available for inspection at the Watson Township Office, 1710 Ridge Road, Jersey Shore, Pennsylvania.

Send comments to Mr. Brent A. Petrosky, Chairman of the Township of Watson Board of Supervisors, 707 Torbert Lane, Jersey Shore, Pennsylvania 17740.

City of Williamsport

Maps available for inspection at the Williamsport City Office, 245 West Fourth Street, Williamsport, Pennsylvania.

Send comments to The Honorable Michael Rafferty, Mayor of the City of Williamsport, 245 West Fourth Street, Williamsport, Pennsylvania 17701.

Township of Wolf

Maps available for inspection at the Wolf Township Office, 695 Route 405 Highway, Hughesville, Pennsylvania.

Send comments to Mr. Gene M. Zahn, Chairman of the Township of Wolf Board of Supervisors, 695 Route 405 Highway, Hughesville, Pennsylvania 17737.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
WEST VIRGINIA Jackson County				
Ohio River	At the downstream county boundary	None	*586	Jackson County (Unincorporated Areas), City of Ravenswood.
	At at the upstream county boundary	None	*598	
Mill Creek	At confluence with Ohio River	None	*587	Jackson County (Unincorporated Areas), City of Ripley.
	Approximately 1.84 miles upstream of entrance to Cedar Lakes.	None	*602	
Sandy Creek	At confluence with Ohio River	None	*592	Jackson County (Unincorporated Areas), City of Ravenswood.
	Approximately 2,530 feet upstream of S.R. 13	None	*598	
Grasslick Creek	Approximately 2,200 feet downstream of Interstate 77	None	*692	Jackson County (Unincorporated Areas).
	Approximately 0.85 mile upstream of the most upstream crossing of County Route 21.	None	*830	
Pocatalico Creek	Approximately 1,210 feet downstream of Interstate 77	None	*642	Jackson County (Unincorporated Areas).
	Approximately 640 feet upstream of County Route 21	None	*746	

Jackson County (Unincorporated Areas)

Maps available for inspection at the Jackson County Courthouse, Ripley, West Virginia.

Send comments to Mr. James Waybright, Chairman of the Jackson County Board of Commissioners, Jackson County Courthouse, Ripley, West Virginia 25271.

City of Ripley

Maps available for inspection at the Ripley City Hall, 113 South Church Street, Ripley, West Virginia.

Send comments to The Honorable Roy Guthrie, Mayor of the City of Ripley, 113 South Church Street, Ripley, West Virginia 25271.

City of Ravenswood

Maps available for inspection at the City of Ravenswood City Hall, 212 Walnut Street, Ravenswood, West Virginia.

Send comments to The Honorable William Ritchie, Mayor of the City of Ravenswood, 212 Walnut Street, Ravenswood, West Virginia 26164.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13641 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7564]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also

used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
Illinois	Albers (Village), Clinton County.	Grassy Branch	Upstream side of County Road 8	None	*421
			Approximately 0.64 mile upstream of County Road 800.	None	*421
		Sugar Creek	Approximately 200 feet upstream of Southern Railway.	None	*422
			Approximately 1,550 feet upstream of State Route 161.	None	*425
Maps available for inspection at the Albers Village Hall, 206 West Dwight, Albers, Illinois.					
Send comments to The Honorable Rick Casson, Mayor of the Village of Albers, P.O. Box 132, Albers, Illinois 62215.					
Illinois	Carlyle (City), Clinton County.	Carlyle Lake	Approximately 0.7 mile northeast of the intersection of 12th Street and Eula Mae Parkway.	None	*463
Maps available for inspection at the Carlyle City Hall, 850 Franklin Street, Carlyle, Illinois.					
Send comments to The Honorable Don Schmitz, Mayor of the City of Carlyle, 850 Franklin Street, Carlyle, Illinois 62231.					
Illinois	Clinton County (Unincorporated Areas).	Grassy Branch	At confluence with Sugar Creek	None	*421
			Approximately 0.91 mile upstream of County Road 800.	None	*422
		Kaskaskia River	At downstream county boundary	None	*402
			Approximately 5.45 miles upstream of confluence of Shoal Creek.	None	*413
		Shoal Creek	At confluence with Kaskaskia River	None	*411
			Approximately 0.5 mile upstream of Southern Railway bridge.	None	*423
		Sugar Creek	At confluence with Kaskaskia River	None	*409
			Approximately 0.3 mile upstream of State Route 161.	None	*425
		Lake Branch	At Alberson Road	None	*428
			Approximately 1.2 miles upstream of Wayne Road.	None	*500
		Carlyle Lake	Entire shoreline	None	*463
Maps available for inspection at the Clinton County Courthouse, 850 Fairfax, Carlyle, Illinois.					
Send comments to Mr. Ronald C. Mitchell, Clinton County Engineer, P.O. Box 188, Carlyle, Illinois 62231.					
Illinois	Damiansville (Village), Clinton County.	Sugar Creek	Upstream side of Interstate Route 64	None	*417

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 4,000 feet upstream of Interstate Route 64.	None	*419
Maps available for inspection at the Damiansville Village Hall, 225 East Main, Damiansville, Illinois.					
Send comments to Mr. Herman Jansen, Jr., Damiansville Village President, 225 East Main, Damiansville, Illinois 62215.					
Illinois	Germantown (Village), Clinton County.	Shoal Creek	Approximately 0.02 mile downstream of State Route 161.	None	*420
			At Southern Railway	None	*422
Maps available for inspection at the Germantown Village Hall, 306 Prairie, Germantown, Illinois.					
Send comments to The Honorable Gerald Kohnen, Mayor of the Village of Germantown, P.O. Box 310, Germantown, Illinois 62245.					
Tennessee	Bristol (City), Sullivan County.	Beaver Creek	Approximately 70 feet downstream of State Route 37.	•1,435	•1,436
			Approximately 25 feet downstream of Moore Street.	•1,675	•1,674
		Back Creek	At the confluence with Beaver Creek	•1,448	•1,450
			Approximately 0.28 mile upstream of Sperry Road.	•1,448	•1,450
		Cedar Creek	At the confluence with Beaver Creek	•1,457	•1,458
			Approximately 0.24 mile downstream of Cedar Creek Road.	•1,457	•1,458
		Whitetop Creek	At the confluence with Beaver Creek	•1,446	•1,448
			Approximately 1.15 miles upstream of the confluence with Beaver Creek.	•1,447	•1,448
Maps available for inspection at the City of Bristol Department of Development Services, Easley Annex Building, 104 8th Street, Bristol, Tennessee.					
Send comments to Mr. Anthony Massey, Bristol City Manager, P.O. Box 1189, Bristol, Tennessee 37621–1189.					
Virginia	Bristol (City), Independent City.	Beaver Creek	Approximately 0.05 mile upstream of the State boundary.	•1,673	•1,672
			Approximately 0.4 mile upstream of Forsythe Road.	None	•1,813
		Susong Branch	Just upstream of the first crossing of Bob Morrison Boulevard.	•1,673	•1,672
			Approximately 170 feet upstream of Euclid Avenue.	•1,684	•1,683
		Little Creek	Just downstream of State Street	•1,670	•1,672
			Approximately 0.76 mile upstream of the 2nd crossing of Commonwealth Avenue.	•1,721	•1,722
		Mumpower Creek	Approximately 0.107 mile upstream of the confluence with Beaver Creek.	•1,689	•1,688
			Approximately 0.035 mile upstream of East Valley Drive.	•1,734	•1,733
Maps available for inspection at the Bristol City Engineer's Office, 41 Piedmont, Bristol, Virginia.					
Send comments to Mr. Paul Spangler, Bristol City Manager, 497 Cumberland Street, Bristol, Virginia 24201.					
West Virginia	Reedy (Town), Roane County.	Reedy Creek	Approximately 650 feet downstream of State Route 14.	*678	*679
			Approximately 170 feet downstream of the confluence of Left Fork Reedy Creek.	*679	*680
		Left Fork Reedy Creek	At the confluence with Reedy Creek	*679	*681
			Approximately 1,600 feet upstream of confluence with Reedy Creek.	*679	*681
		Right Fork Reedy Creek	At confluence with Reedy Creek	*679	*680
			At upstream corporate limits	*679	*680
Maps available for inspection at Reedy Town Water Office, 118 Main Street, Reedy, West Virginia.					
Send comments to The Honorable Sam Salvucci, Mayor of the Town of Reedy, 54 Locust Street, Reedy, West Virginia 25270.					
West Virginia	White Sulphur Springs (City), Greenbrier County.	Howard Creek	Approximately 850 feet downstream of Greenbrier Avenue.	*1,840	*1,839
			At upstream corporate limits	None	*1,887
		Dry Creek	At the confluence with Howard Creek	*1,850	*1,848

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 0.45 mile upstream of Interstate Route 64.	*1,885	*1,883

Maps available for inspection at the White Sulphur Springs City Hall, 34 West Main Street, White Sulphur Springs, West Virginia.

Send comments to The Honorable Debra Fogus, Mayor of the City of White Sulphur Springs, City Hall, 34 West Main Street, White Sulphur Springs, West Virginia 24986.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13640 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–104; FCC 03–100]

Broadband Power Line Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On May 23, 2003 (68 FR 28182), the Commission published proposed rules in the **Federal Register**, which requested comments from the public on the current state of Broadband Power Line technology. This document contains a correction to the comments and reply comments date of the rules which was inadvertently published incorrectly.

DATES: Written comments are due on or before July 7, 2003, and reply comments are due on or before August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, TTY (202) 418–2989, e-mail: *awride@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document proposing to amend part 15 in the **Federal Register** of May 23, 2003, (68 FR 28182). This document corrects the **Federal Register** as it appeared. In FR Doc. 03–12914 published on May 23, 2003 (68 FR 28182), the Commission is correcting the ''**DATES:** Written comments are due on or before August 6, 2003, and reply comments are due on or before September 5, 2003'', of the Commission's rules to reflect the correct ''**DATES:** Written comments are due on or before July 7, 2003, and reply comments are due on or before August 6, 2003''. In rule FR Doc. 02–12914 published on May 23, 2003 (68 FR 28182) make the following correction:

On page 28182, in the second column correct ''**DATES:** Written comments are due on or before August 6, 2003, and reply comments are due on or before September 5, 2003'', to read as ''**DATES:** Written comments are due on or before July 7, 2003, and reply comments are due on or before August 6, 2003''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13590 Filed 5–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 03–119]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether the Commission needs to amend its payphone compensation rules, which are designed to provide fair per-call compensation, pursuant to section 276 of the Act, to payphone service providers (PSPs). On a petition for review, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on January 21, 2003, remanded the *Second Order on Reconsideration*, 66 FR 21105–01 (2001) in this proceeding. The *Second Order on Reconsideration* had amended the Commission's payphone compensation rules. The D.C. Circuit, however, held that the Commission violated the Administrative Procedure Act (APA) when it modified its rules pursuant to a Common Carrier Bureau—issued notice that was not published in the **Federal Register**. The D.C. Circuit held that the Commission should have issued a *Notice of Proposed Rulemaking (NPRM).* The D.C. Circuit vacated the Commission's order, but stayed its mandate and its vacatur of the *Second Order on Reconsideration* through September 30, 2003. As a result, the rules promulgated in the *Second Order on Reconsideration* remain in effect through September 30, 2003. Accordingly, the Commission adopts this *Further Notice of Proposed Rulemaking* seeking comment on whether to retain the rules or to adopt alternative ones by this deadline.

DATES: Comments are due June 23, 2003, and Reply Comments are due July 3, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See Supplementary Information for further filing instructions.*

FOR FURTHER INFORMATION CONTACT: Darryl Cooper, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7131, or via the Internet at *dcooper@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking (FNPRM)* in CC Docket No. 96–128, FCC 03–119, adopted May 23, 2003, and released May 28, 2003. The complete text of this *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper

copies. All filings should refer to CC Docket No. 96–128. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is CC Docket No. 96–128. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfshelp@fcc.gov,* and should include the following words in the regarding line of the message: ''get form<your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

For hand deliveries, the Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages that parties track the organization set forth in this *FNRPM* in order to facilitate our internal review process.

Synopsis of the Further Notice of Proposed Rulemaking

1. *Background.* In the *Second Order on Reconsideration,* 66 FR 21105–01 (2001), in this proceeding, the Commission found that payphone service providers (PSPs) were not receiving fair compensation when a switch-based long distance reseller completed a payphone-originated call. The Commission found that, prior to the adoption of the order, there was confusion in the marketplace as to which facilities-based carrier—the interexchange carrier (IXC) or the switch-based reseller—was responsible for tracking payphone-originated calls to completion and compensating the PSP (switchless resellers are not required to track calls or compensate the PSP). The Commission also found that, because of the way telephone calls are switched, PSPs do not have the ability to track calls to completion. Thus, the Commission, in the *Second Order on Reconsideration* in this proceeding, amended its rules to specify that the first IXC to receive a payphone call from a local exchange carrier (LEC) was responsible for tracking the call to completion and for compensating the PSP for the call. The first IXC was also required to prepare reports of completed payphone calls so that the PSPs could verify that they were being adequately compensated. The Commission permitted the IXC to then seek reimbursement from its switch-based reseller customer for both the payment to the PSP and its expenses in tracking and preparing tracking reports.

2. *Discussion.* The Commission tentatively concludes that, prior to the adoption of our current rules, PSPs were not receiving fair per call compensation. The Commission bases this conclusion on the record amassed prior to the release of the *Second Order on Reconsideration,* which shows that payphone service providers are not fairly compensated and that they face myriad difficulties in identifying resellers that complete calls. The item discusses how the very structure of the PSP industry may exacerbate this problem and solicits further comment on this issue. The Commission invites comment on this tentative conclusion and its bases, and on what rules, if any, the Commission should adopt to ensure that PSPs are fairly compensated. Specifically, to assist the Commission in its analysis of the PSP marketplace and whether to retain or amend the payphone compensation rules, this *FNRPM* requests comment on whether the Commission should retain the rules adopted in the *Second Order on Reconsideration* or whether it should adopt alternative rules to ensure that PSPs receive fair compensation. To assist the Commission in its analysis of whether to maintain or alter the current payphone compensation rules, it invites comments on four questions: (1) Whether PSPs are not receiving fair compensation when a switch-based reseller is involved in the routing of a payphone originated call; (2) which facilities-based carrier in the call path is best able to track a completed call made from a payphone; (3) which facilities-based carrier is best situated both to compensate the PSP and seek reimbursement from other carriers that derive an economic benefit from the call; and (4) what types of contractual relationships for tracking and payment of payphone calls should the Commission permit as exceptions to its payphone compensation rules. The item then poses a series of detailed questions to flesh out each of these four over-riding questions.

Initial Paperwork Reduction Act Analysis

3. This *FNRPM* contains a proposed information collection requirement. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *FNPRM,* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due June 23, 2003, and Reply Comments are due July 3, 2003. OMB comments are due August 1, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

4. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim A. Johnson,

OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *KimA.Johnson@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided above. The Commission will send a copy of the *FNPRM* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

6. On a petition for review, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on January 21, 2003, remanded the *Second Order on Reconsideration* in this proceeding. The *Second Order on Reconsideration* had amended the Commission's payphone compensation rules. The D.C. Circuit did not address the merits of these rules, but instead found that the Commission had violated the Administrative Procedure Act (APA) in adopting them.

7. In the *Second Order on Reconsideration* in this proceeding, the Commission found that payphone service providers (PSPs) were not receiving fair compensation when a switch-based long distance reseller completed a payphone-originated call. The Commission found that, prior to the adoption of the order, there was confusion in the marketplace as to which facilities-based carrier—the interexchange carrier (IXC) or the switch-based reseller—was responsible for tracking payphone-originated calls to completion and compensating the PSP (switchless resellers are not required to track calls or compensate the PSP). The Commission also found that, because of the way telephone calls are switched, PSPs do not have the ability to track calls to completion. Thus, the Commission, in the *Second Order on Reconsideration* in this proceeding, amended its rules to specify that the first IXC to receive a payphone call from a local exchange carrier (LEC) was responsible for tracking the call to completion and for compensating the PSP for the call. The first IXC was also required to prepare reports of completed payphone calls so that the PSPs could verify that they were being adequately compensated. The Commission permitted the IXC to then seek reimbursement from its switch-based reseller customer for both the payment to the PSP and its expenses in tracking and preparing tracking reports.

8. The overall objective of this *FNPRM* is to ensure that PSPs receive fair per-call compensation pursuant to section 276 of the Act. In this regard, the *FNPRM* asks whether the Commission should retain the PSP compensation rules adopted in the *Second Order on Reconsideration* or whether any alternative rules should be adopted to address PSP problems in receiving fair compensation.

Legal Basis

9. The legal basis for any action that may be taken pursuant to the *FNPRM* is contained in sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, and §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the most recent *Telephone Trends Report* data, 1,335 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,037 or fewer providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

12. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

13. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most

recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of CAPS or other local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

14. *Local Resellers.* SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of local resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

15. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these toll resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of toll resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

16. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Trends in Telephone Service data, 758 PSPs reported that they were engaged in the provision of payphone services. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these payphone service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

17. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 163 or fewer small entity IXCs that may be affected by the rules.

18. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. The Commission does not have data specifying the number of these operator service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

19. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of prepaid calling card providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

20. The rules adopted in the *Second Order on Reconsideration,* which are subject to review in the item, require IXCs to produce and provide reports to PSPs detailing which payphone-originated calls were completed over a IXC's or a switch-based reseller's network so that the PSPs may verify whether they are being fairly compensated pursuant to section 276 of the Act. The *FRNRM* asks whether these rules should be retained or whether other reporting requirements should be adopted.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. The current rules requiring an IXC to track and report payphone calls completed on an IXC's or switch-based reseller's network impose a minimal burden on the IXC or switch-based reseller. This is because IXCs and switch-based resellers already keep track of such data for their own billing and collection purposes. In addition, the Commission allows IXCs to diminish their expenses by (1) recovering their reporting costs from other carriers in the call path and (2) outsourcing their reporting obligations to clearinghouses. In this *FNRPM,* the Commission seeks comment on the burdens of these reporting requirements and asks whether alternative requirements should be adopted.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

23. None.

Ordering Clauses

24. Accordingly, *it is ordered that,* pursuant to the authority contained in sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, this *Further Notice of Proposed Rulemaking is adopted.*

25. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13722 Filed 5–30–03; 8:45 am]

BILLING CODE 6712–02–P

Notices

Federal Register
Vol. 68, No. 105
Monday, June 2, 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

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: August 16 and 17, 2003, 8:30 a.m. to 5 p.m. both days.

ADDRESSES: Vista C Room at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Officer, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The first meeting of the AC21 has been scheduled for August 16–17, 2003. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics researchers, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers including a bioethicist. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative have been invited to serve as ''ex officio'' members. The Committee meeting will be held from 8:30 a.m. to 5 p.m. on each day. The topics to be discussed will include: (1) Rules of procedure for the AC21; (2) assessment of informational needs of AC21 members; (3) organization of the AC21's work in examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years and expected outputs from the committee; and (4) preliminary presentations and introductory discussions on two sub-areas of that work, namely new biotechnology-derived non-food uses of row crops and impacts of biotechnology along the overall food production and distribution system.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html*. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via E-mail at the indicated addresses at least three business days before the meeting. On August 16, 2003, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at dharmon@*ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Joseph J. Jen,

Under Secretary, Research, Education and Economics.

[FR Doc. 03–13761 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for and revision to a currently approved information collection in support of the CCC's Export Enhancement Program (EEP) and the CCC's Dairy Export Incentive Program (DEIP) based on re-estimates.

DATES: Comments on this notice must be received by August 1, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1031, Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Number: 0551–0028.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The major objective of the EEP and DEIP is to expand U.S. agricultural exports by paying cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at competitive prices. Currently, 120 countries and 3 country regions are targeted export destinations and 850 exporters are eligible to participate under either or both programs. Under 7 CFR part 1494, exporters are required to submit the following: (1) Information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), and (4) evidence of export and related information (section 1494.701). In addition, each exporter

must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the EEP or DEIP as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for, evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 1.08 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 40 per annum.

Estimated Number of Responses per Respondent: 47.4 per annum.

Estimated Total Annual Burden on Respondents: 2,047.68 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency'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 those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. 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.

Signed at Washington, DC, on May 23, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–13602 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Dairy Tariff-Rate Import Quota Licensing program.

DATES: Comments should be submitted no later than August 1, 2003 to be assured of consideration.

ADDITIONAL INFORMATION AND COMMENTS: Contact Michael Hankin, Dairy Import Quota Manager, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021, telephone (202) 720–9439.

SUPPLEMENTARY INFORMATION:

Title: Dairy Tariff-Rate Import Quota Licensing Program.

OMB Number: 0551–0001.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The currently approved information collection supports the Dairy Tariff-Rate Import Quota Regulation (the Regulation) (7 CFR 6.20–6.37) which governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States (HTS) as a result of entry of certain provisions in the Uruguay Round Agreements Act (Pub. L. 103–465) that converted existing absolute quotas to TRQs. Imports of nearly all cheese made from cow's milk (except soft-ripened cheese such as Brie) and certain non-cheese dairy products (including butter and dried milk) are subject to TRQs and the Regulation. Licenses are issued each quota year to eligible applicants and are valid for twelve months (January 1 through December 31). Only licensees may enter dairy articles at low-tier TRQ tariff-rates. Importers who do not hold licenses may enter dairy articles only at high-tier TRQ tariff-rates.

Each quota year, all applicants must submit form FAS 923 (rev. 7–96). This form requires applicants to: (1) Certify they are either an importer, manufacturer or exporter of certain dairy products; (2) certify they meet the eligibility requirements of § 6.23 of the Regulation; and (3) submit documentation required by § 6.23 and § 6.24 as proof of eligibility for import licenses. Applicants for non-historical licenses must also submit form FAS 923–A (rev. 7–96) (cheese) and/or FAS 923–B (rev. 7–96) (non-cheese dairy products). This form requires applicants to request licenses in descending order of preference for specific products and countries listed on the form.

After licenses are issued, § 6.26 requires licensees to surrender by October 1 on form FAS 924–A, License Surrender Form, any license amount that a licensee does not intend to enter that year. These amounts are reallocated, to the extent practicable, to existing licensees for the remainder of that year based on requests submitted on form FAS 924–B, Application for Additional License Amounts. Form 924A and 924B requires the licensee to complete a scannable table listing the surrendered amount by license number, or listing the additional amounts requested by dairy article, supplying country and amount requested, in descending order of preference.

The estimated total annual burden of 270 hours in the OMB inventory for the currently approved information collection will be increased by 156 hours to 426 hours. The estimated public reporting burden for this collection of currently approved FAS 923, FAS 923–A, and 923–B (one form) (rev. 7–96) is estimated to average 405 hours; and FAS 924–A and FAS 924–B (one form) is 21 hours. The estimated increase in burden hours is based on an increase in the number of respondents which has primarily resulted from the growing domestic interest in importing cheeses.

Estimate of burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated at .75 hour for form FAS 923, 923–A, 923–B (rev. 7–96) and .15 hour for form 924–A, 924–B.

Respondents: Importers and manufacturers of cheese and non-cheese dairy products, and exporters of non-cheese dairy products.

Estimated number of respondents: 540 for form FAS 923, 923–A, 923–B (rev. 7–96) and 140 for form 924–A, 924–B (rev. 7–96).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 426 hours.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency'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 those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Michael Hankin, Import Policies and Program Division, FAS, 1400 Independence Avenue, Stop 1021, SW., Washington, DC 20520–1021 or *Michael.Hankin@fas.usda.gov.,* or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means of communication of information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Electronic submission of the information collection will be implemented before October 2003 in compliance with the GPEA. The Department will request OMB approval of forms that are being developed for electronic submission of the information collection, and issue a **Federal Register** notice soliciting public comments on the requested revision of the information collection to provide for submission of the information collection on electronic forms. All public comments received will be considered prior to implementation of an electronic reporting system, and will also become a matter of public record. Copies of that information collection will be made available from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at *Chisley@fas.usda.gov.*

Signed at Washington, DC, on April 30, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–13603 Filed 5–30–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of June 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
Belgium: Sugar A–423–077	6/1/02–5/31/03
France: Sugar A–427–078	6/1/02–5/31/03
Germany: Sugar A–428–082	6/1/02–5/31/03
Japan:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–588–850	6/1/02–5/31/03
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–588–851	6/1/02–5/31/03
Structural Steel Beams, A–588–852	6/1/02–5/31/03
Certain Hot-Rolled Carbon Steel Flat Products, A–588–846	6/1/02–5/31/03
Forklift Trucks, A–588–703	6/1/02–5/31/03
Grain-Oriented Electrical Steel, A–588–831	6/1/02–5/31/03
Republic of Korea: Polyethylene Terephthalate (Pet) Film, A–580–807	6/1/02–5/31/03
Russia: Ammonium Nitrate, A–821–811	6/1/02–5/31/03
South Africa: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–791–808	6/1/02–5/31/03
Taiwan: Carbon Steel Plate, A–583–080	6/1/02–5/31/03
Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/02–5/31/03
Certain Helical Spring Lock Washers, A–583–820	6/1/02–5/31/03
The People's Republic of China:	
Apple Juice Concentrate, Non-Frozen, A–570–855	6/1/02–5/31/03
Folding Metal Tables & Chairs, A–570–868	12/3/01–5/31/03
Furfuryl Alcohol, A–570–856	6/1/02–5/31/03
Indigo, A–570–856	6/1/02–5/31/03
Silicon Metal, A–570–806	6/1/02–5/31/03
Sparklers, A–570–804	6/1/02–5/31/03
Tapered Roller Bearings, A–570–601	6/1/02–5/31/03
Countervailing Duty Proceedings	
Italy: Grain-Oriented Electrical Steel, C–475–812	1/1/02–12/31/02

Suspension Agreements

None.

In accordance with § 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 2003. If the Department does not receive, by the last day of June 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated:May 23, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–13725 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (Sunset) Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''sunset'') review of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering this same antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3 *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Initiation of Review

In accordance with 19 CFR 351.218 we are initiating a sunset review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product
A-337–803	731-TA-768	Chile	Fresh Atlantic Salmon

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet website at the following address: ''http://ia.ita.doc.gov/sunset/''.

All submissions in this sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in this sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13723 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703D]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, June 16, 2003, from3 p.m. to 5 p.m.

ADDRESSES: This meeting will be held at the MAFMC Office, 300 S. New Street, Room 2115, Dover, DE; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make quota and management measure recommendations for the Atlantic Mackerel, Squid, and Butterfish fisheries for the 2004 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 28, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13729 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703C]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Scientific and Statistical Committee (SSC), a joint meeting of its SSC and Snapper Grouper Committee, a meeting of its Snapper Grouper Committee, and a joint meeting of its Mackerel Committee and Advisory Panel. In addition, two public hearings will be held as part of the meeting: (1) Regarding Snapper Grouper Amendment 13A addressing the Oculina Experimental Closed Area and, (2) the Gulf of Mexico Council's Regulatory Amendment to the Fishery Management Plan for Coastal Migratory Pelagics (Mackerel FMP) and other possible framework actions in the south Atlantic. Additional public comment periods will be held on these issues during the meeting week. There will also be a full Council Session.

DATES: The meetings will be held in June 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hilton CocoaBeach Oceanfront Hotel, 1550 North Atlantic Avenue, Cocoa Beach, FL 32931; telephone: (1–800) 526–2609 or (321) 799–0003.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at

866/SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Scientific and Statistical Committee (SSC) Meeting: June 16, 2003, 1:30 p.m.- 5 p.m.

The Scientific and Statistical Committee will receive a report on the results of the Subcommittee meeting on the red porgy, vermilion snapper & black sea bass stock assessments and discuss and develop recommendations for the Council. In addition, the Committee will receive a presentation on mackerel stock assessments and develop recommendations regarding those assessments.

Note: A public hearing will be held as part of the meeting on Monday, June 16, 2003 at 6 p.m. regarding Amendment 13A to the Snapper Grouper Fishery Management Plan. This Amendment addresses options pertaining to the Oculina Experimental Close Area off the central East Coast of Florida. Copies of the public hearing document can be obtained at the Council office or on the Council's web site at www.safmc.net.

2. Joint Snapper Grouper Committee and SSC Meeting: June 17, 2003, 8:30 a.m. until 12 noon.

During the joint meeting, the Committee and SSC will discuss and develop recommendations for the Council on Amendment 13A to the Snapper Grouper Fishery Management Plan. The Committee will also discuss the red porgy, vermilion snapper and black sea bass stock assessments and a program to fill data gaps in the assessments. Additionally, the Committee will discuss and develop recommendations for the Southeastern Data Assessment and Review (SEDAR) process.

3. Snapper Grouper Committee: June 17, 2003, 1:30 p.m. 5 p.m. and June 18, 2003, from 8:30 a.m. until 12 noon.

The Committee will review Snapper Grouper Amendments 13A regarding the Oculina Experimental Closed Area and develop recommendations to the Council. The Committee will then review material from NOAA Fisheries regarding Sustainable Fisheries Act (SFA) requirements and make recommendations to the Council for the draft version of Amendment 13B to the Snapper Grouper Fishery Management Plan that includes options to address mandates outlined in the SFA. The Committee will also receive an update on the status of the development of Amendment 14 to the Snapper Grouper Fishery Management Plan regarding the use of Marine Protected Areas as a fishery management tool.

4. Joint King & Spanish Mackerel Committee and Advisory Panel Meeting: June 18, 2003, 1:30 p.m. until 5 p.m. and June 19, 2003 from 8:30 a.m. until 12 noon.

The Mackerel Committee will meet jointly with the Advisory Panel to receive an overview of the Mackerel Stock Assessment, review comments from the Scientific and Statistical Committee and develop framework recommendations.

Note: On June 19, 2003, beginning at 8:30 a.m., the Council will hold a public hearing on the Gulf of Mexico Council's Regulatory Amendment to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and any other framework action(s) proposed by the South Atlantic Fishery Management Council.

Following the public hearing, the Committee and Advisory Panel will review the Gulf Council's Regulatory Amendment as well as comments from NOAA Fisheries, the SSC and the public. During the meeting the Committee and AP will develop recommendations for the Council to consider. In addition, they will begin to develop the Mackerel Amendment 15 scoping document and modify as needed.

5. Council Session: June 19, 2003, 1:30 p.m. 5:30 p.m.

From 1:30 p.m.—1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the March 2003 meeting minutes.

From 1:45 p.m.—2:15 p.m., the Council will conduct an election for Vice-Chairman and have presentations.

From 2:15 p.m.—4:15 p.m., The Council will hear a report from the Snapper Grouper Committee. Beginning at 2:15 p.m., a public comment period will be held for Snapper Grouper Amendment 13A. Following public comment, the Council will approve Amendment 13A.

From 4:15 p.m.—5:30 p.m., The Council will hear a report from the Mackerel Committee. Beginning at 4:15 p.m., a public comment period will be held on the Gulf of Mexico Council's Regulatory Amendment for the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Mackerel FMP). Following the public comment period, the Council will take action on the Gulf Council's Regulatory Amendment. In addition, the Council will take any necessary framework actions for the south Atlantic.

6. Council Session: June 20, 2003, 8:30 a.m.—12 noon

From 8:30 a.m.—9:30 a.m., the Council will receive legal briefing on litigation affecting the Council (CLOSED SESSION).

From 9:30 a.m.—10 a.m., the Council will receive a report on the project, ''Identifying Fishery Dependent Communities in the South Atlantic.≥

From 10 a.m.—10:30 a.m., the Council will hear a report regarding the Joint Information and Education Committee and Advisory Panel Meeting.

From 10:30 a.m. 10:45 a.m., the Council will receive a report on the Council Chairman's meeting.

From 10:45 a.m.—11:15 a.m., the Council will hear NOAA Fisheries status reports on Shrimp Amendment 5 implementation, the Sargassum FMP, the Dolphin Wahoo FMP, the SEDAR Committee Process, Operations Plan and implementation of the Atlantic Coast Cooperative Statistics Program (ACCSP) implementation. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11:15 a.m.—12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 12, 2003.

Dated: May 28, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13728 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID. 051903C]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces receipt of an application for an exempted fishing permit (EFP) from the California Department of Fish and Game (CDFG). This EFP application applies to vessels with valid California State delivery permits, fishing for flatfish with an experimental small footrope trawl net in Federal waters off the State of California. If awarded, this EFP would allow qualifying vessels to catch and retain groundfish in closed rockfish conservation areas (RCAs) and to retain groundfish species in excess of cumulative trip limits, providing the vessels carry state-sponsored samplers. Samplers would monitor vessel activity and collect data that are otherwise not available shoreside. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing data that can be used to enhance management of the groundfish fishery.

DATES: Comments must be received by June 17, 2003.

ADDRESSES: Copies of the EFP application are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko at (206) 526–6140 or Carrie Nordeen at (206) 526–6144.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

If awarded, this EFP would allow qualifying vessels to catch and retain groundfish in the Trawl RCA and to retain groundfish species in excess of cumulative trip limits, providing the vessels carry state-sponsored samplers and use gear that meets the requirements specified by CDFG. Samplers will monitor fishing activities and collect data that are otherwise not available shoreside.

The purpose of this exempted fishing activity would be to collect data on the rate at which unintended species, particularly overfished shelf rockfish (bocaccio and canary rockfish), are taken by commercial fishers targeting flatfish in Federal waters off the State of California using an experimental trawl net. Fishers will be required to use the experimental small footrope trawl net and will be restricted to areas outside of 3 miles and in less than 100 fathoms (183 meters) of water. If the EFP is issued, approximately 22 vessels would be eligible to participate, with no more than 6 vessels participating at one time. The fishing period for the EFP would be the from July 1 through October 31, 2003.

Flatfish species are abundant and commercially important off California, however, the harvest of these species is constrained by efforts to rebuild overfished species, particularly bocaccio and canary rockfish. In 2001 and 2002, the Oregon Department of Fish and Wildlife (ODFG) chartered commercial fishing vessels to develop and test new trawl net designs. Testing was conducted to compare new trawl net configurations with those that are typically used in the groundfish fishery. During the initial testing, a gear configuration similar to the design that is proposed for use under this EFP had significant reductions in the catch of overfished rockfish species relative to the catch of flatfish species. This EFP is similar to an EFP that was issued to ODFG earlier this year. (68 FR, 19518, April 21, 2003) Because this gear design meets the requirements of small footrope bottom trawl gear, as defined by regulations at 50 CFR part 660, it is currently legal to use for fishing and it could become an effective way for fishery participants to reduce rockfish bycatch in the flatfish fishery. Vessels participating under this EFP must submit a net plan and use only gear that is consistent with the specified requirements for EFP fishing.

Data collected during this project are expected to benefit the management of the groundfish fishery by: (1) providing catch rates by fishing location of species incidentally caught with the experimental net, (2) allowing for the collection of biological data that is otherwise not available from landed catch, and (3) providing data that can be used to evaluate the full retention of rockfish as a management approach. The information gathered through this EFP may lead to future rulemaking.

The flatfish limits for limited entry trawl gear south of 40° 10′ N lat., as currently published in the **Federal Register**, will be available to EFP participants who may fish for these limits within the Trawl RCA as well as in areas not within the Trawl RCA. If the limits are lowered later in the year through an inseason adjustment, the current limits will still be allowed under the EFP. The total amount (discard plus retained) of flatfish allowed to be taken under this EFP is not expected to exceed 381 metric tons (mt) and the total amount (discard plus retained) of petrale sole is not expected to exceed 54 mt. The EFP fishing will be constrained by the following EFP limits for overfished species: bocaccio rockfish 0.5 mt, cowcod 0.5 mt, yelloweye rockfish 0.5 mt, canary rockfish 0.5 mt, widow rockfish 0.5 mt, darkblotched rockfish 0.5 mt, and Pacific ocean perch 0.5 mt. If the total catch during the period of time in which the EFP is conducted of any one of these overfished species reaches the EFP limit, the EFP will be terminated for the remainder of the 2003 fishing year. All harvests are expected to be within set asides for 2003 EFP harvests and, therefore, no optimum yield of overfished species is expected to be exceeded.

In accordance with regulations, NMFS determined that the proposal warranted further consideration and, therefore, consulted with the Council. The Council considered the EFP application during its April 2003 meeting and recommended that NMFS issue the EFP. Contingent on review of public comments, NMFS intends to approve the EFP fishing. A copy of the application is available for review from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–13727 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Federal Acquisition Regulation; Submission for OMB Review; Subcontract Consent

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning subcontract consent. A request for public comments was published in the **Federal Register** at 68 FR 12686, on March 17, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.

Responses Per Respondent: 3.61.

Total Responses: 15,349.

Average Burden Hours Per Response: .87.

Total Burden Hours: 13,353.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: May 28, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–13671 Filed 5–30–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board and the Secretary of the Air Force. The purpose of the meeting is to allow the SAB leadership to prepare for and brief the Secretary on the outcome of the 2003 studies. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: June 15, 2003.

ADDRESSES: The Arnold and Mabel Beckman Center, 100 Academy, Irvine, CA 92612–3002.

FOR FURTHER INFORMATION CONTACT: Lt Col John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–13665 Filed 5–30–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof

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. 09/848,370 entitled ''Assay for Detecting, Measuring, and Monitoring the Activities and Concentrations of Proteins and Methods of Use Thereof,'' filed May 4, 2001. Foreign rights are also available (PCT/US01/14444). 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: An assay for detecting, measuring, or monitoring the activity of concentration of at least two proteins that have similar or overlapping properties is disclosed. The assay comprises first determining the sensitivity coefficients of the substrates for each of the proteins in which the concentrations are to be determined. This method may be used for detecting, measuring, or monitoring the activity and concentration of AchE, BChC, or both in a test sample which test sample may be whole and unprocessed blood or tissue. Also disclosed are methods of using the assay to detect a subject's exposure to an agent which affects cholinesterase, determine the efficacy of progress of a treatment, determine the

amount of protection provided against exposure to an agent which affects cholinesterase, or both, screen a subject for having a drug sensitivity or a particular disease, detect a change in red blood cell count of a subject, determine whether a candidate compound affects cholinesterase. Also disclosed are devices and kits for detecting, measuring, or monitoring the activities and concentrations of AchE, BCchE, or both.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13595 Filed 5–30–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive, Partially-Exclusive, or Non-Exclusive Licensing of U.S. Army Patent for ''Flameless Tracer Ammunition''

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the availability of exclusive, or non-exclusive, licensing of U.S. Army Patent 6,497,181 issued on December 24, 2002 entitled ''Flameless Tracer Ammunition'' by Leon Manole, Stewart Gilman, and Ernest Logsdon, Jr., of the U.S. Army TACOM–ARDEC, Picatinny Arsenal, NJ, based upon patent application serial no. 10/095,342 filed March 11, 2002 claiming priority date December 4, 2001 of provisional application 60/337,751; Army docket no. 2000–005. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Mr. John Moran, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army TACOM–ARDEC, Picatinny Arsenal, NJ 07806–5000, e-mail: *jfmoran@pica.army.mil* telephone (973) 724–6590.

SUPPLEMENTARY INFORMATION: New tracer is non-burning (thus addressing a safety concern), as well as environmentally friendly. This new approach for tracer ammunition uses the novel application of chemiluminescent chemicals in compartments designed to activate an intense light emitting chemical reaction capable of being seen, day or night, upon firing for tracing the trajectory path of each tracer round in flight. A further advantage is that upon impact, the glowing continues from the same chemicals marking the landing on the target. Accordingly the results of the firing can be readily seen, evaluated and acted upon. Further advantages of this new flameless tracer ammunition are associated with its routine handling and lifecycle characteristics compared to conventional tracer ammo as well as avoiding the clean up after use of conventional pyrotechnic chemicals from existing tracer ammo. These advantages provide clear benefits for both military and non-military organizations, such as police, National Guard, private and commercial rifle ranges, which commonly conduct training practices and tactical exercises. The patented invention covers applications of flameless tracers ranging in size from small munitions to large caliber cannon projectiles.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13600 Filed 5–30–03; 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 Application Concerning Method of Establishing Cultures of Human Dendritic Cells and Use Thereof

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. 09/712,688 entitled ''Method of Establishing Cultures of Human Dendritic Cells and Use Thereof,'' filed November 14, 1999. Foreign rights are also available (PCT/US00/31465). 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: A simple method for producing dendritic cells from peripheral blood monocytes is provided. The dendritic cells may be used as adjuvants for vaccines and immunotherapies. The mature dendritic cells also provide an effective means of producing novel T cell dependent antigens comprised of dendritic cell modified antigens useful as vaccines or for the treatment of disease.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13597 Filed 5–30–03; 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 and Related U.S. Patent Application Concerning Protein Biomarker for Mustard Chemical Injury

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. 6,124,108, entitled ''Protein Biomarker for Mustard Chemical Injury,'' filed May 13, 1997, and related U.S. Patent Application Serial No. 09/482,604, filed January 14, 2000 and having the same title. 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: This invention relates to the use of a test to evaluate exposure to mustard gas. This invention relates to the discovery that toxicity to mustard may be evaluated by diagnostic test means disclosed. Upon electrophoretic separation (sodium dodocyl sulfate polyacrylamide gel electrophoresis (SDS–PAGE)) of buffered extract of human skin cells (normal human epidermal keratinocytes (NHEK)) which had been exposed to mustard-type chemical compounds a band at approximately 50,000 to 80,000 daltons molecular weight was found. The protein band constitutes a biomarker. The marker protein can be

used either to raise protective antibodies to protect against the protease or may be used in a kit for identifying presence or absence of the marker in study of tissues taken from individuals who may have been exposed to mustard poisoning.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13596 Filed 5–30–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2003 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2003.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia, 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Karon Webb, SES Program Manager, HQC Human Resources Office, Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 1-year term, which begins on July 1, 2003.

PRB Chair: Maj. Gen. Mary Saunders, USAF.

Members: Ms. Claudia Knott, Deputy Director, Logistics Operations. Ms. Phyllis Campbell, Deputy Commander, Defense Distribution Center. Mr. Richard Connelly, Director, DLA Support Services.

Keith W. Lippert,

Director, Defense Logistics Agency.

[FR Doc. 03–13651 Filed 5–30–03; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Proposed Modifications to Kawaihae Deep Draft Harbor, Island of Hawaii, HI

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District (Corps), Honolulu, in partnership with the State of Hawaii, Department of Transportation, Harbors Division, is proposing modifications to Kawaihae Deep Draft Harbor. Kawaihae Harbor is located on the west side of the island of Hawaii in the Kohala region. The completed project would enable vessels of greater capacity to utilize the harbor and reduce surge problems now being experienced within the harbor basin.

FOR FURTHER INFORMATION CONTACT: Warren Kanai, Project Manager, U.S. Army Engineer District, Honolulu, Attn: CEPOH–PP–C, Fort Shafter, HI 96858–5440. Phone: (808) 438–0881. E-mail: *warren.s.kanai@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. The project may include the following items:

a. Deepening the harbor basin and entrance channel.

b. Deepening the harbor basin and entrance channel, in combination with lengthening the existing breakwater.

c. Constructing a new breakwater on the east side of the harbor entrance channel.

These features may be modified, or new features added as a result of the analyses to be performed as part of the feasibility investigation and Environmental Impact Statement (EIS) process.

2. Alternatives to be considered include ''No Action'' and various construction techniques.

3. In July 2001, the Corps completed a reconnaissance study on the harbor. The study stated that there is a growing demand for cargo to support the expanding economy in west Hawaii. The existing harbor's depth is limiting the use of larger bulk-cargo vessels. The harbor also experiences surge and oscillations in the basin which causes operational inefficiencies and higher transportation costs for harbor users.

4. A public scoping meeting will be held in October 2003. A public hearing will be held after publication of the draft EIS. Meeting dates, items and locations will be publicly announced. The draft EIS is expected to be available in June 2005.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13601 Filed 5–30–03; 8:45 am]

BILLING CODE 3710–NN–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 12, 2003 6:30 p.m.–9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:30 p.m. Call to Order
6:30–6:45 p.m. Chair's Remarks and Ex-Officio Announcements
6:45–7:05 p.m. Project Updates
7:05–7:25 p.m. Silos Update
7:25–7:45 p.m. Waste Pits Update
7:45–8:30 p.m. Recommendations on Natural Resource Damage (NRD) Settlement
8:30–8:45 p.m. Planning for 10th Anniversary Celebration
8:45–9 p.m. Public Comment
9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary

Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on May 28, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–13681 Filed 5–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–262–000, –001, 002, 003, and –004; ER03–263–000 and –001]

American Electric Power Service Corp., Dayton Power and Light Company, Virginia Electric and Power Company (New PJM Companies) and PJM Interconnection, LLC, Commonwealth Edison Company; Notice Placing Transcript Into the Record

May 23, 2003.

At the Commission's public meeting of April 30, 2003, the Agenda Item A–3 and at the Commission's public meeting of May 14, 2003, the Agenda Item A–3 included panel presentations and discussions that relate to matters being considered in the dockets listed above. Consequently, the Commission is placing the relevant portions of the transcript of this public meeting in the, record and is providing an opportunity for parties in the dockets listed above to file comments on the presentations and discussions that pertain to issues pending in these dockets.

Any party in these dockets desiring to file comments should file comments in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed by the comment date below, and must be served on all parties designated on the official service list for this proceeding. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission strongly encourages electronic filings. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

Comment Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13617 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–299–000]

ANR Pipeline Company; Notice of Application

May 23, 2003.

On April 16, 2003, ANR Pipeline Company (ANR), filed in Docket No. CP03–299–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon the C.I. Richards A–1 natural gas storage well (Well) and related facilities, located in the Loreed Storage Field, in Osceola County, Michigan.

ANR proposes to abandon the Well due to its chronic poor performance. ANR states that the Well will be sealed and removed along with the well-head, well connection to the gathering system, aboveground piping, concrete piers, and tank. ANR also states that the 4-inch brine pipeline and the 6-inch natural gas pipeline associated with the Well will be abandoned in place and remain connected to the main header. ANR notes that the proposed abandonment will not adversely affect the service of the field, nor the environment.

Any questions concerning this application may be directed Kathy Cash, Certificates and Regulatory Compliance, ANR Pipeline Company, Nine E. Greenway Plaza, Houston, Texas 77046, phone: (832) 676–3102, e-mail: *kathy.cash@elpaso.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the 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.

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 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) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

Comment Date: June 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13614 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–410–006]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 21, 2003, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective April 1, 2003:

Second Substitute Original Sheet No. 253

MRT states that the purpose of this filing is to comply with the Commission's order issued May 6, 2003 in Docket Nos. RP00–410–004, RP00–410–005, RP01–8–004 and RP01–8–005.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13621 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–369–018 and RP98–54–038]

Colorado Interstate Gas Company; Notice of Refund Report

May 23, 2003.

Take notice that on May 19, 2003, Colorado Interstate Gas Company (CIG) filed its sixth refund report in Docket Nos. RP97–369 and RP98–54 *et al.* CIG states that this filing and refund was made to comply with the Commission's Order of September 10, 1997. CIG states that refunds were paid by CIG on May 14, 2003.

The May 19, 2003, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's Order dated September 10, 1997 and Settlement Order dated November 21, 2000. Lump sum cash refunds were made by CIG to its former jurisdictional sales customers. In instances where payment has not been made within thirty (30) days of receipt from the producers, appropriate interest will be computed as provided in the Order.

CIG states that copies of CIG's filing will be served on all parties of record in Docket No. RP98–54–000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13628 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–142–003]

Columbia Gas Transmission Corporation; Notice of Petition To Amend

May 23, 2003.

Take notice that on May 22, 2003, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–142–003, a petition to amend the order issued December 20, 2002, in Docket No. CP02–142–000, *et al.*, pursuant to Sections 7(b) and (c) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations authorizing the abandonment and construction and operation of certain natural gas transmission facilities in Pennsylvania and Maryland to phase-in certain facilities and underlying firm transportation services for Rock Springs Generation, LLC (Rock Springs) and CED Rock Springs, Inc. (CEDRS) (together, ''Customers''), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to revise its previously approved proposals in Docket Nos. CP142–000, *et al.* in order to phase-in operation of certain authorized facilities and the underlying transportation services to the Customers pursuant to interim service agreements negotiated with the Customers subsequent to the December 20 Order. Columbia states that construction of electric generation facilities is essentially complete, and firm service is still required for testing and for operation during summer peak electric demand season. It is asserted that the Customers requested service at the earliest date possible, and that the service agreements were proposed to be effective May 1, 2003. Columbia indicates that certain of the certificated facilities can be placed into service earlier than the October 2003 date envisioned in the December 20, 2002 Order. Phasing the in-service date of the facilities, it is asserted, will permit Columbia to render an interim lower volume transportation service for its customers until all the facilities (and the

related incremental capacity) are completed and placed in service in the fall of 2003.

It is stated that in all respects other than phasing in of the facilities and transportation service, the authorizations in the original order would remain the same.

Any questions regarding this application should be directed to Fredric J. George, Senior Attorney, at (304) 357–2359, Columbia Gas Transmission Company, P.O. Box 1273, Charleston, West Virginia 25325–1273.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''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, contact (202) 502–8659. 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.

Comment Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13613 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–300–000]

Columbia Gas Transmission Corporation; Notice of Filing

May 23, 2003.

Take notice that on May 20, 2003, Columbia Gas Transmission Corporation (Columbia), filed with the Federal Energy Regulatory Commission (Commission) an abbreviated application pursuant to the Natural Gas Act (NGA) to abandon certain natural gas storage facilities in Columbia's Laurel Storage Field.

Specifically, Columbia requests to abandon a Segment of its Line SR–556 consisting of 1.3 miles of 12-inch pipeline in Hocking County, Ohio, in Columbia's Laurel Storage Field. This segment of line was originally scheduled for replacement in 2002 due to age and condition. However, Columbia has determined that this segment could be eliminated and a more efficient storage pipeline network created by redirecting gas flow from the only storage well connected to it. Columbia explains that a short crossover line was built in 2002 to connect this well to Line SR–553 under Columbia's blanket authority. Columbia adds that the 1.3 mile segment of Line SR–556 has been kept in idle service pending approval of this application. Columbia states that there will be no changes in deliverability or annual turnover of the Laurel Storage Field resulting from this requested abandonment.

The application is on file with the Commission and open for public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application may be directed to Frederic J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia, 25325–1273 at (304) 357–2359, fax (304) 357–3206.

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 below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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.

Comment Date: June 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13615 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2310–000]

Crescent Ridge LLC; Notice of Issuance of Order

May 23, 2003.

Crescent Ridge LLC (Crescent Ridge) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. Crescent Ridge also requested waiver of various Commission regulations. In particular, Crescent Ridge requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Crescent Ridge.

On September 6, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—Central, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Crescent Ridge should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 2, 2003.

Absent a request to be heard in opposition by the deadline above, Crescent Ridge is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Crescent Ridge, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Crescent Ridge's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13616 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–005 and CP01–77–005]

Dominion Cove Point LNG, LP.; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 20, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2003:

Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 10
Second Revised Sheet No. 11

On February 28, 2003, the Commission accepted for filing in the above-referenced dockets tariff sheets implementing the rate schedules and other tariff changes associated with the reactivation of the LNG import facilities at Dominion Cove Point, with certain sheets effective March 1, 2003 and others to be effective June 1, 2003. Dominion Cove Point states that in filings that led to its decision it had estimated that its import facility would be reactivated by June 1, 2003. By letter being contemporaneously filed with the Commission in these proceedings, Dominion Cove Point is now informing the Commission of its current estimate of the date by which the LNG facilities will be reactivated—July 22, 2003.

Dominion Cove Point proposes to replace the lower rates for other services currently accepted by the Commission for a June 1 effective date with the pre-reactivation rates as reflected in the sheets submitted herein until the Commission approves the date on which the import facilities will be placed in service. Dominion Cove Point states that when the Commission issues its order placing those facilities in service, Dominion Cove Point will immediately file the post-reactivation rate and fuel sheets to be effective on the date approved by the Commission. Dominion Cove Point also notes that none of the sheets filed in Docket No. RP03–392–000 as a result of the Commission's order issued February 27, 2003, in Docket Nos. CP01–76–000, *et al.*, 102 FERC ¶ 61,227 are affected.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13612 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–299–003]

Dominion Cove Point LNG, LP.; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 20, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Original Sheet No. 10, with an effective date of May 1, 2003.

Dominion Cove Point states that on April 30, 2003, the Commission approved Dominion Cove Point's filing of its fuel retainage percentages as reflected on First Revised Second Revised Sheet No. 7 to Cove Point LNG, Limited Partnership's Second Revised Volume No. 1. Dominion Cove Point explains that its Original Volume No. 1 became effective May 1, 2002 as approved by the Commission's letter order on May 5, 2003. Dominion Cove Point states that in order to comply with the Commission's April 30, 2003 order adjusting the annual fuel retainage rates and incorporating the approved percentages in the new tariff, Dominion Cove Point is filing First Revised Original Sheet No. 10 in order to make the fuel retention rates effective on May 1, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.*Protest Date:* June 2, 2003.

Dated:

Magalie R. Salas,

Secretary.

[FR Doc. 03–13623 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–392–001]

Dominion Cove Point LNG, LP.; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 20, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 228, with an effective date of June 1, 2003.

On May 1, 2003, Dominion Cove Point submitted a filing in the above-referenced docket to place into effect pro forma tariff sheets approved by the Commission in its order of February 27, 2003 in Docket No. CP01–76–000, *et al.*, 102 FERC ¶ 61,227. Dominion Cove Point states that they subsequently discovered that proposed Second Revised Sheet No. 228 had a typographical error in that the Btu content in 8.(d) appears as 1,065 rather than 1,100 as approved in the pro forma tariff sheets submitted to the Commission in the Amendment to the January 2001 Settlement and the Stipulation and Agreement on October 24, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with ¶ 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13625 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–213–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 20, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2003:

Substitute Second Revised Sheet No. 1
Substitute Original Sheet No. 1418
Substitute Third Revised Sheet No. 2
Substitute Original Sheet No. 1419
Substitute First Revised Sheet No. 25
Substitute Original Sheet No. 1420
Substitute First Revised Sheet No. 303
Substitute Original Sheet No. 1421
Substitute Second Revised Sheet No. 400
Sheet Nos. 1422–1499
Substitute First Revised Sheet No. 401
Substitute Second Revised Sheet No. 1905
Substitute First Revised Sheet No. 402
Substitute Second Revised Sheet No. 2002
Substitute First Revised Sheet No. 403
Substitute Third Revised Sheet No. 2701
Substitute Second Revised Sheet No. 404
Substitute Fourth Revised Sheet No. 2702
Substitute Second Revised Sheet No. 405
Substitute Fourth Revised Sheet No. 3613
Sheet Nos. 406—499
Substitute Second Revised Sheet No. 3705
Substitute Third Revised Sheet No. 502
Substitute Third Revised Sheet No. 3706
Substitute First Revised Sheet No. 504
Substitute Second Revised Sheet No. 4010
Sheet No. 1417
Substitute Third Revised Sheet No. 4400

Gulf South states that this filing revises Gulf South's tariff to recognize that firm storage services will be offered under separate rate schedules for services provided at Gulf South's existing Bistineau storage facility and its newly certificated Magnolia storage facility, expected to be in service October 1, 2003. Gulf South indicates that the revised tariff provisions also establish the auction procedures for marketing available firm storage capacity from Bistineau that is not subject to a contractual right of first refusal, as well as those for Magnolia before and after August 1, 2003. This

filing is submitted in compliance with the Commission's Order dated May 5, 2003, in Docket No. RP03–213–000.

Gulf South states that copies of the filing has been served upon each person designated on the office service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13622 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–030]

Northern Natural Gas Company; Notice of Filing of Annual Report

May 23, 2003.

Take notice that on May 19, 2003, Northern Natural Gas Company (Northern) submitted its annual report pursuant to the Commission's Order in Public Service Company of Colorado, *et al.*, Docket Nos. RP97–369–000, *et al.*

Northern further states that copies of the filing have been mailed to each of its affected jurisdictional sales customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13629 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–034]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

May 23, 2003.

Take notice that on May 19, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report. Panhandle states that it is submitting the following information:

Schedule 1 shows the status of the Non-Settling First Sellers under the Settlement. Updated interest has been calculated in accordance with Section 154.501(d) of the Commission's Regulations. Schedule 2 shows certain First Sellers refund amounts related to the Missouri Public Service Commission's (MOPSC's) election to opt-out of a portion of the Settlement.

Panhandle states that a copy of this information is being sent to intervenors in the subject proceeding, Non-Settling First Sellers, MOPSC Opt-Out First Sellers, Panhandle's affected customers, and respective State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13630 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–402–001]

Questar Pipeline Company; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 21, 2003, Questar Pipeline Company (Questar) tendered for filing FERC Gas Tariff, First Revised Volume No.1, Substitute Original Sheet No. 66B, to be effective July 1, 2003.

Questar states that this filing proposes to amend Questar's May 1 tariff filing that was filed in compliance with the Commission's Order No. 587–R in Docket No. RM96–1–024, dated March 12, 2003, which incorporated the most recent Version 1.6 standards promulgated by the North American Energy Standards Board (NAESB). Questar indicates that it was discovered that a portion of NAESB Standard 5.3.45, that was intended to be included verbatim, was inadvertently omitted from the May 1 filing. Therefore, Questar seeks to incorporate the omitted portion of NAESB Standard 5.3.45.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and

the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13626 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–752–000 and ER03–752–001]

Solaro Energy Marketing Corporation; Notice of Issuance of Order

May 23, 2003.

Solaro Energy Marketing Corporation (Solaro) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sale of capacity and energy at market-based rates. Solaro also requested waiver of various Commission regulations. In particular, Solaro requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Solaro.

On May 21, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Solaro should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 20, 2003.

Absent a request to be heard in opposition by the deadline above, Solaro is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Solaro, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Solaro's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13618 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–389–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 23, 2003.

Take notice that on May 20, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub Thirteenth Revised Sheet No. 412, effective July 1, 2003.

Tennessee states that the tariff sheet is being filed in compliance with the Commission's Order No. 587–R issued March 12, 2003, requiring pipelines to adopt Version 1.6 of the Standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board, and the WGQ recommended Standards (R02002 and R02002–2) governing partial day recalls. Tennessee inadvertently incorporated by reference Standard 4.3.4 in Article XXXVI of its General Terms and Conditions. Accordingly, Tennessee is submitting Sub Thirteenth Revised Sheet No. 412 with the standard removed from Article XXXVI.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13624 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–480–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

May 23, 2003.

Take notice that on May 19, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets bearing a proposed effective date June 19, 2003:

Thirteenth Revised Sheet No. 38
Ninth Revised Sheet No. 38A
Third Revised Sheet No. 70

WIC states that the tendered tariff sheets revise the quality specifications for sulphur and further define the thermal content basis for the maximum delivery quantity of gas used in its contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13627 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, ER03–323–000ER03–323–001, ER03–323–002, and ER03–323–003]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference Agenda

May 23, 2003.

As announced in the Notice of Technical Conference issued on May 8, 2003, a technical conference will be held on June 11, 2003, to discuss with states and market participants in the Midwest ISO region the timetables for addressing wholesale power market design issues and to explore ways to provide the flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussions.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A.[1] These issues were developed in conjunction with those in the region. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 1 p.m. central time and will adjourn at about 5 p.m. central time. It is scheduled to take place at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line at *http://www.ferc.gov/home/conferences.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's FERRIS system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

Questions about the conference program should be directed to: Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8368. *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Appendix A

Midwest ISO Technical Conference with States and Market Participants

1–1:10 p.m. Opening Remarks, Chairman Pat Wood, Commissioner William Massey, and Commissioner Nora Brownell.

1:10–1:20 p.m. Update on Organization of MISO States, Commissioner Susan E. Wefald, North Dakota Public Service Commission.

1:20–1:45 p.m. Midwest ISO's Wholesale Power Market Platform Overview, James Torgerson, President, Midwest ISO.

Timeline and Key Decisions for:

- Market Rules Tariff;
- Firm Transmission Rights Allocation;
- Overview of Market Mitigation.

1:45–2:45 p.m. Stakeholder Perspectives on the Wholesale Power Market Platform.

- Transmission Owners;
- Munis/Coops/Other TDUs;
- IPPs/EWGs;
- Power Marketers/Brokers;
- Eligible End-Use Customers;
- Public Consumer Group;
- Environmental/Other Stakeholder Groups;
- State Regulatory Authorities.

2:45–3 p.m. Break.

3–4:45 p.m. Discussion of timeline and planning for Midwest Power Market Platform, led by FERC and State Commissioners.

4:45–5 p.m. Next Steps—Discussion with FERC and State Commissioners.

- Resource Adequacy;
- Transmission Planning.

5 p.m. End of Conference.

[FR Doc. 03–13619 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission will issue notice of, and convene, a separate technical conference to address in detail certain technical issues raised by parties in the above captioned proceedings dealing with the Midwest ISO's proposed Market Mitigation Measures, and to address issues identified in the March 13, 2003, order. *See* Midwest Independent Transmission System Operator Inc., 102 FERC ¶ 62,280 (2003). The details of such conference will be forthcoming.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

May 28, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 4, 2003 (Within a relatively short time before or after the regular Commission Meeting).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on June 4, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present. In addition, for this meeting, representatives from the Commodities Futures Trading Commission will be present to discuss matters of mutual concern to the two agencies.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13824 Filed 5–29–03; 11:35 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

May 28, 2003.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 4, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda. * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

830th—Meeting June 4, 2003; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER01–3155, 003, New York Independent System Operator, Inc.
Other#s EL01–45, 011, Consolidated Edison Company of New York, Inc.
ER01–1385, 012, Consolidated Edison Company of New York, Inc.

E–2.
Omitted

E–3.
Omitted

E–4.
Docket# EL03–42, 000, Occidental Power Services, Inc. V. PJM Interconnection, L.L.C.

E–5.
Omitted

E–6.
Docket# EL01–118, 000, Investigation of Terms & Conditions of Public Utility Market-Based Rate Authorizations
Other#s EL01–118, 001, Investigation of Terms & Conditions of Public Utility Market-Based Rate Authorizations

E–7.
Omitted

E–8.
Docket# EL02–105, 001, UBS AG
Other#s EC02–91, 001, UBS AG
EC02–120, 001, Bank of America, N.A.
EL02–130, 001, Bank of America, N.A.

E–9.
Docket# ER03–727, 000, Midwest Independent Transmission System Operator, Inc.

E–10.
Docket# ER03–730, 000, Southern Company Services

E–11.
Docket# ER03–352, 001, GenWest, LLC
Other#s ER03–352, 000, GenWest, LLC

E–12.
Docket# ER03–568, 000, Phelps Dodge Energy Services, LLC

E–13.
Docket# ER03–738, 000, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company and West Penn Power Company, all d/b/a Allegheny Power; Atlantic City Electric Company; Delmarva Power & Light Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Potomac Electric Power Company; Public Service Electric and Gas Company; Rockland Electric Company; And UGI Utilities, Inc.

E–14.
Omitted

E–15.
Docket# ER03–743, 000, Virginia Electric and Power Company

E–16.
Docket# ER03–753, 000, Entergy Services, Inc.

E–17.
Docket# ER03–694, 000, PJM Interconnection LLC
Other#s ER03–694, 001, PJM Interconnection LLC

E–18.
Docket# ER03–631, 000, ISO New England Inc.
Other#s ER03–631, 001, ISO New England Inc.

E–19.
Docket# ER02–913, 000, American Electric Power Service Corporation
Other#s ER02–913, 002, American Electric Power Service Corporation

E–20.
Omitted

E–21.
Docket# EL03–31, 000, City of Vernon, California

E–22.
Docket# ER03–749, 000, New York Independent System Operator, Inc.

E–23.
Docket# EL03–11, 001, Wisvest Conneticut, LLC v. ISO New England Inc.

E–24.
Omitted

E–25.
Docket# EC03–18, 001, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, Millennium Power Partners, L.P. and New GenHoldings
Other#s EC03–18, 000, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, Millennium Power Partners, L.P. and New GenHoldings

E–26.
Docket# TX03–1, 000, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen

West, LLC, Las Vegas Cogeneration II, LLC, and Reliant Energy Bighorn, LLC
Other#s TX03–1, 001, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC, and Reliant Energy Bighorn, LLC

E–27.
Docket# EF00–2012, 000, Bonneville Power Administration
Other#s
EF00–2012, 001, Bonneville Power Administration

E–28.
Docket# EL02–65, 009, Alliance Companies; Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company and National Grid USA
Other#s RT01–88, 022, Alliance Companies, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; Alliance Companies; Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Consumers Energy Company and the Michigan Electric Transmission Company; Dayton Power and Light Company; Detroit Edison Company and International Transmission Company
ER01–2992, 004, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company
RT01–84, 005, Illinois Power Company
ER01–123, 009, Illinois Power Company
ER01–2999, 004, Illinois Power Company
RT01–26, 005, Northern Indiana Public Service Company
ER01–2993, 004, Virginia Electric and Power Company
RT01–37, 005, Dayton Power and Light Company
ER01–2997, 004, Dayton Power and Light Company
ER01–2995, 005, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
EL02–111, 001, Midwest Independent System Operator; PJM Interconnection, L.L.C. and all Transmission Owners (including the Entities identified below) Union Electric Company; Central Illinois Public Service Company; Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; Michigan Electric Transmission Company; Dayton Power and Light Company; Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.; American Transmission Systems, Inc.; Illinois Power Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; IES Utilities, Inc.; Interstate Power Company; Aquila, Inc. (Formerly UtiliCorp United, Inc.), PSI Energy, Inc.; Union Light Heat & Power Company; Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Louisville Gas & Electric Company; Kentucky Utilities Company; Lincoln Electric (Neb.) System; Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company; Montana-Dakota Utilities; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Cooperative; Southern Minnesota Municipal Power Agency; Sunflower Electric Power Corporation; Wabash Valley Power Association, Inc.; Wolverine Power Supply Cooperative; International Transmission Company; Alliant Energy West; Xcel Energy Services, Inc.; MidAmerican Energy Company; Corn Belt Power Corporation; Allegheny Electric Cooperative, Inc.; Atlantic City Electric Company; Baltimore Gas & Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Potomac Electric Power Company; UGI Utilities, Inc.; Allegheny Power; Carolina Power & Light Company; Central Power & Light Company; Conectiv; Detroit Edison Company; Duke Power Company; Florida Power & Light Company; GPU Energy; Northeast Utilities Service Company; Ohio Power Company; Old Dominion Electric Cooperative; PECO Energy Company; Public Service Company of Colorado; Public Service Electric & Gas Company; Public Service Company of Oklahoma; Rockland Electric Company; South Carolina Electric & Gas Company; Southwestern Electric Power Company; Cincinnati Gas & Electric Company; Missouri Public Service; WestPlains Energy; Cleco Corporation; Kansas Power & Light Company; OG&E Electric Services; Southwestern Public Service Company; Empire District Electric Company; Western Resources and Kansas Gas & Electric

E–29.
Docket# ER02–2222, 002, Southwest Power Pool, Inc.
Other#s ER02–2223, 002, Southwest Power Pool, Inc.
ER02–2224, 002, Southwest Power Pool, Inc.
ER02–2225, 002, Southwest Power Pool, Inc.
ER02–2226, 002, Southwest Power Pool, Inc.

E–30.
Docket# ER97–2353, 008, New York State Electric & Gas Corporation
Other#s ER97–2353, 009, New York State Electric & Gas Corporation
ER97–2353, 010, New York State Electric & Gas Corporation
ER97–2353, 011, New York State Electric & Gas Corporation

E–31.
Omitted

E–32.
Docket# ER03–338, 002, Southern California Edison Company

E–33.
Omitted

E–34.
Omitted

E–35.
Docket# ER03–221, 001, El Paso Electric Company

E–36.
Docket# ER02–2014, 005, Entergy Services, Inc.
Other#s ER02–2014, 008, Entergy Services, Inc.
ER02–2014, 009, Entergy Services, Inc.

E–37.

Docket# EL02–86, Exelon Generation Company L.L.C. v. Southwest Power Pool, Inc.
E–38.
Docket# ER02–1420, 007, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1420, 008, Midwest Independent Transmission System Operator, Inc.
E–39.
Omitted
E–40.
Omitted
E–41.
Omitted
E–42.
Docket# EL03–121, 000, Sagebrush
E–43.
Docket# EL02–126, 000, City of Corona, California v. Southern California Edison Company
E–44.
Omitted
E–45.
Omitted
E–46.
Omitted
E–47.
Docket# EL01–22, 002, Idaho Power Company
E–48.
Docket# ER02–2001, 001, Electric Quarterly Reports—Lyon Rural Electric Cooperative
E–49.
Docket# ER02–2001, 002, Electric Quarterly Reports—Sussex Rural Electric Cooperative
E–50.
Omitted
E–51.
Docket# ER03–386, 000, Southern Company Services, Inc.
Other#s ER02–2015, 001, Southern Company Services, Inc.
ER02–2455, 000, Southern Company Services, Inc.
ER03–386, 001, Southern Company Services, Inc.
E–52.
Docket# ER02–2361, 000, WPS Westwood Generation, LLC
Other#s ER02–2361, 001, WPS Westwood Generation, LLC
E–53.
Omitted
E–54.
Docket# EL02–101, 001, Cleco Power LLC, Dalton Utilities; Entergy Services, Inc., Georgia Transmission Corporation, JEA, MEAG Power, San Rayburn G&T Electric Cooperative, Inc., Southern Company Services, Inc. and City of Tallahassee, Florida
E–55.
Docket# ER02–2014, 007, Entergy Services, Inc.

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP03–312, 000, Calpine Energy Services, L.P. v. Southern Natural Gas Company
G–2.
Omitted
G–3.
Omitted
G–4.
Docket# PR03–10, 000, Atmos Energy Corporation
G–5.
Docket# RP03–14, 001, Pine Needle LNG Company, LLC
G–6.
Docket# RP00–467, 002, Midwestern Gas Transmission Company
Other#s RP00–467, 003, Midwestern Gas Transmission Company
RP01–19, 002, Midwestern Gas Transmission Company
G–7.
Docket# RP02–361, 006, Gulfstream Natural Gas System, L.L.C.
G–8.
Omitted
G–9.
Docket# RP03–4, 001, Panhandle Eastern Pipe Line Company
G–10.
Docket# RP01–416, 001, Northwest Pipeline Corporation
G–11.
Docket# OR92–8, 020, SFPP, L.P.
Other#s OR92–8, 021, SFPP, L.P.
OR92–8, 022, SFPP, L.P.
G–12.
Docket# RP00–474, 001, Maritimes & Northeast Pipeline, L.L.C.
Other#s RP00–474, 002, Maritimes & Northeast Pipeline, L.L.C.
RP01–17, 004, Maritimes & Northeast Pipeline, L.L.C.
RP01–17, 005, Maritimes & Northeast Pipeline, L.L.C.
RP03–174, 000, Maritimes & Northeast Pipeline, L.L.C.
G–13.
Docket# RP00–459, 001, TransColorado Gas Transmission Company
Other#s RP00–459, 002, TransColorado Gas Transmission Company
RP01–32, 001, TransColorado Gas Transmission Company
RP01–32, 002, TransColorado Gas Transmission Company
RP01–477, 005, TransColorado Gas Transmission Company
RP02–5, 002, TransColorado Gas Transmission Company
RP02–5, 003, TransColorado Gas Transmission Company
G–14.
Docket# RP03–13, 002, Transcontinental Gas Pipe Line Corporation
Other#s RP03–13, 001, Transcontinental Gas Pipe Line Corporation
G–15.
Docket# RP02–153, 002, Horizon Pipeline Company, L.L.C.
Other#s RP02–153, 003, Horizon Pipeline Company, L.L.C.
G–16.
Docket# RP03–219, 003, Discovery Gas Transmission LLC
Other#s MG03–2, 000, Discovery Gas Transmission LLC
G–17.
Docket# GT02–35, 003, Tennessee Gas Pipeline Company
Other#s GT02–35, 004, Tennessee Gas Pipeline Company
G–18.
Docket# GT02–38, 005, Northern Natural Gas Company
Other#s GT02–38, 004, Northern Natural Gas Company
G–19.
Docket# RP00–468, 008, Texas Eastern Transmission, LP
Other#s RP00–468, 007, Texas Eastern Transmission, LP
RP00–468, 009, Texas Eastern Transmission, LP
RP00–468, 010, Texas Eastern Transmission, LP
RP01–25, 006, Texas Eastern Transmission, LP
RP01–25, 007, Texas Eastern Transmission, LP
RP01–25, 008, Texas Eastern Transmission, LP
RP01–25, 009, Texas Eastern Transmission, LP
RP03–175, 001, Texas Eastern Transmission, LP
RP03–175, 002, Texas Eastern Transmission, LP
RP03–175, 003, Texas Eastern Transmission, LP
RP03–175, 004, Texas Eastern Transmission, LP
G–20.
Docket# RP03–197, 001, Northern Natural Gas Company
G–21.
Docket# RM03–10, 000, Amendments to Blanket Sales Certificates
G–22.
Omitted
G–23.
Docket# RP03–163, 000, Energy Development Corporation v. Columbia Gas Transmission Company and Columbia Natural Resources, Inc.
G–24.
Omitted
G–25.
Docket# RP03–473, 000, Enbridge Pipelines (KPC)
G–26.
Omitted
G–27.
Docket# RP03–243, 000, Nicole Energy Services, Inc.

Energy Projects—Hydro

H–1.
Docket# P–2552, 058, FPL Energy Maine Hydro, LLC
H–2.
Docket# P–2651, 030, Indiana Michigan Power Company
H–3.
Docket# JR00–2, 002, James M. Knott, Sr.
Other#s P–9100, 018, James M. Knott, Sr.
H–4.
Docket# P–1494, 232, Grand River Dam Authority
H–5.
Docket# P–2436, 174, Consumers Energy Company
Other#s P–2447, 166, Consumers Energy Company

P–2448, 170, Consumers Energy Company
P–2450, 145, Consumers Energy Company
P–2451, 143, Consumers Energy Company
P–2452, 150, Consumers Energy Company
P–2453, 172, Consumers Energy Company
P–2580, 200, Consumers Energy Company
P–2599, 164, Consumers Energy Company

H–6.
Omitted

Energy Projects—Certificates

C–1.
Docket# CP02–37, 000, Williston Basin Interstate Pipeline Company
Other#s CP02–37, 002, Williston Basin Interstate Pipeline Company
CP02–37, 003, Williston Basin Interstate Pipeline Company

C–2.
Docket# CP03–1, 000, El Paso Natural Gas Company

C–3.
Docket# CP03–99, 000, Norteno Pipeline Company and OKTex Pipeline Company

C–4.
Docket# CP02–420, 000, Red Lake Gas Storage, L.P.
Other#s CP02–420, 001, Red Lake Gas Storage, L.P.
CP02–421, 000, Red Lake Gas Storage, L.P.
CP02–421, 001, Red Lake Gas Storage, L.P.
CP02–422, 000, Red Lake Gas Storage, L.P.
CP02–422, 001, Red Lake Gas Storage, L.P.

C–5.
Docket# CP02–434, 000, ANR Pipeline Company

C–6.
Docket# CP03–30, 000, BP West Coast Products LLC, Atlantic Richfield Company and Intalco Aluminum Corporation

C–7.
Docket# CP02–387, 001, Petal Gas Storage, L.L.C.

C–8.
Docket# CP01–36, 001, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company
Other#s CP01–52, 001, Raton Gas Transmission Company
CP01–382, 001, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company
CP01–383, 001, Raton Gas Transmission Company

C–9.
Docket# CP02–90, 000, AES Ocean Express LLC
Other#s CP02–90, 001, AES Ocean Express LLC
CP02–91, 000, AES Ocean Express LLC
CP02–92, 000, AES Ocean Express LLC
CP02–93, 000, AES Ocean Express LLC
CP02–93, 001, AES Ocean Express LLC

Magalie R. Salas,

Secretary.

[FR Doc. 03–13823 Filed 5–29–03; 11:35 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 23, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Prohibited

Docket No., Date Filed, and Presenter or Requester

1. Project No. 2342–000, 5–22–03, James Nolan

Magalie R. Salas,

Secretary.

[FR Doc. 03–13620 Filed 5–30–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0039; FRL–7506–5]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Nonmetallic Mineral Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO) OMB Control Number 2060–0050, EPA ICR Number 1084.07 The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 2, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; E-mail address: *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed

in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0039, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comment, whether submitted electronically or on paper, will be available for public viewing in EDOCKET, as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO), (OMB Control Number 2060–0050, EPA ICR Number 1084.07). This is a request to renew an existing, approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Administrator has judged that PM emissions from nonmetallic mineral processing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. This standard applies to owners or operators of new, modified, or reconstructed facilities at nonmetallic mineral processing plants that commenced construction, modification, or reconstruction after August 1, 1985. Nonmetallic mineral processing includes the following affected facilities: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. This standard does not apply to facilities located in underground mines; stand-alone screening operations; operations that only involve recycled asphalt; fixed sand gravel, or crushed stone plants with capacities of 25 tons per hour or less; portable sand, gravel, or crushed stone plants with capacities of 150 tons per hour or less; common clay or pumice plants with capacities of 10 tons per hour or less. Additionally, when an existing facility is replaced by a piece of equipment of equal or smaller size it is not subject to the standard until all facilities in a production line are replaced. Affected facilities in the plant process that are subject to 40 CFR part 60, subpart F, for Portland Cement NSPS, or subpart I, Asphalt Concrete Plants NSPS, are not subject to this NSPS.

Respondents must submit the following one-time-only reports: notification of the date of construction or reconstruction, notification of the actual date of initial startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of demonstration of the continuous emission monitor system (CMS) where the CMS is required (wet scrubber), notification of the date of the initial performance test, and the results of the initial performance test. Wet mining/screening operations are exempt from all requirements of the regulation, except an initial report and record describing the location of these operations. The general provision requirement to submit a notification of the anticipated date of initial startup is being waived for respondents subject to this standard. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard.

Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Owners or operators of facilities using a wet scrubber must record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate and submit semiannual reports for occurrences when the measurements of the scrubber pressure loss (or gain) and liquid flow rate differ by more than +/-30 percent from the average determined during the most recent performance test. All records shall be retained for at least two years. The information collected from recordkeeping and reporting requirements is necessary to ensure compliance with these standards, as required by section 114(a) of the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nonmetallic Mineral Processing Plants.

Estimated Number of Respondents: 3,825.

Frequency of Response: Initial.

Estimated Total Annual Hour Burden: 31,026 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: 0.

Changes in the Estimates: There is a decrease of 720 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to correction of a mathematical error regarding the total number of respondents in the most recently approved ICR, in spite of a small increase in sources.

Dated: May 13, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–13716 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7506–4]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree that the United States Environmental Protection Agency (''EPA'') lodged with the United States District Court for the Northern District of California on May 14, 2003 to address a lawsuit filed by Medical Advocates for Healthy Air, Sierra Club and Latino Issues Forum. *Medical Advocates for Healthy Air et. al.* v. *Whitman,* Case No. C–02–5102 CRB(N.D. Cal.). This lawsuit was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a).

DATES: Written comments on the proposed consent decree must be received by July 2, 2003.

ADDRESSES: Written comments should be sent to Jan Taradash, Office of Regional Counsel, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the proposed consent decree are available from Jan Taber, (415) 972–3900.

SUPPLEMENTARY INFORMATION: This lawsuit concerns EPA's alleged failure to perform certain nondiscretionary duties under the CAA. The consent decree provides that: (1) the Administrator of EPA or her delegatee shall sign no later than March 31, 2004, a notice for publication in the **Federal Register** proposing a federal implementation plan (''FIP'') to implement the requirements of section 189(b)(1)(B) of the Act, 42 U.S.C. 7513a(b)(1)(B), for the San Joaquin Valley PM–10 nonattainment area; and (2) the Administrator or her delegatee shall sign no later than July 31, 2004, a notice for publication in the **Federal Register** taking final action to adopt a FIP to implement the requirements of that section for the San Joaquin Valley. Section 189(b)(1)(B) provides that plans for serious PM–10 nonattainment areas must include provisions to assure the implementation of best available control measures. The consent decree also provides that EPA's obligation to promulgate the FIP shall be relieved as to any portions of the plan for which the Administrator or her delegatee signs a notice of final rulemaking by July 31, 2004 approving state implementation plan (''SIP'') revisions for the San Joaquin Valley pursuant to Clean Air Act sections 110(k)(3) and 189(b)(1)(B), 42 U.S.C. 7410(k)(3), 7313a(b)(1)(B).

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will then be executed by the parties.

Dated: May 22, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 03–13717 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[LA–68–1–7599; FRL–7506–3]

Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: MOBILE6 Motor Vehicle Emissions Budgets for the Baton Rouge 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the on-road motor vehicle emissions budget contained in the revision to the Baton Rouge serious ozone nonattainment area attainment demonstration SIP adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted attainment demonstration SIP revision must be used for future conformity determinations in the Baton Rouge area.

DATES: These budgets are effective June 17, 2003.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Ms. Peggy Wade, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7247, Email address: *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the State Implementation Plan revision submitted to satisfy the commitment of the State of Louisiana to revise its mobile source budgets for the Baton Rouge ozone nonattainment area with MOBILE6. (MOBILE6 is the most recent emissions factor model, released by EPA on January 29, 2001.)

On January 21, 2003, we received the MOBILE6 SIP revision for the Baton Rouge 5–Parish ozone nonattainment area. There are two motor vehicle emissions budgets found in this plan for 2005. The emissions budget for VOCs is 18.82 tons/day; the NO_X emissions budget is 30.00 tons/day. On January 31, 2003, the availability of these budgets was posted on EPA's Web site for the purpose of soliciting public comments.

The comment period closed on March 3, 2003, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 6 delivered a letter to the Louisiana Department of Environmental Quality on March 27, 2003, finding that the motor vehicle emissions budgets in the Baton Rouge 5–Parish ozone nonattainment area are adequate and must be used for transportation conformity determinations.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that such an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

On March 2, 1999, the DC Circuit Court of Appeals ruled that budgets contained in submitted SIPS cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. We have described our process for determining the adequacy of submitted SIP budgets in the policy guidance dated May 14, 1999, and titled *Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.* We followed this guidance in making our adequacy determination. You may obtain a copy of this guidance from EPA's conformity website or by contacting us at the address above.

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

Dated: May 16, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–13718 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Region 2 Docket No. NJ60–258; FRL–7506–2]

Adequacy Status of the Submitted 2005 and 2007 Revised Attainment Demonstration Budgets for the 1-Hour Ozone National Ambient Air Quality Standard for Transportation Conformity Purposes for the New Jersey Severe Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the revised attainment year motor vehicle emissions budgets (''budgets'') for volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the submitted revision to the 1-hour ozone attainment demonstration state implementation plan (SIP) for New Jersey's severe nonattainment areas to be adequate for conformity purposes. These attainment year budgets were recalculated using EPA's latest motor vehicle emissions factor model, MOBILE6. On March 2, 1999, the DC Circuit Court ruled that submitted state implementation plan budgets cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area can use the revised 2007 attainment year budgets of VOC and NO_X from the submitted revision to the 1-hour ozone attainment demonstration SIP for future conformity determinations. These 2007 budgets also apply to the New Jersey portion (Warren County) of the Allentown-Bethlehem-Easton marginal ozone nonattainment area. The New Jersey portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area can use the revised 2005 attainment year budgets of VOC and NO_X from the submitted revision to the 1-hour ozone attainment demonstration SIP for future conformity determinations. These 2005 budgets also apply to the Atlantic City moderate ozone nonattainment area.

DATES: This finding is effective June 17, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, *champagne.kenneth@epa.gov.*

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on May 19, 2003, stating that the revised attainment year budgets in the submitted 1-hour ozone attainment demonstration SIP revision (dated April 8, 2003) for the New Jersey portions of the New York-Northern New Jersey-Long Island and Philadelphia-Wilmington-Trenton severe ozone nonattainment areas are adequate for conformity purposes. The purpose of New Jersey's April 8, 2003, submittal was to address its enforceable commitment to revise the attainment year budgets using MOBILE6 within one year of the release of the model. This enforceable commitment was approved by EPA on February 4, 2002 (67 FR 5152). EPA's adequacy finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance, which can also be found on EPA's Web site at: *http://*

www.epa.gov/otaq/traq, in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–13719 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7506–1]

Protection of Stratospheric Ozone: Methyl Bromide Critical Use Exemption and Allocation Planning; Notice of Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stakeholder meetings.

SUMMARY: EPA will hold stakeholder meetings this summer on the methyl bromide critical use exemption (CUE) program in Washington D.C. and in locations around the country to be announced. The stakeholder meetings will assist applicants with the 2003 critical use exemption (CUE) application, provide guidance to 2002 critical use exemption applicants, and discuss options for allocation of methyl bromide under the CUE. For additional information on the application workshops and for logistical information, please contact the Office of Pesticide Programs. Preliminary information on additional, tentatively scheduled workshops is listed below. Updated information will be posted to both *www.epa.gov/ozone/mbr* and *www.epa.gov/pesticides.* Interested members of the public are encouraged to R.S.V.P. no later than June 10, 2003, by 5 p.m. for the June 16 allocation session by contacting the Office of Air and Radiation as listed under **ADDRESSES.**

DATES: The meetings will take place:

1. *Washington, DC*—Allocation options session: Monday, June 16, 2003, from 1 p.m. to 5 p.m. at EPA Judiciary Square, 1st Floor Conference Room, 501 3rd Street, NW., Washington, DC 20009. CUE application workshops—the week of June 16, 2003.
2. *Raleigh, North Carolina*—the week of June 16, 2003.
3. *East Lansing, Michigan*—the week of June 16, 2003.
4. *Orlando, Florida*—the week of June 24, 2003.
5. *Parlier, California*—the week of June 24, 2003.
6. *Washington, DC*—Allocation options session: Friday, August 15, 2003, from 9 a.m. to 12 p.m. at EPA Judiciary Square, 1st Floor Conference Room, 501 3rd Street, NW., Washington, DC 20009.

ADDRESSES: Send R.S.V.P's for the June 16 Washington DC allocation sessions to Hodayah Finman at U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460; via phone at 202–564–2651 or electronic mail at *finman.hodayah@epa.gov.*

FOR FURTHER INFORMATION CONTACT: *For additional information about the application workshops and logistics,* contact Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Avenue., NW., Washington, DC 20460; telephone: (703) 308–8136; e-mail: *chism.bill@epa.gov.*

For additional information and R.S.V.P.s on the allocation options sessions, contact Hodayah Finman, U.S. Environmental Protection Agency, Office of Atmospheric Programs (6205J), 1200 Pennsylvania Avenue., NW., Washington, DC 20460; telephone: (202) 564–2651; e-mail: *finman.hodayah@epa.gov.*

For further information on the Critical Use Exemption from the phaseout of methyl bromide, contact the U.S. EPA Stratospheric Ozone Information Hotline at 1–800–296–1996.

SUPPLEMENTARY INFORMATION: Methyl bromide is a chemical pesticide that has been identified as an ozone-depleting substance under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) and the Clean Air Act. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that demonstrate they have no technically and economically feasible alternatives.

The purpose of the June 16 meeting, and other sessions on the allocation rule, is for the Environmental Protection Agency (EPA) to describe potential options for allocating critical use exemptions authorized by the Parties to the Protocol and to provide a public fora for input on the issues raised by allocation options. At this first session on June 16, EPA will describe possible options to be discussed in the allocation notice and comment rulemaking process. The presentation of possible allocation options will be followed by a lengthy question and answer session. At the subsequent session on August 15, EPA will seek stakeholder comments and statements on the allocation options in either an oral or written format. At this time, EPA is announcing the time and location for sessions on allocation options to be held in Washington, DC and requests that all interested members of the public R.S.V.P. to the Office of Air and Radiation no later than June 10, 2003, by 5 p.m. for the June 16 session and no later than July 29 at 5 p.m. for the August 15 meeting. EPA will be having additional discussions about the notice and comment rulemaking process for the allocation of critical use exemptions as part of the meetings to be held in locations outside of Washington DC. Further information on the other methyl bromide sessions regarding the CUE application process will be posted to both *www.epa.gov/ozone/mbr* and *www.epa.gov/pesticides.* Additional information about the Critical Use Exemption of methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Individuals wishing to attend these meetings or participate via conference call are encouraged to R.S.V.P. For those who cannot travel to the Washington DC, sessions on allocation options, there will be 20 conference call lines available on a first come, first served basis. When registering, please give your name, organization, postal (and electronic, if any) mailing address, telephone, and fax number. All statements, questions, and answers will become part of the public record and will be considered in the development of any proposed rule. If there is insufficient interest in a meeting, that particular meeting may be canceled. The Agency bears no responsibility for attendees' decisions to purchase nonrefundable transportation tickets or accommodation reservations.

Dated: May 22, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–13720 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7506–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to CERCLA and RCRA, BKK Landfill Site, West Covina, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the BKK Landfill site, located in West Covina, Los Angeles County, California was

executed by the Agency on May 22, 2003, and concurred upon by the United States Department of Justice on May 13, 2003. The site is an interim status hazardous waste facility. The agreement, between the City of West Covina, California (the ''City''), and the United States, is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), and potential claims under section 3008(h) of the Resource Conservation and Recovery Act (''RCRA'').

The City plans to purchase approximately 158 acres of the 583-acre BKK hazardous waste facility for redevelopment into sports, recreation and commercial uses. Under this proposed prospective purchaser agreement, the City would be required to implement a workplan for monitoring soil, soil-gas and indoor air at any development involving a park or playground that the City approves on certain specified portions of the property it plans to purchase if the facility owner/operator, the BKK Corporation (''BKK''), fails to do so and if funds are available to the City to implement that workplan. Under a separate agreement being entered into between the City, BKK and Wells Fargo Bank, the City also has certain obligations to oversee BKK's use of the funds obtained from the purchase of the property for compliance with local, State and federal requirements at the BKK Landfill site.

The City is required to grant access to the property to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105 and the information repository for the BKK Landfill site located at the West Covina Public Library, 1601 West Covina Parkway, West Covina, CA 91790.

DATES: Comments must be submitted on or before July 2, 2003.

ADDRESSES: Comments may be submitted to Mimi Newton, Assistant Regional Counsel (ORC–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105 (e-mail: *newton.mimi@epa.gov*). Comments should reference ''The BKK Landfill Site Prospective Purchaser Agreement.''

Availability: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and the information repository for the BKK Landfill site located at the West Covina Public Library, 1601 West Covina Parkway, West Covina, CA 91790. A copy of the proposed agreement may be obtained from Mimi Newton, Assistant Regional Counsel (ORC–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105 (e-mail: *newton.mimi@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Mimi Newton, Assistant Regional Counsel (ORC–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3941; e-mail: *newton.mimi@epa.gov*.

Dated: May 21, 2003.

Jeff Scott,

Director, Waste Management Division, Region IX.

Dated: May 16, 2003.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. 03–13699 Filed 5–30–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Tuesday, June 3, 2003, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's enforcement and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: May 29, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–13926 Filed 5–29–03; 3:24 pm]

BILLING CODE 6714–01–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 June 16, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Dittman Family Trust, Lincoln, Nebraska; to retain control of Cornhusker Growth Corporation, Lincoln, Nebraska, and thereby indirectly retain control of Cornhusker Bank, Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, May 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13605 Filed 5–30–03; 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 Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Weed Investment Group, Inc., Cheyenne Wells, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Eastern Colorado Bank, Cheyenne Wells, Colorado.

Board of Governors of the Federal Reserve System, May 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13604 Filed 5–30–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces six reappointments to fill the vacancies occurring this year.

DATES: Appointments are effective May 1, 2003 through April 30, 2006.

ADDRESSES: *GAO*—441 G Street, NW., Washington, DC 20548; *MedPAC*—1601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: *GAO*—Molly Ryan, 202/512–3592; *MedPAC*—Mark E. Miller, Ph.D., 202/220–3700.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following: Reappointed members are Glenn M. Hackbarth, J.D. (Chair), Consultant; Robert D. Reischauer, Ph.D. (Vice Chair), President, The Urban Institute; Autry O.V. ''Pete'' DeBusk, Chairman, Chief Executive Officer, and founder of DeRoyal; Alan R. Nelson, M.D., Special Advisor to the Executive Vice President and Chief Executive Officer, American College of Physicians-American Society of Internal Medicine; David A. Smith, Senior Policy Advisor to the President of the American Federation of Labor-Congress of Industrial Organizations; and Ray E. Stowers, D.O., Director of Rural Health in the Department of Family Medicine at Oklahoma State University College of Osteopathic Medicine.

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 03–13692 Filed 5–30–03; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Title III and VII State Program Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) 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 of public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Title III and VII State Program Report.

DATES: Submit written or electronic comments on the collection of information by August 1, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *saadia.greenberg@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, Office of Evaluation, Washington, DC 20201 Attention: SPR Comments.

FOR FURTHER INFORMATION CONTACT: Saadia Greenberg at 202–357–3554 or e-mail: *saadia.greenberg@aoa.gov.*

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 request 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, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA'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.

The Older Americans Act (OAA) requires annual program performance reports from States. In compliance with this OAA provision, AoA has developed a new State Program Report (SPR) in 1996 as part of its National Aging Program Information System (NAPIS). The SPR collects information about how State Agencies on Aging expend their OAA funds as well as funding from other sources for OAA authorized supportive services. The SPR also collects information about the demographic and functional status of

the recipients of these services. This proposed collection, represents a revision of the SPR. This revision was undertaken for the following purposes: (1) The need to develop more permanent information requirements for the National Family Caregiver Support Program (enacted in 2000); (2) the need to comply with revised OMB standards for gathering information regarding race and ethnicity; and (3) the need to reduce the burden of the SPR/NAPIS requirements on States, area agencies and service providers.

AoA estimates the burden of this collection of information as follows: 2,606 hours.

Dated: May 27, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–13730 Filed 5–30–03; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03106]

Development and Validation of Measures To Assess Outcomes of Mild Traumatic Brain Injury; Notice of Availability of Funds

Application Deadline: July 2, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 391, 317(k)(2), and 301(a) of the Public Health Service Act, (42 U.S.C. sections 280b, 247b(k)(2), and 241(a)). The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement for the development and validation of measures to assess outcomes of mild traumatic brain injury (MTBI). This program addresses the ''Healthy People 2010'' focus area, Injury and Violence Prevention.

The purpose of this program is to fund research to develop reliable and valid measures for assessing longer-term outcomes of mild traumatic injury. These measures should be applicable to future population-based studies of outcomes of MTBI to estimate the prevalence of MTBI-related disability (See Attachment 2 of the announcement as posted on the CDC Web site).

Measurable outcomes of this research study will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC), described as a priority in the NCIPC Research Agenda: To monitor and detect fatal and non-fatal injuries.

C. Eligible Applicants

Applications may be submitted by: Public nonprofit organizations, private nonprofit organizations, universities, colleges, technical schools, research institutions, hospitals, managed care organizations, community-based organizations, faith-based organizations, federally recognized Indian tribal governments, Indian tribes, Indian tribal organizations, State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.)

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.

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to four years. The funding estimate 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.

Use of Funds

Funds awarded may not be used to supplant funds available from other sources to the recipient to conduct similar activities. Funds are not to be used for construction purposes, the rental of office space, or for the purchase or rental of furniture. Eligible applicants may enter into contracts including consortia agreements as necessary to meet the requirements of the program and strengthen the overall application.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. With assistance from the CDC, prepare a detailed research protocol for Institutional Review Board (IRB) approval by all cooperating institutions participating in the study. The protocol shall include but is not limited to the following: Detailed description of methods for selecting the study sample, recruitment and enrollment methods, the informed consent process and consent forms, study instruments including questionnaires if applicable, methods for data handling and storage including methods for ensuring participant confidentiality, data analysis, and plans for data dissemination.

b. Develop a detailed operations manual and other manuals documenting study methods.

c. Train study personnel.

d. Recruit and enroll study participants.

e. Collect and enter the data.

f. Analyze and interpret the data.

g. Report study findings, including in peer-reviewed publication(s).

2. CDC Activities

a. Assist in effective study planning and management.

b. CDC will provide critical guidance related to the study design, including the case definition for mild traumatic brain injury and selection of the study population.

c. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

d. CDC will provide guidance about protocol format and content as well as scientific and human subjects considerations.

e. CDC staff will collaborate in the analysis of data.

f. CDC will collaborate in the reporting of findings by participating as co-authors in the preparation of peer-reviewed publications.

g. CDC staff will convene routine conference calls with the recipient and

conduct a site visit annually or as needed to review progress.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The LOI should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point Times Roman font. Your LOI will be used to determine level of interest in the announcement. The LOI should include the following information:

1. Program Announcement Number 03106.
2. Name and address of institution.
3. Name and telephone number of the principal investigator.
4. A summary of the key research hypotheses, study design and proposed methods you intend to use if awarded funding.
5. A brief description of proposed collaborations with health departments or other entities, if applicable.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your 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 30 (8½″ x 11″) double-spaced pages, printed on one side, with one inch margins on all four sides, and unreduced 12-point Times Roman font, and a page number at the bottom of each page. Applications with more than 30 pages will be returned and not reviewed. Please provide only attachments or appendices that are directly relevant to this request for funding. Include sample forms and data collection instruments. The budget and attachments/appendices, including letters of support, are not included in the count for the 30-page limit. All pages, including appendices, must be numbered sequentially.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet. The PHS 398 Errata sheet is posted on the CDC web site. The narrative should contain the following information in the order presented:

1. Abstract (1 page recommended).

a. Provide a brief abstract of the proposed study including key research hypotheses, study design and proposed methods.

b. The abstract must reflect the study's focus and the length of the project period (maximum of four years) for which assistance is being requested (see ''Availability of Funds''). Amount of federal assistance requested.

2. Proposal Narrative

a. Background, including literature review and justification of the need for the research.

b. Goals, objectives, and timeline for completion.

c. Study design and methods, including hypotheses to be tested, proposed study population and methods for selection of the study sample, proposed time post-injury for assessing participants, case definition for mild traumatic brain injury, existing measure(s) to be validated or proposed methods for development of new measure(s), methods for assessing the reliability and validity of measure(s), and data analysis methods.

d. Study management and staffing, including institutional resources, investigator and staff qualifications and experience.

e. Proposed methods to evaluate the attainment of objectives.

3. Budget Narrative
4. Human Subjects
5. Appendices—which may include letters of commitment from key collaborators, resumes of key staff, brief summary reports of analyses of TBI surveillance data.

G. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by June 17, 2003. Submit the LOI, on the applicant's letterhead, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and five copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS 398. 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 2, 2003. Submit the application to: Technical Information Management–PA 03106, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment 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 4:00 Eastern Time on the deadline date. Any applicant who sends their application 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, natural or manmade disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above requirements will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Special Emphasis Panel (SEP), to determine if the application is of sufficient and scientific merit to warrant further review by the SEP. 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. A dual review process will evaluate applications that are complete and responsive.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee SEP, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the SEP. A committee of reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. Significance—Does this study address an important problem? Does the applicant justify the present proposal using existing scientific knowledge? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. Approach—Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant describe the specific questions this research is intended to address? Does the applicant describe how relevant behavioral theories will be applied to encourage the proposed activities? Does the applicant describe the hypotheses to be tested, the specific study goals, measurable objectives, and outcomes? 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? Does the applicant provide a detailed time-line for the first year of the study as well as a projected time-line for the subsequent years?

Does the applicant describe methods for selecting the study population and study sample, timing of assessments post-injury, and identifying participants (case definition for MTBI) measure(s) or validating existing measure(s) of outcomes of MTBI, and for assessing the reliability and validity of those measures?

Are there adequate plans for data collection and data management including security of data, assurance of participant confidentiality, data entry, editing, and quality assurance procedures? Is there a statistical analysis plan appropriate for the study design?

c. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator—Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting TBI-related research? Does the applicant document capacity to accomplish the proposed study as demonstrated by relevant past or current experience conducting research on TBI outcomes and/or developing and validating outcome measures?

e. 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? Does the applicant describe the personnel and study collaborators needed to accomplish the proposed activities? Does the applicant provide evidence that the study personnel have the expertise and capacity to accomplish the proposed activities and to provide appropriate scientific oversight necessary to fulfill study goals and objectives?

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? Is there evidence of the experience and capacity for all key staff members including CVs and position descriptions?

f. Study Samples—Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

g. Ethical Issues—What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, (*e.g.*, suspected child abuse)?

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? Not scored; however, 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:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

h. Dissemination—What plans have been articulated for disseminating findings?

i. Measures of Effectiveness—The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

j. Budget—The SEP will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered

would be the same as those considered by the SPRS.

The Subcommittee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review Subcommittee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the NCIPC ''Injury Research Agenda.''

d. Budgetary considerations including the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress reports, 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 Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status reports, 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 the program 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–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–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

Executive order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Wanda Allison, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2645, E-mail address: *wallison@cdc.gov.*

For business management and budget assistance in the territories, contact: Angelia Hill, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2785, E-mail address: *aph8@cdc.gov.*

For program technical assistance, contact: Stacy Harper, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS F–41, Atlanta, GA 30341–3724, Telephone number (770) 488–4031, E-mail address: *slharper@cdc.gov.*

Dated: May 23, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13652 Filed 5–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03057]

Cooperative Agreement for a National Poison Prevention and Control Program; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for a national poison prevention and control program was published in the **Federal Register** on May 7, 2003, Volume 68, Number 88, on pages 24483–24485. The notice is amended as follows: On page 24483, in the second column, section E. Program Requirements, item 1(a) should read: Develop a plan to improve the current national toxicosurveillance system, with a focus on improvement of data collection and coding. Enhance real time data collection and aberration detection capabilities of TESS.

Dated: May 23, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13656 Filed 5–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Active Surveillance for Pertussis—Surveillance for Vaccine Preventable Disease as a Foundation for Evaluating the Effectiveness and Impact of an Adolescent/Adult Pertussis Immunization Program and for Evaluating the Feasibility of a Pediatric Hospital-Based Sentinel Surveillance Network for Vaccine Preventable Diseases, Program Announcement #03101 and Solicitation 2003–N–0837

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Active Surveillance for Pertussis-Surveillance for Vaccine Preventable Disease as a Foundation for Evaluating the Effectiveness and Impact of an Adolescent/Adult Pertussis Immunization Program and for Evaluating the Feasibility of a Pediatric Hospital-Based Sentinel Surveillance Network for Vaccine Preventable Diseases, Program Announcement #03101 and Solicitation 2003–N–0837.

Times and Dates: 6 p.m.–7 p.m., June 26, 2003. (Open) 7 p.m.–9 p.m., June 26, 2003. (Closed) 8 a.m.–4:30 p.m., June 27, 2003. (Closed)

Place: Doubletree Hotel, 3342 Peachtree Road, NE., Atlanta, GA 30326, Telephone 404.231.1234.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #03101 and Solicitation 2003–N–0837.

FOR FURTHER INFORMATION CONTACT: Kim Lane, Associate Director for Management and Operations, National Immunization Program, CDC, 1600 Clifton Road, NE., MS–E05, Atlanta, GA 30333, Telephone 404—639–8201.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–13653 Filed 5–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–367, a, b, and c; CMS–R–38, CMS–566, CMS–10077, and CMS–10072]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* CMS–367a,b,c (OMB# 0938–0578); *Use:* Section 1927 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 570; *Total Annual Responses:* 2,280; *Total Annual Hours:* 54,780.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage for Rural Health Clinics—42 CFR 491.9 Subpart A; *Form No.:* CMS–R–38 (OMB #0938–0334); *Use:* This information is needed to determine if rural health clinics meet the requirements for approval for Medicare Participation.; *Frequency:* Initial Application for Medicare approval; *Affected Public:* Business or other for-profit, State, Local, or Tribal Gov't., and not-for-profit institutions, Individuals or households, Farms, and Federal Government; *Number of Respondents:* 3,305; *Total Annual Responses:* 3,305; *Total Annual Hours:* 8,580.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Managed Care Disenrollment Form; *Form No.:* CMS–566 (0938–0507); *Use:* This form provides Medicare beneficiaries the option to disenroll from their Medicare managed care plan through a neutral third party. CMS and SSA have established an agreement via a formal Memorandum of Understanding for SSA to process beneficiary disenrollments from Medicare managed care plans. Prior to 1999, the Social Security Act provided Medicare beneficiaries enrolled in Medicare managed care plans with the option of disenrolling from the plan at a Social Security Field Office; however, Section 4001 of the Balanced Budget Act of 1997 amended the Social Security Act, removing this requirement from the statute; *Frequency:* On Occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 85,000; *Total Annual Responses:* 85,000; *Total Annual Hours:* 2,805.

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* ''Medicare Decisions and Your Rights''; *Form No.:* CMS–10077 (OMB# 0938–NEW); *Use* Pursuant to 42 CFR 422.568 (c), M+C practitioners must deliver notices to enrollees informing them of their right to obtain a detailed notice regarding services from their M+C organizations. This notice fulfills the regulatory requirement.; *Frequency:* Other (distribution); *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 155; *Total Annual Responses:* 5,000,000; *Total Annual Hours:* 83,333.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* MSInteractive Survey Tool for cms.hhs.gov; *Form No.:* CMS–10072 (OMB# 0938–NEW); *Use* CMS has developed a survey tool using MSInteractive to obtain feedback from users accessing cms.hhs.gov website to guide future improvements; *Frequency:* on occasion; *Affected Public:* Individuals or Households, Business or

other for-profit; *Number of Respondents:* 7000; *Total Annual Responses:* 7000; *Total Annual Hours:* 583.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: May 22, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–13666 Filed 5–30–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Innovative Food Safety Projects; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of an innovative food safety program. The agency will have approximately $300,000 available for this program in fiscal year (FY) 2003. FDA anticipates making at least six awards, not to exceed $50,000 (direct and indirect costs combined) per award per year. Support of these grants will be for 1 year. The number of grants funded will depend on the quality of the applications received and the availability of Federal funds to support the grant. These grants are not intended to fund food inspections.

DATES: Submit applications by July 17, 2003.

ADDRESSES: Application kits are available from, and completed applications should be submitted to Cynthia M. Polit, Grants Management Office (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7180, e-mail: *cpolit@oc.fda.gov*. Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. Application forms PHS–5161–1 (7/00) are available via the Internet at *http://www.psc.gov/forms* (revised 7/00). **NOTE**: Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Cynthia M. Polit (see **ADDRESSES**).

Regarding the programmatic aspects of this notice: Paul M. Raynes, Division of Federal-State Relations (HFC–150), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, e-mail: *dfsr@ora.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA will support projects covered by this notice under Title XVII of the Public Health Service Act (42 U.S.C. 1702). FDA's project program is described in the Catalog of Federal Domestic Assistance, No. 93.245, and applicants are limited to food safety regulatory agencies of State, local, and tribal governments.

FDA urges applicants to submit work plans that address specific objectives of ''Healthy People 2010.'' Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, volumes I and II, for $70 ($87.50 foreign) (S/N 017–000–00550–9), by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD-ROM format (S/N 017–001–00549–5) for $19 ($23 foreign) as well as on the Internet at *http://www.health.gov/healthypeople*. Internet viewers should proceed to ''Publications.''

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Background

The Office of Regulatory Affairs (ORA) is the inspection component of FDA and utilizes approximately 1,600 investigators and inspectors to oversee the country's approximately 95,000 FDA-regulated businesses. These investigators inspect more that 15,000 facilities a year. In addition to their efforts under the standard inspection program, they conduct special investigations and food inspection recall audits, perform consumer complaint inspections, and collect samples of regulated products. FDA has relied on the States in assisting with these activities through formal contracts, partnership agreements, and other arrangements. Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the demands on both the agency and the States have increased. Procedures need to be reviewed and innovative changes made that will increase effectiveness and efficiency and conserve resources. ORA will continue to support food safety programs by: (1) Effectively and efficiently ensuring compliance of regulatory products, and (2) providing high quality, science-based work that results in maximizing consumer protection. Since it's inception in FY 1999 this program has been extremely successful and generated significant projects benefiting State and local governments, FDA, and the general public. To view past awards view the ORA Web site at *www.fda.gov/ora/fed_state/Innovative_Grants.html*.

In partnership with our State and local food safety agencies, FDA will continue to develop innovative food safety programs that would be utilized nationally by State and local food safety regulatory agencies. Even though the American food supply is among the safest in the world, 76 million Americans become ill each year from the food they consume, and approximately 5,000 Americans a year, primarily the very young and elderly, die as a result. The goal of our food safety programs is to further reduce the incidence of foodborne disease to the greatest extent possible. Innovative food safety programs that are developed at the State and local levels and have national implication could enhance programs that are developed at the Federal level.

A. Project Goals, Definitions, and Examples

The specific goal of this program is to complement, develop, or improve State and local food safety programs that could be applied to food safety

programs nationwide. Examples of food safety projects are the retail food program; the egg, milk, and shellfish safety programs; and, State food safety laboratories. Applications that address one of the food safety projects and fulfill the following specific project objectives will be considered for funding.

Each application must address only one project. Applicants may apply for more than one project area, but must submit a separate application for each project. These grants are not to be used to fund or conduct food inspections for food safety regulatory agencies. For example, applications relating to the Retail Food Program area should be applicable to program improvement processes for FDA's Draft ''Recommended National Retail Food Regulatory Program Standards'' (*http://vm.cfsan.fda.gov/~dms/ret-toc.html*) (see review criteria).

There are three key project areas identified for this effort:

1. Inspection

One key project area is the development of innovative regulatory inspection methods or techniques for the inspection process of various food establishments in order to improve effectiveness and efficiency. Innovative Regulatory Program Methodology projects must demonstrate an effect on factors that contribute to foodborne illness in all, or a segment of, food industry programs. For example, projects could address key elements from the draft entitled ''Recommended National Retail Food Regulatory Program Standards,'' such as the 5 Food Code Interventions (management knowledge; employee health; hands as a vehicle of contamination; time/temperature relationships; and consumer advisory), or the 5 Centers for Disease Control and Prevention (CDC) Risk factors (improper holding temperature; inadequate cooking; contaminated equipment; unsafe source; and poor personal hygiene). Other examples of projects in this area could include prevention and control of *Listeria monocytogenes* in retail and foodservice environments and projects that address shell egg safety, such as refrigeration, safe handling, or labeling. The goal of these projects should be to achieve efficient and effective compliance with regulations that affect factors that contribute to foodborne illness.

2. Education and Health Information Dissemination

Another key project area is the development of innovative education projects and materials for State and local food safety regulatory officials that foster consistency and uniform application of State and local food regulations. These education projects and/or materials must be reproducible by other State and local food safety regulatory agencies. These projects may incorporate concurrent education of both State and local food safety regulatory agencies and the food industry.

3. State Laboratories

FDA recognizes that there are a number of new technologies and test methods that may be applicable to chemical and/or microbiological food analyses. FDA's regulation of a wide range of food commodities requires the validation of new test methods in a variety of food matrices. State/local food testing laboratory validation of test methods will provide the Federal, State, and local food safety agencies with invaluable information with respect to the methods' feasibility and applicability. State laboratories should identify areas in food testing (chemical and/or biological) that would enhance their program activities and provide alternative analytical capabilities for Federal and local food safety officials.

Requirements For State Laboratories Projects:

The applicant must include the following in the grant application:

1. The applicant must identify rapid test method/technique proposed for validation study. Please note that this is NOT research; it is a single lab validation of food test methods/techniques with already existing data that warrants further investigation. Selection of test method technology must fall under the following categories:

•AOAC official method with foods and food commodities that have not been previously validated;

•Non-AOAC official method, i.e., State lab method;

•New technology or method with single lab validation for a particular food and analyte (validation data must be submitted).

2. The applicant must include at least 4 food matrices for each validation study. Food matrices selected should benefit State program activities in addition to providing Federal and local agencies with alternative analytical capabilities.

3. The applicant must identify the microbiological or chemical test method protocol, including laboratory equipment and personnel needed for each validation study. Copies of the complete methods for the validation study must be included.

4. The applicant must cite and incorporate into a protocol the single-laboratory method validation guidelines (i.e., AOAC) for both chemical and microbiological validations studies.

5. The applicant must also provide a scientific review of the literature pertaining to the rapid test.

6. The applicant must agree to provide a written report on the laboratory findings, including all the above materials and appropriate documentation which will be reviewed by the FDA Division of Field Science (DFS) before being recommended to other State/local food safety agencies.

B. Applicability

All grant application projects that are developed at State, local, and tribal levels MUST have national implication or application that can enhance Federal, State, and local food regulatory programs and are likely to reduce factors that cause foodborne illness. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal food safety regulatory agencies. No grant will be awarded for projects that do not support the FDA Food Code.

FDA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (1) The copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and (2) any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support (45 CFR 92.34).

III. Reporting Requirements

Semiannual progress reports as well as a final program progress report and a final financial status report (FSR) (SF–269) are required. The grantee must submit an original FSR and two copies to FDA's Grants Management Officer within 90 days of the expiration date of the grant. The final program progress report must provide full written documentation of the project, copies of any results, as described in the grant application, and an analysis and evaluation of the results of the project. The documentation must be in a form and contain sufficient detail such that other State and local food safety regulatory agencies could reproduce the final project.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semiannually by the project officer. Project monitoring may also be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a

site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the project grant programs of FDA, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 also apply to this program and are implemented through Department of Health and Human Services regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit. The SPOC should send any State review process recommendations to the FDA administrative contact (see **ADDRESSES**). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60 day cutoff.

B. Eligibility

This grant program is only available to State, local, and tribal government food regulatory agencies. (See SPOC requirements stated in section IV.A of this document).

C. Length of Support

The length of support will be for 1 year from date of award.

V. Review Procedure and Criteria

All applications submitted in response to the Request for Applications (RFA) will first be reviewed by grants management and program staffs for responsiveness. Responsiveness is defined as submission of a complete application with original signatures on or before the required submission date as listed above. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration. An application will be considered nonresponsive if any of the following circumstances are not met: (1) If it is received after the specified receipt date; (2) if the total dollar amount requested from FDA exceeds $50,000; (3) if all required original signatures are not on the face, assurance or certification pages of the application; (4) if there is no original signature copy; (5) if it is illegible; (6) if the material presented is insufficient to permit an adequate review; (7) if the application demonstrates an inadequate understanding of the intent of the RFA; (8) if the application is determined to be essentially similar to projects that have been funded in the past; (9) if for any reason the results of the project, including computer software, cannot be made available to other State, local, and tribal food regulatory agencies. Applicants are encouraged to check the list of projects that received funding in prior years under this program on the Internet at *http://www.fda.gov/ora/fed_state/Innovative_Grants.html*.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Applications will be considered for funding on the basis of their overall technical merit as determined through the review process. Other award criteria will include availability of funds and overall program balance in terms of geography. Final funding decisions will be made by the FDA Commissioner or his designee.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their applications. All questions of a technical or programmatic nature must be directed to the ORA program staff (Paul Raynes) and all questions of an administrative or financial nature must be directed to the grants management staff (Cynthia Polit).

Applications will be given an overall score and judged based on all of the following criteria:

- Application budgets must remain within the $50,000 cap for combined direct and indirect costs. Applications exceeding this dollar amount will be returned as nonresponsive.
- Applications must provide in DETAIL, a sound rationale and appropriate grant design to address the objectives of the RFA.
- The project MUST be generic enough in nature to be used by other State, local, and tribal food regulatory agencies.
- Applications must include a detailed explanation of the desired goals and outcomes of the project.
- For applications relating only to the Retail Food Program, the outcome of the project should be applicable to the program improvement process for FDA's Draft ''Recommended National Retail Food Regulatory Program Standards.'' These standards will serve as a guide to the regulatory retail food program. The standards apply to the operation, management, and promotion of a regulatory retail food program focused on the reduction of risk factors known and suspected to cause foodborne illness. The FDA Draft ''Recommended National Retail Food Regulatory Program Standards'' can be found on the Internet site at *http://vm.cfsan.fda.gov/~dms/ret-toc.html* or contact your local FDA Regional Retail Food Specialist from the list provided in the application packet.
- Applications must include a full description of the project design, a detailed implementation plan, methods of execution, and a timeline for completion. The application must include a detailed description of measures of effectiveness and a description of the source documents or data collection methods for establishing the baseline for measurement.
- Applications must address the adequacy of facilities, equipment, databases and support services and the expertise of project staff needed for the project.
- Applicants and applicant's subgrantees and subcontractors must ensure that any projects developed in whole or in part with Federal funds may be made available to other State, local, and tribal food regulatory agencies by FDA or its agents. Copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Federal Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.
- Laboratory grant applications must meet all the requirements in the key project areas: State laboratories (see section II.A. 3 of this document).

VI. Submission Requirements

The original and two copies of the completed Grant Application Form PHS–5161–1 (Revised 7/00) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Cynthia M. Polit (see **ADDRESSES**). The application receipt date is July 17, 2003. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled ''Response to RFA-

FDA-ORA–03–Project I (Inspection)'' or ''RFA-FDA-ORA–03–Project II (Education and Health Information Dissemination) or ''RFA-FDA-ORA–03–Project III (State Laboratories).'' You must submit only one project application (an original and two copies) per package.

VII. Method of Application

A. Submission Instructions

You must submit each application under separate cover. Do not submit more than one application (original with 2 copies) per envelope. Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research (CDR), NIH. Any application sent to NIH that is then forwarded to FDA and not received in time for orderly processing will be deemed unresponsive and returned to the applicant. Instructions for completing the application are included in Form PHS–5161–1. FDA is unable to receive applications via the Internet.

B. Format for Application

You must submit the application on Grant Application Form PHS 5161–1 (Rev 7/00). All of the instructions for the enclosed Standard Form 424 (SF424) should be followed using the nonconstruction application pages. A properly formatted sample application for the grant can be accessed on the Internet at *http://www.fda.gov/ora/fed_state/Innovative_Grants.html*. Applications may be considered nonresponsive if not submitted in the proper order.

The face page of the application should indicate ''RFA–FDA–ORA–03–Project I (Inspection),'' or ''RFA–FDA–ORA–03–Project II (Education and Health Information and Dissemination)'' or ''RFA–FDA–ORA–03–Project III (State laboratories).''.

Data and information included in the application, if identified by the applicant as trade secret will be given treatment as such to the extent permitted by the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under the Office of Management and Budget Circular A–102.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13594 Filed 5–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91D–0407]

Medical Devices; Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA.'' This document describes a means by which resorbable calcium salt bone void filler devices may comply with the requirement for special controls. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule to classify the resorbable calcium salt bone void filler device into class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance 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*. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nadine Y. Sloan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 7, 2002 (67 FR 5753), FDA published a proposed rule to classify the resorbable calcium salt bone void filler device into class II (special controls). FDA identified the draft guidance document entitled ''Class II Special Controls Guidance: Resorbable Calcium Salt Bone Void Filler Device: Draft Guidance for Industry and FDA'' as the special control capable of providing reasonable assurance of safety and effectiveness for these devices.

Interested persons were invited to comment on the draft guidance by May 8, 2002. FDA received three comments. These comments were supportive of the guidance document and made suggestions on the guidance's content. Two of the comments also requested clarification of the scope and the risks in the guidance document. FDA considered the comments and revised the guidance document accordingly. We also clarified our labeling recommendations.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the resorbable calcium salt bone void filler device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a resorbable calcium salt bone void filler device will need to

address the issues covered in the class II special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two hard copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device; Guidance for Industry and FDA'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (855) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: April 9, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–13593 Filed 5–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is submitting a request for review and approval of a collection of information under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by June 23, 2003. The approval will authorize FEMA to use the collection through December 31, 2003. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

SUPPLEMENTARY INFORMATION: Executive Order 13254 of January 29, 2002 specifies that ''the executive departments, agencies, and offices constituting USA Freedom Corps shall coordinate and strengthen Federal and other service opportunities, including opportunities for participation in homeland security preparedness and response.'' The Office of Citizen Corps, within the Department of Homeland Security, is the USA Freedom Corps office with lead responsibility for overseeing homeland security, preparedness, and response service opportunities for all Americans.

To better determine the needs, interests, and attitudes of the American public in these realms, it is critical for the Office of Citizen Corps to conduct a survey of a representative sampling of the general public. To date, there is no survey data that pertains specifically to the mission of Citizen Corps to have every American embrace their personal responsibility to be prepared, to get training in first aid and emergency response and to volunteer to support first responders. The results of the survey will be an essential tool to most effectively direct program resources and activities.

Collection of Information

Title: Citizens Corps Individual Survey.

Abstract: The Office of Citizen Corps will conduct a survey of a representative sampling of the public to better determine the needs and interests of the American public in the realms of homeland security, preparedness and response. The results of the survey will enable Citizen Corps to determine future programs and activities.

Type of Information Collection: New collection.

Affected Public: Individuals or households.

Number of Respondents: 2500.

Estimated Total Annual Burden Hours: 417 hours.

Estimated Cost: There are no financial costs associated with the collection of this information. The Office of Citizen Corps has contract support to develop, administer, and analyze this survey. In addition, contract support will develop a communications strategy based on the survey results and analysis to best position the Citizen Corps message for the American public. The estimated costs, including these contractor services, as well as those associated with incidental printing and information delivery, is $140,000.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and

clarity of the information to be collected; and (d) 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. Submit comments to OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs (Attention: Desk Officer for the Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security) 725 17th Street, NW, Washington, DC 20503.

FEMA Addressee: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625, facsimile number (202) 646–3347, or e-mail address: *muriel.Anderson@fema.gov.*

Dated: May 22, 2003.

Darcy Bingham,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–13631 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1466–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2003:

Baldwin, Clarke, Escambia, Mobile, Monroe and Washington Counties for Individual Assistance.

Colbert County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13636 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1469–DR]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois, (FEMA–1469–DR), dated May 15, 2003, and related determinations.

EFFECTIVE DATE: May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 15, 2003: Greene, McDonough, and Pike Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13639 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to

include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Haskell and Meade Counties for Individual Assistance.
Seward County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13633 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3179–EM]

Maryland; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Maryland (FEMA–3179–EM), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maryland is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 2003:

Dorchester County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13638 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Christian, Greene and Platte Counties for Categories C through G under the Public Assistance program (already designated Individual Assistance, debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.)

Pike and Scott Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13635 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1465–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1465–DR), dated May 10, 2003, and related determinations.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 2003:

Carter, Delaware, Kay, Muskogee, Okfuskee, Pontotoc, Roger Mills, Texas, and Washington Counties for Individual Assistance.

Osage County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment

Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13637 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATE: May 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 2003:

Benton, Giles, Humphreys, Lawrence, Perry, Smith, Tipton and Trousdale Counties for Individual Assistance (already designated for Public Assistance.)

Decatur, Fayette, Hickman, Lewis, Macon and Shelby Counties for Individual Assistance.

Hardeman, Hardin, Lincoln, Marshall, Monroe, Sequatchie and Warren Counties for Public Assistance (already designated for Individual Assistance.)

Cocke, Grundy, Hickman, Lewis for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13634 Filed 5–30–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Federal Acknowledgment of Tribes Proposed Information Collection Renewal; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe will expire September 30, 2003. As required by the Paperwork Reduction Act of 1995, we are seeking comments on this information collection before we request extension from the Office of Information and Regulatory Affairs, Office of Management and Budget.

DATES: Submit comments on or before August 1, 2003.

ADDRESSES: Send your written comments to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 219–3008. You may submit comments electronically by contacting R. Lee Fleming at (202) 208–3592. Please mention OMB Number 1076–0104.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information or copies of the information collection submission should be directed to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660 MIB, Washington, DC 20240. You may also call (202) 208–3592.

All written comments will be available for public inspection in Room 10 of the South Interior Building, 1951 Constitution Avenue, NW., Washington, DC from 10 a.m. until 4 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Federal acknowledgment makes the group eligible for benefits from the Federal government.

II. Method of Collection

The Federal acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a sovereign-to-sovereign relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs, but will probably maintain copies for their own use. No periodic reports are required.

III. Data

Title: Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

OMB Control Number: 1076–0104.

Expiration Date: September 30, 2003.

Type of Review: Extension of a currently approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Estimated Number of Petitioners: 10.

Estimated Time per Petition: 2,237.7 hours.

Estimated Total Annual Burden Hours: 22,377.

Estimated Annual Costs: $895,080 (2,237.7 hours × $40.00 per hour × 10).

IV. Request for Comments

You are invited to comment on:

(a) 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;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, fax, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

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.

Dated: May 22, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–13672 Filed 5–30–03; 8:45 am]

BILLING CODE 4310–4J–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–469]

In the Matter of Certain Bearings and Packaging Thereof; Notice of Commission Determination to Review-in-Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on April 10, 2003, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation. Specifically, the Commission has determined to review the issues of registered and common law trademark infringement, false representation as to source, and laches. The Commission has also determined to affirm ALJ Order No. 95, which disqualified complainant's expert witness on the issue of quality control.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the ALJ's IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 16, 2002, based on a complaint filed by SKF USA, Inc. (SKF) of Norristown, PA against fourteen respondents. 67 FR 18632 (2002). Four respondents remain in the investigation, ten respondents have either settled with complainant or have been found in default. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain bearings by reason of infringement of registered and common law trademarks, dilution of trademarks, various acts in violation of the Lanham Act, and passing off. A count concerning ''unfair pecuniary benefits'' was dismissed by the Commission on September 23, 2002.

On April 10, 2003, the ALJ issued his final ID on violation and his recommended determination (RD) on remedy. The ALJ found a violation of section 337 by reason of infringement of SKF's registered and common law trademarks by each of the four remaining respondents, viz., Bearings Limited, Bohls Bearing and Transmission Service, CST Bearing Company, and McGuire Bearings Company, and recommended the issuance of a general exclusion order and cease and desist orders to the respondents found in violation. All parties remaining in the investigation, including the Commission investigative attorney, filed petitions for review on April 21, 2003, and replies to the petitions on April 28, 2003.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the issues of registered and common law trademark infringement, false representation as to source, and laches. On review, the Commission requests briefing based on the evidentiary record on the issues under review and is particularly interested in receiving answers to the following questions:

1. In view of the fact that the parties have cited only one district court case finding gray market trademark infringement based solely on non-physical material differences,[1] please discuss any legal and policy bases for finding gray market trademark infringement and false representation of source where no physical differences

[1] *Osawa & Co.* v. *B & H Photo,* 589 F. Supp. 1163, 1167–68 (S.D.N.Y. 1984). The parties also cited *Philip Morris, Inc.* v. *Allen Distribs., Inc.,* 48 F. Supp.2d 844, 853 (S.D. Ind. 1999). That case, however, found a physical material difference in that packages of authorized cigarettes had a particular Universal Product Code (UPC) on their side panel which consumers accumulated and redeemed for merchandise, while the gray market cigarette packages lacked this UPC label. *Philip Morris,* 48 F. Supp.2d at 848.

exist between the authorized and unauthorized products. In addition, as part of the submission on remedy, please discuss any issues that would likely arise in the enforcement of a general exclusion order based solely on non-physical differences between the authorized and gray market bearings.

2. What types of warranty, product recall procedures, and post-sale services accompany sales of authorized SKF USA bearings in the following categories: (a) Sales of SKF USA bearings by Chicago Rawhide; (b) sales of SKF USA bearings under the Roller Bearing Company/Tyson Bearing Company License Agreement; (c) downstream sales of SKF USA bearings by unauthorized distributors, *e.g.*, the three entities discussed on pp. 32–34 of Respondents' Confidential Joint Petition for Review, dated April 21, 2003; (d) sales of SKF USA bearings downstream from authorized SKF USA distributors; (e) sales of SKF USA bearings on the surplus market, (f) sales of SKF USA bearings by formerly authorized distributors, *e.g.*, by Bohls Bearings and Power Transmission Service; (g) sales of SKF USA bearings by respondents who have entered into settlement agreements with complainant in this investigation; (h) downstream sales of SKF USA bearings by original equipment manufacturers that have purchased bearings from SKF USA or its authorized distributors? Based on the evidence of record, please quantify the size of these types of sales to the extent possible. Please compare and contrast the warranties, product recall procedures, and post-sale services that accompany these categories of sales with the warranties, product recall procedures, and post-sale services that accompany the sales of gray market bearings by respondents.

3. In determining what comprises the bundle of services that are integral to the authorized bearings originally put into commerce in the United States by complainant SKF USA, what basis, if any, exists for excluding the categories of bearings listed above in Question 2? In order to find trademark infringement and false designation of source, is it necessary for the Commission to find that SKF USA's bundle of services accompanies sales of substantially all its authorized bearings and differs materially from the bundle of services that accompany the gray market bearings sold by respondents?

4. Please discuss the evidence of record that relates to actual consumer confusion based on warranties, product recall procedures, and post-sale services offered in respect to the authorized and gray market bearings.

5. How does the element of likelihood of consumer confusion factor into the legal standard for finding gray market trademark infringement based solely on non-physical material differences?

6. With respect to non-physical material differences based on SKF USA's post-sale technical and engineering support services, of what relevance is the fact that SKF USA will provide post-sale customer support to consumers who buy SKF bearings from SKF USA authorized distributors even if the authorized distributors have obtained the bearings from the gray market?

7. Please discuss the material differences, if any, between warranties provided by SKF USA and warranties that are express or implied under the UCC, as adopted by the relevant states.

In connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the April 10, 2003, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on June 6, 2003. Reply submissions must be filed no later than the close of business on June 13, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.43 of the Commission's Rules of Practice and Procedure (19 CFR 210.43).

Issued: May 28, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13689 Filed 5–30–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–768 (Review)]

Fresh Atlantic Salmon From Chile

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fresh Atlantic salmon from Chile.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh Atlantic salmon from Chile would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 22, 2003. Comments on the adequacy of responses may be filed with the Commission by August 15, 2003. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 30, 1998, the Department of Commerce issued an antidumping duty order on imports of fresh Atlantic salmon from Chile (63 FR 40699). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Chile.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all fresh Atlantic salmon.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of all fresh Atlantic salmon. The Commission further determined that the domestic industry does not include firms who merely process whole salmon into cuts. One Commissioner defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is July 30, 1998.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 03–5–075, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 22, 2003. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2003. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1997.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2002 (report quantity data in pounds of dressed weight and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2002 (report quantity data in pounds of dressed weight and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2002 (report quantity data in pounds of dressed weight and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13724 Filed 5–30–03; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–478]

In the Matter of Certain Ground Fault Circuit Interrupters and Products Containing Same; Notice of a Commission Determination To Review and Remand a Portion of an Initial Determination Denying a Motion for Monetary Sanctions as Moot, and Not To Review the Remainder of the Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand the portion of the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') denying respondents' motion for monetary sanctions as moot and not to review the remainder of the ID, which grants a motion to terminate the above-captioned investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the Commission's order, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*) The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 23, 2002 the Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain ground fault circuit interrupters (''GFCIs'') and products containing same by reason of infringement of claims 1–4 of the U.S. Patent No. 4,595,894 (''the '894 patent''). 67 FR 54671. The complainant is Leviton Manufacturing Co., Inc. (''Leviton''), and the respondents are Yueqing Huameili Electronic Co., Ltd. d/b/a HML, Yueqing Huameili Electronic Co., Ltd., Van-Sheen Electric Appliance Co. d/b/a Yatai Switch Factory, Sammax International Limited, and Jiamei Electrical Engineering Co., Ltd.

On January 8, 2003, Leviton filed a motion seeking summary determination that certain of respondents' GFCI products infringe claim 1 of the '894 patent. On February 14, 2003, respondents filed an Opposition and Conditional Cross-Motion for Summary Determination that the '894 patent is invalid and unenforceable. On February 21, 2003, the presiding ALJ issued Order No. 9, denying Leviton's infringement motion.

On January 22, 2003, respondents filed a motion to compel complete responses to their discovery requests. On February 3, 2003, the ALJ issued Order No. 7 granting in part respondents' motion to compel. On February 21, 2003, respondents filed a Motion to Compel Compliance with Order No. 7 and for Sanctions.

On March 3, 2003, Leviton filed a motion to terminate the investigation based upon withdrawal of the complaint pursuant to rule 210.21(a)(1).

On March 17, 2003, the ALJ issued an ID (Order No. 11) granting in part respondents' cross-motion for summary determination on invalidity, and on April 15, 2003, the Commission determined to review and reverse that ID.

On April 30, 2003, the ALJ issued an ID (Order No. 13) granting Leviton's motion to terminate the investigation and denying all pending motions, including respondents' motion for monetary sanctions, as moot.

On May 7, 2003, Leviton filed a petition for review of Order No. 13 requesting that the Commission review and vacate certain statements set forth in footnote 3 of Order No. 13, and on May 7, 2003, respondents filed a petition for review of the portion of Order No. 13 denying their motion for monetary sanctions as moot.

On May 14, 2003, Leviton responded to respondents' petition for review, respondents responded to Leviton's petition for review, and the Commission investigative attorney responded to both petitions.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rules 210.42, 210.43, 19 CFR 210.42 and 210.43.

Issued: May 27, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13690 Filed 5–30–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 28, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Energizer Holdings, Inc. and Eveready Battery Company, Inc., both of St. Louis, Missouri. Letters supplementing the complaint were filed on May 1, 9, and 20, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 27, 2003, ordered that—pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, or products containing same by reason of infringement of one or more of claims 1–12 of U.S. Patent No. 5,464,709, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served: (a) The complainants are—

Energizer Holdings, Inc., 533 Maryville University Drive, St. Louis, Missouri 63141, Eveready Battery Company, Inc., 533 Maryville University Drive, St. Louis, Missouri 63141

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Atico International U.S.A., Inc., 501 South Andrews Avenue, P.O. Box 14368, Fort Lauderdale, Florida 33302,

Sichuan Changhong Electric Company, Ltd., 35 East Mianxing Road, Hightech Park, Mianyang, Sichuan 621000, China

Changhong Battery Company, 35 East Mianxing Road, Hightech Park, Mianyang, Sichuan 621000, China

Chung Pak Battery Works, 7/f Chung Pak Comm Building, 2 Cho Uyen Street, Yau Tong, Kowloon, Hong Kong

Dorcy International, Inc., 2700 Port Road, Columbus, Ohio 43217–1136

FDK Corporation, Hamagomu Building, 5–36–11, Shinbashi, Minato-Ku, Tokyo 105–8677 Japan

FDK Energy Co., Ltd., 614 Washizu, Kosai-Shi, Shizuoka-ken 431–0431 Japan

Fujian Nanping Nanfu Battery Co., Ltd., 109 Industry Road, Nanping, Fujian 353000, China

Golden Million Enterprises, Inc., 1201 Broadway, Suite 601, New York, New York 10001

Golden Power Industries, Ltd., Flat C, 20/F, Block 1, Tai Ping Industrial Centre 57 Ting Kok Road, Tai Po, N.T., Hong Kong

Gold Peak Industries, Ltd., 8/F, Gold Peak Building, 30 Kwai Wing Road, Kwai Chung N.T., Hong Kong

GP Industries Limited, 97 Pioneer Road, Singapore 639579

GP Batteries International, Ltd., 50 Gul Crescent, 629543, Singapore

Gold Peak Industries (North America), Inc., 11235 West Bernardo Court, San Diego, California 92127–1638

Guangdong Chaoan Zhenglong Enterprise Co., Ltd, Huaqiao Industrial Zone, Caitang Chaozhou City, Guangdong 515644, China

Guangzhou Tiger Head Battery, Group Co., Ltd., 568 Huangpu Street Middle Section, Guangzhou 510655, China,

Hi-Watt Battery Industry Company, Ltd., 21 Tung Yuen Street, Yau Tong Bay, Kowloon, Hong Kong

Maxell Corporation of America, 22–08 Route 208, Fair Lawn, New Jersey 07410

Monster Cable Products, Inc., 455 Valley Drive, Brisbane, California 94005

Ningbo Baowang Battery Co., Ltd., No. 66 Keji Road, Science Technological Industry Zone Ninghai, Ningbo 315600, China

PT International Chemical Industrial Co., Ltd., Jl. Daan Mogot Km. 9, Cengkareng, Jakarta 11470, Indonesia

The Mazel Company d/b/a The Powerhouse Group, 31000 Aurora Road, Solon, Ohio 44139

Universal Battery Corporation, 4300 Wiley Post Road, Addison, Texas 75001, Winner International, L.L.C., 32 West State Street, Sharon, Pennsylvania 16146

Zhejiang 3–Turn Battery Co., Ltd., Huailu Industrial Park of Dongyang, Zhejiang 322104, China

Zhongyin Ningbo Battery Co., Ltd., No. 99, Dahetou St. Duantang, Ningbo Zhejiang, 315011, China

(c) Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington,

D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: May 27, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13687 Filed 5–30–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Index and Description of Major Information Systems and Availability of Records

AGENCY: United States International Trade Commission.

ACTION: Notice announcing availability of public information.

SUMMARY: The United States International Trade Commission (USITC or Commission) provides notice of its index and description of major information systems and availability of its records.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott (202–205–2799), Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission and persons seeking information on the Commission, or making submittals or requests, and seeking decisions, may contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission makes agency records available to the public in a number of ways: *Electronic Document Information System (II).* This system provides Internet access to public documents filed with the Office of the Secretary. Docketing information for USITC investigations instituted since 1996 is available electronically by accessing the USITC Internet site at *http://www.usitc.gov.* or directly at *http://edis.usitc.gov.*

FOIA. Commission records may also be requested under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These requests are filed with the Secretary at 500 E Street, SW., Washington, DC 20436, and shall indicate clearly in the request letter, and on the envelope if the request is in paper form, that it is a ''Freedom of Information Act Request.'' A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.* Commission rules for requesting information under FOIA are set out in 19 CFR 201.17–201.21.

Frequently requested FOIA-processed records can be accessed by following the ''Freedom of Information Act'' link on the USITC Internet site at *http://www.usitc.gov.*

Government Information Locator. The USITC has an entry in the Government Information Locator Service, at *http://www.access.gpo.gov/su_docs/gils/gils.html.*

Libraries. The Commission maintains two libraries, its National Library of International Trade (the Commission's main reference library), located on the 3rd floor of the Commission building, and a law library, located on the 6th floor. Both are open to the public during normal business hours of 8:45 a.m. to 5:15 p.m. The libraries contain, among other things, complete sets of Commission reports. To determine whether the respective libraries have the information sought, persons seeking information may call the main library at (202) 205–2630, or the law library at (202) 205–3287.

Public Reading Room. The Commission's docket files in the Office of the Secretary contain the submissions made in all Commission investigations. The files are available for inspection in the Public Reading Room in the Office of the Secretary. The Public Reading Room is located on the 1st floor of the Commission building. Persons having questions regarding availability of records may call the Dockets staff at (202) 205–1802. Depending on the age of the records requested, the files are available electronically, in hard copy, and/or on microfiche.

Reports. Reports containing the findings and conclusions of Commission investigations and Commissioner opinions are available in hard copy, generally at no charge, from the Office of the Secretary (telephone (202) 205–1806). Reports are also made available for download from the USITC Internet site *http://www.usitc.gov.*

Rules. The Commission's Rules of Practice and Procedure set out the procedures used in Commission proceedings. The rules in 19 CFR parts 200–213 are located in the Code of Federal Regulations and the Commission's Internet site.

Tariff and Trade DataWeb. The Commission's DataWeb *http://dataweb.usitc.gov,* provides public access to tariff and trade data. Data from 1989 are available and can be retrieved in a number of classification systems.

USITC Internet Site. Recent Commission notices, news releases, meeting agendas, monthly calendars, general information ''fact sheets,'' Commissioner biographies, schedules of pending investigations (including hearing dates and deadlines for written submissions), reports, information frequently requested under FOIA, and general information about the Commission are available electronically through the Internet at *http://www.usitc.gov.*

Copies of Commission public records can also be obtained from the Secretary through an on-site duplicating service for a minimum fee.

Issued: May 27, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13691 Filed 5–30–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2003 Budget

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to provide safety and health training and education in the workplace. This notice announces grant availability for three different categories of Susan Harwood Training Grants. The Targeted Topic category grants will support training in occupational safety and health on topics selected by OSHA. The OSHA Training Materials Development category grants will support the development, evaluation, and validation of occupational safety and health training materials on topics selected by OSHA. The Ergonomics Guidelines Training category grants will support the development and conduct of training programs that are based on the new industry-specific ergonomics guidelines being developed by OSHA for various industries. General descriptions of the three categories of grants are provided below.

1. Targeted Topic Grants

These grants will support training in occupational safety and health on eight different topics selected by OSHA.

Targeted Topic category grants will be awarded for 12 months. There is approximately $2.8 million available for this grant category. The average Federal award will be $150,000.

2. OSHA Training Materials Development Grants

Grants are available to nonprofit organizations to develop, evaluate, and validate training materials on eight different occupational safety and health topics that are to be tailored to a specific industry selected by OSHA, and target audience. Training materials are to be developed in formats that are suitable for hard-copy publication and distribution as well as for Internet publication and distribution.

OSHA Training Materials Development grants will be awarded for 12 months. There is approximately $4 million available for this grant category and an average Federal award will be $200,000.

3. Ergonomics Guidelines Training Grants

Grants are available to nonprofit organizations to develop and conduct training programs for workers and employers based on the four new industry-specific ergonomic guidelines being developed by OSHA. Information on the ergonomics guidelines is available on the OSHA Home page at *http://www.osha.gov* by searching the site index by selecting ''E'' and clicking on ergonomics, or from the Home page by looking under Safety/Health Topics and clicking on ergonomics.

Ergonomics Guidelines Training grants will be awarded for 12 months. There is approximately $1 million available for this grant category and an average Federal award will be $100,000.

This notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. All applicants must obtain the detailed grant application instructions mentioned later in the notice before submitting an application.

Separate grant applications must be submitted by organizations interested in applying for a grant under more than one grant category and by organizations interested in applying for more than one topic under each category.

Authorities: The Occupational Safety and Health Act of 1970 and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, Pub. L. 108–7, authorize this program.

Due Date: Grant applications must be received by 4:30 p.m. central time, Thursday, July 3, 2003.

Address for Mailing Applications: Submit one signed original and two copies of each grant application to the attention of Grants Officer, U.S. Department of Labor, OSHA Office of Training and Education, Division of Training and Educational Programs, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005.

Submissions are due July 3, 2003, by 4:30 p.m. central time at the specified address. Each applicant assumes the risk for ensuring a timely submission of its application. If, because of mail or other problems, the Department does not receive an application or receives it after the closing deadline, even if the application was timely mailed, the Department will not consider the application. To be considered for funding, hand-delivered applications must be received not later than 4:30 p.m. central time on the July 3, 2003, at the specified address.

FOR FURTHER INFORMATION CONTACT: Ernest Thompson, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005, telephone (847) 297–4810. This is not a toll-free number. E-mail: *cindy.bencheck@osha.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of the Susan Harwood Training Grant Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Plan, or as part of an OSHA special emphasis program.

Grantees are expected to provide occupational safety and health training programs, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct and evaluate the training. Grantees are also expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Three Grant Categories Being Announced This Year?

1. Targeted Topic grants.
2. OSHA Training Materials Development grants.
3. Ergonomics Guidelines Training grants.

What Are the Training Topics for the Targeted Topic Grants?

Eight training topics were chosen for this grant announcement. OSHA may award grants for some or all of the listed Targeted Topics. Applicants wishing to apply for more than one grant topic must submit a separate grant application for each topic. Each grant application must address one of the following training topics.

1. *Construction hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following areas.

- Fall hazards in residential and commercial construction, especially

wireless communication and high-definition television (HDTV) tower construction.

• Highway construction work zone and traffic control hazards.

• Noise hazards in the construction industry.

2. *General Industry hazards.* Programs that train workers and employers in the recognition and prevention of safety and health hazards in one of the following industries.

• Landscaping/horticultural services.

• Oil and gas field operations.

• Food processing industry involved in preserving fruits and vegetables.

• Industries involved in the manufacture of concrete, gypsum and plaster products.

• Blast furnace and basic steel products.

• Ship and boat building and repair.

• Public warehousing and storage.

3. Transportation fatalities.

• Programs that train workers and employers about the principles of safe driving and the prevention of transportation fatalities. Applicants should propose training programs applicable to one or more industries covered by the Occupational Safety and Health Act.

4. Workplace Violence.

• Programs that train workers and employers about what can be done to prevent workplace violence.

5. Emergency Preparedness and Response.

• Programs that train and assist employers in establishing workplace emergency response plans and that train workers and employers on preparing to respond to emergency situations at their workplaces. Applicants may propose training programs that address emergency preparedness for any industry covered by the Occupational Safety and Health Act. Training programs should include information on developing and maintaining comprehensive emergency action plans and focus on occupational safety and health requirements such as egress, evacuation policies and procedures, and fire safety protection plans. Other relevant workplace emergency preparedness topics that can be included or proposed under this topic include biological hazards and chemical hazards.

6. Lead Exposure.

• Programs that train construction or general industry workers and employers about the recognition of lead hazards within their industry and the prevention of exposure.

7. Silica Exposure.

• Programs that train construction or general industry workers and employers about the recognition of silica hazards within their industry and the prevention of exposure.

8. Small Business Topic (safety and health management systems).

• Programs that develop curricula and conduct training programs that promote the value of safety and health to small businesses and assist employers to establish safety and health management systems. The program should be based on business case studies tailored to specific industries that demonstrate the value of safety and health management systems.

What Are the Training Topics for the OSHA Training Materials Development Grants?

These grants are intended to assist nonprofit organizations in developing, evaluating and validating ''classroom quality'' training programs on topics selected by OSHA that can be used immediately by an instructor or student. The training materials are to be developed in a format that is suitable for hard-copy publication and distribution as well as Internet publication and distribution.

Grantees developing training materials under this grant category will be requested to post the approved final product training materials on their Web site for two years at no cost to users. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site. In addition, these grantees will also be requested to track and report quarterly to OSHA on the distribution and use of these training materials during the two years the materials are posted on their Web site. Grantees will collect and report on training materials product usage by tracking the number of times the grantee's training materials Web site was visited, and the number of times the training materials were downloaded.

Proposals should address one of the following eight subject areas of emphasis and should be tailored to the specific topic, industry and a selected target audience. OSHA may award grants for some or all of the listed training materials development subject areas.

1. *Construction hazards.* Programs suitable for self-study as well as for training others in the recognition and prevention of one of the following workplace hazards.

• Fall hazards in residential and commercial construction, especially wireless communication and high-definition television (HDTV) tower construction.

• Highway construction work zone safety and traffic control hazards.

• Noise hazards in the construction industry.

2. *General industry hazards.* Programs suitable for self-study as well as for training others in the recognition and prevention of safety and health hazards in one of the following industries.

• Landscaping/horticultural services.

• Oil and gas field operations.

• Food processing industry involved in preserving fruits and vegetables.

• Industries involved in the manufacture of concrete, gypsum and plaster products.

• Blast furnace and basic steel products.

• Ship and boat building and repair.

• Public warehousing and storage.

3. *Transportation fatalities.* Programs suitable for self-study as well as for training others in the principles of safe driving and the prevention of transportation fatalities.

4. *Workplace Violence.* Programs suitable for self-study as well as for training others about what can be done to prevent workplace violence.

5. *Emergency Preparedness and Response.* Programs suitable for employers to use for self-study on establishing workplace emergency response plans as well as for training others on preparing to respond to emergency situations at their workplaces. Applicants may propose training programs that address emergency preparedness for any industry covered by the Occupational Safety and Health Act.

Training programs should include information on developing and maintaining comprehensive emergency action plans and focus on occupational safety and health requirements such as egress, evacuation policies and procedures, and fire safety protection plans. Other relevant workplace emergency preparedness topics that can be included or proposed under this topic include biological hazards and chemical hazards.

6. *Lead Exposure.* Programs suitable for self-study as well as for training others in the recognition of lead hazards within their industry and the prevention of exposure. Program may address construction or general industry hazards and exposures.

7. *Silica Exposure.* Programs suitable for self-study as well as for training others in the recognition of silica hazards within their industry and the prevention of exposure. Program may address construction or general industry hazards and exposures.

8. *Small Business Topic (safety and health management systems).* Programs

suitable for self-study as well as for training others that promote the value of safety and health to small businesses and assist employers to establish safety and health management systems. The program should be based on business case studies tailored to specific industries that demonstrate the value of safety and health management systems.

What Are the Topics for the Ergonomics Guidelines Training Grants?

Applicants will be expected to develop and conduct training programs for workers and employers based on the new industry-specific ergonomics guidelines being developed by OSHA for various industries. OSHA may award grants for some or all of the listed ergonomics guidelines industries.

Ergonomics Guidelines have been or are being developed for the following industries.

- Nursing Home Industry
- Retail Grocery Stores
- Poultry Processing Industry
- Shipyard Industry

Who Is Eligible To Apply for a Grant?

Any nonprofit organizations, including community-based and faith-based organizations, that are not an agency of a State or local government are eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR part 95.

A 501(c)(4) nonprofit organization, as described in 26 U.S.C. 501(c)(4), that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant or loan. See 2 U.S.C. 1611.

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.
- For OSHA Training Materials Development category grants, software necessary to track number of visits to the grantee's training materials Web site and the number of times the training materials were downloaded.

Are There Restrictions on How Grant Funds Can Be Spent?

Grant funds may not be used for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.
2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include State and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.
3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs that have not been reviewed by OSHA for technical accuracy.
4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.
5. Activities that provide assistance to workers or employers in arbitration cases or other actions against employers, or that provide assistance to employers and workers in the prosecution of claims against Federal, State or local governments.
6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

What Other Grant Requirements Are There?

1. *OSHA review of educational materials.* OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used. Grantees developing training materials must follow all copyright laws and document that their materials are free from copyright infringements.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program will be included in this lending program. In addition, all materials produced by grantees must be provided to OSHA in hard copy as well as in a digital format (CD Rom) for possible publication on the Internet by OSHA. Three copies of the materials must be provided to OSHA. Acceptable formats for training materials include Microsoft Word 2000 and Microsoft PowerPoint 2000.

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

Grantees developing training materials under the OSHA Training Materials Development grant category will be requested to post the approved final product training materials on their Web site for two years at no cost to users. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site. In addition, these grantees will also be requested to track and report quarterly to OSHA on the distribution and use of these training materials during the two years the materials are posted on their Web site. Grantees will collect and report on training materials product usage by tracking the number of times the grantee's training materials Web site was visited, and the number of times the training materials were downloaded.

2. *OMB and regulatory requirements.* Grantees are required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, 29 CFR parts 96 and 99, which provides information about audit requirements.
- 29 CFR parts 31 and 36 as applicable.

3. *Certifications.* All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. *Students.* Grant-funded training programs must serve multiple employers and their employees.

5. *Other.* In keeping with the policies outlined in Executive Orders 13256, 12928, 13230, and 13021 as amended, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

6. *Acknowledgment of Federal Funds.* When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds shall clearly state: (1) The percentage of the total costs of the program or project that will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

What Information Must My Application Contain?

Separate grant applications must be submitted by organizations interested in applying under more than one grant category and by organizations applying for more than one topic under a grant category.

To be considered for a Harwood grant, an application must include all of the information listed in this notice. In addition, all applicants should obtain and review the grant application package before preparing and submitting their grant application. A complete application will contain the following forms and narrative.

1. Application for Federal Assistance form (SF 424).
2. Survey on Ensuring Equal Opportunity for Applicants.
3. Program Summary. The program summary is a short one-to-two page abstract that summarizes the proposed project and provides information about the applicant organization.
4. Budget Information forms (SF 424A).
5. Detailed Budget Backup.
6. Program Narrative, not to exceed 30 pages in length, which includes: Problem Statement/Need for Funds; Managerial Experience; Program Experience; Workplan.
7. Assurances form (SF 424B).
8. Certifications form (OSHA 189).
9. Supplemental Certification Regarding Lobbying Activities form.
10. Organizational Chart.
11. Evidence of Non-Profit Status, if applicable.
12. Accounting System Certification, if applicable.

What Are OSHA's Preference Areas for Grant Applications for All Three Grant Categories?

OSHA will give preference to applications that:

- Train managers or supervisors in addition to workers.
- Contribute non-Federal resources towards the grant. While applicants are not required to do so, preference will be given to organizations that contribute non-Federal resources.
- Propose to reach and serve one or more categories of workers within the target audience. The target audience includes small business and minority business employers and employees, non-English speaking, immigrant, minority workers, and youth as well as workers employed in high hazard industries and industries with high fatality rates.

How Are Applications for the Targeted Topic Grants Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants. OSHA may award grants for some or all of the listed training topic areas. The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses one of the eight selected training topics. Please refer back to the What are the training topics for the Targeted Topic grants? section for details on the selected training topics.

1. Construction hazards.
- Programs that train workers and employers in the recognition and prevention of fall hazards in residential and commercial construction, especially wireless communication and HDTV tower construction.
- Programs that train workers and employers in the recognition and prevention of highway construction work zone and traffic control hazards.
- Programs that train workers and employers in the recognition and prevention of noise hazards in the construction industry.

2. General industry hazards. Programs that address the recognition and prevention of safety and health hazards in the following industries.
- Landscaping/horticultural services.
- Oil and gas field operations.
- Food processing industry involved in preserving fruits and vegetables.
- Industries involved in the manufacture of concrete, gypsum and plaster products.
- Blast furnace and basic steel products.
- Ship and boat building and repair.
- Public warehousing and storage.

3. Transportation Fatalities.
- Programs that train workers and employers about the principles of safe driving and the prevention of transportation fatalities.

4. Workplace Violence.
- Programs that train workers and employers about what can be done to prevent workplace violence.

5. Emergency Preparedness and Response.
- Programs that train and assist employers in establishing workplace emergency response plans and that train workers and employers on preparing to respond to emergency situations at their workplaces. Applicants may propose training programs that address emergency preparedness for any industry covered by the Occupational Safety and Health Act. Training programs should include information on developing and maintaining comprehensive emergency action plans and should focus on occupational safety and health requirements such as egress, evacuation policies and procedures, and fire safety protection plans. Other relevant workplace emergency preparedness topics that can be included or proposed under this topic include biological hazards and chemical hazards.

6. Lead Exposure.
- Programs that train construction or general industry employers and workers about the recognition of lead hazards within their industry and the prevention of exposure.

7. Silica Exposure.
- Programs that train construction or general industry employers and workers about the recognition of silica hazards within their industry and the prevention of exposure.

8. Small Business Topic (safety and health management systems).
- Programs that develop curricula and conduct training programs that promote the value of safety and health to small businesses and assist employers to establish safety and health management systems. The programs should be based on business case studies tailored to specific industries that demonstrate the value of safety and health management systems.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers.

Training materials and programs are to be tailored to the training needs of

one or more of the following audiences: small businesses, minority businesses, non-English speaking, immigrant, minority workers, and youth as well as workers in high-hazard industries and industries with high fatality rates.

c. If the proposal contains a train-the-trainer program, the following information must be provided:

—What ongoing support the grantee will provide to new trainers;
—the number of individuals to be trained as trainers;
—the outline of the course curriculum that will be used by the new trainers to teach their students;
—the estimated number of courses to be conducted by the new trainers;
—the estimated number of students to be trained by these new trainers; and
—a description of how the new trainers will report back to the grantee about their classes and student numbers.

d. The planned activities and training are tailored to the needs and levels of the workers and employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

h. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health. Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in providing safety and health training to workers or employers may partner with an established safety and health organization to acquire safety and health expertise.

b. The organization applying for the grant demonstrates experience in training adults in work-related subjects or in providing services to its target audience.

c. The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. Any Federal and/or State grants that your organization has administered over the past five years are listed.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

c. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Are Applications for the OSHA Training Materials Development Grants Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants. OSHA may award grants for some or all of the listed training materials development topic areas.

Grantees will be expected to develop, evaluate and validate training materials that are tailored to a specific topic, industry and target audience that could be used to supplement materials that are currently available from OSHA and other government agencies. More than one target audience may be selected. The training materials must include:

- Detailed description of the most dangerous tasks/job duties.
- Identification of the hazards associated with these tasks.
- Methods of abating these hazards.
- Training materials should be tailored directly to the target audience participant. Grantees will be expected to submit ''classroom quality'' products. Classroom quality materials should follow the commonly accepted Instruction Design (ISD) process that OSHA has adopted as a quality measure for all of its education and training products. The five ISD steps are: analysis, design, development, implementation, and evaluation.
- Grantees are to develop the training materials in a format that is suitable for hard-copy publication and distribution as well as Internet publication and distribution.
- Grantees will be requested to post the approved final product training materials on their Web site for two years at no cost to users. OSHA may list the grantees' URL addresses to access these materials or directly link to the materials on the grantees' Web sites from OSHA's Web site.
- Grantees will be requested to track and report quarterly to OSHA on the usage of the training materials developed under this grant. Standard usage statistics would include the number of times the training materials Web site was visited, and the number of times the training materials were downloaded from the Internet during the two-year period.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and educational materials address one of the eight selected training materials topics. Please refer back to the *What are the training materials development topics for the OSHA Training Materials Development grants*? section for details on the selected training materials topics.

1. Construction hazards. Programs suitable for self-study as well as for training others in the recognition and prevention of one of the following workplace hazards.

- Fall hazards in residential and commercial construction, especially wireless communication and high-definition television (HDTV) tower construction.
- Highway construction work zone safety and traffic control hazards.
- Noise hazards in the construction industry.

2. General industry hazards. Programs suitable for self-study as well as for training others in the recognition and prevention of safety and health hazards in one of the following industries.

- Landscaping/horticultural services.
- Oil and gas field operations.
- Food processing industry involved in preserving fruits and vegetables.
- Industries involved in the manufacture of concrete, gypsum and plaster products.

- Blast furnace and basic steel products.
- Ship and boat building and repair.
- Public warehousing and storage.

3. Transportation Fatalities. Programs suitable for self-study as well as for training others in the principles of safe driving and the prevention of transportation fatalities.

4. Workplace Violence. Programs suitable for self-study as well as for training others about what can be done to prevent workplace violence.

5. Emergency Preparedness and Response. Programs suitable for employers to use for self-study on establishing workplace emergency response plans as well as for training others on preparing to respond to emergency situations at their workplaces. Applicants may propose training programs that address emergency preparedness for any industry covered by the Occupational Safety and Health Act.

Training programs should include information on developing and maintaining comprehensive emergency action plans and focus on occupational safety and health requirements such as egress, evacuation policies and procedures, and fire safety protection plans. Other relevant workplace emergency preparedness topics that can be included or proposed under this topic include biological hazards and chemical hazards.

6. Lead Exposure. Programs suitable for self-study as well as for training others in the recognition of lead hazards within their industry and the prevention of exposure. Program may address construction or general industry hazards and exposures.

7. Silica Exposure. Programs suitable for self-study as well as for training others in the recognition of silica hazards within their industry and the prevention of exposure. Program may address construction or general industry hazards and exposures.

8. Small Business Topic. Programs suitable for self-study as well as for training others that promote the value of safety and health to small businesses and assist employers to establish safety and health management systems. The program should be based on business case studies tailored to specific industries that demonstrate the value of safety and health management systems.

b. Training objectives are provided for each course or set of training materials.

c. The intended audience(s) for this training is identified.

d. The planned activities and training are tailored to the needs and levels of the workers and employers to be trained.

e. Proposed method(s) to evaluate and verify that training objectives will be met are described.

f. Tasks/job duties that will be discussed during training are described.

g. Occupational safety and health hazards associated with the featured tasks/job duties are described. An explanation of how these hazards were identified and a description of the method(s) being proposed to eliminate or control the hazards to be highlighted during the training process are provided.

h. A brief outline of the proposed course or training program content is provided.

i. A sample lesson/training module or a detailed description of the lesson/training module is included.

j. Description of the items that will be included in the final training materials are provided, such as instructor's manual, student manual, visual aids, videotapes, digital photos, computer-based training materials such as CD's or DVD's.

k. Proposal includes a plan for OSHA to review the educational materials during development.

l. Proposal explains how the grantee will track and report on the usage of the training materials during the two-year time period the materials are to be posted on the grantee's Web site.

Training programs and materials are to be tailored to the training needs of one or more of the following audiences: small businesses, minority businesses, non-English speaking, immigrant, and minority workers, and youth and workers in high-hazard industries or industries with high fatality rates.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health. Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in safety and health may partner with an established safety and health organization to acquire safety and health expertise.

b. The organization applying for the grant demonstrates experience in training adults in work-related subjects or in providing services to its target audience.

c. The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. Any Federal and/or State grants that your organization has administered over the past five years are listed.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

How Are Applications for the Ergonomics Guidelines Training Grants Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants. OSHA may award grants for some of all of the listed ergonomics guidelines industries.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and educational curricula and training program address the recognition and prevention of ergonomic hazards for workers and employers based on the new industry-specific ergonomic guidelines being developed by OSHA.

b. Applicants may propose to develop and conduct training programs for one or more of the four industries that guidelines will be available for.

c. Applicants may propose to develop and conduct training programs that are more comprehensive than the scope of the ergonomics guidelines.

d. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained. The training will reach workers and employers from multiple employers.

e. If the proposal contains a train-the-trainer program, the following information must be provided:

—What ongoing support the grantee will provide to new trainers;
—the number of individuals to be trained as trainers;
—the outline of the course curriculum that will be used by the new trainers to teach their students;
—the estimated number of courses to be conducted by the new trainers;

—the estimated number of students to be trained by these new trainers; and
—a description of how the new trainers will report back to the grantee about their classes and student numbers.

f. The planned activities and training are tailored to the needs and levels of the workers and employers to be trained.

g. There is a plan to recruit trainees for the program.

h. The proposal includes a plan for OSHA to review the materials during development.

i. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

j. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health. Nonprofit organizations, including community-based and faith-based organizations, that do not have prior experience in providing safety and health training may partner with an established safety and health organization to acquire safety and health expertise.

b. The organization applying for the grant demonstrates experience in training adults in work-related subjects or in providing services to its target audience.

c. The staff to be assigned to the project has experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. Any Federal and/or State grants your organization has administered over the past five years are listed.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

c. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

Targeted Topic grants. There is approximately $2.8 million available for these grants. The Federal award will average $150,000.

OSHA Training Materials Development grants. There is approximately $4 million available for these grants. The Federal award will average $200,000.

New Ergonomics Guidelines Training grants. There is approximately $1 million available for these grants. The Federal award will average $100,000.

How Long Are Grants Awarded For?

Grants are awarded for a twelve-month period. The period of performance begins September 30, 2003, and ends September 29, 2004. The grant applicant's workplan should coincide with these dates.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005. The application instructions are also available at *http://www.osha.gov/fso/ote/training/sharwood/sharwood.html.*

When and Where Are Applications To Be Sent?

The application deadline is 4:30 p.m. central time, Thursday, July 3, 2003.

Submit one signed original and two copies of each application to Grants Officer, U.S. Department of Labor, OSHA Office of Training and Education, Division of Training and Educational Programs, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005.

Each applicant assumes the risk for ensuring a timely submission of its application. If, because of mail or other problems, the Department does not receive an application or receives it after the closing deadline, even if the application was timely mailed, the Department will not consider the application. To be considered for funding, hand-delivered applications must be received not later than 4:30 p.m. central time on the July 3, 2003, at the specified address.

How Will I Be Told If My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 27th day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–13661 Filed 5–30–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: June 16, 2003, from 10 a.m. to 11 a.m.

ADDRESSES: The United States Capitol Building, LBJ Room S–211.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director; or Richard

H. Hunt, Assistant Director; Center for Legislative Archives; (202) 501-5350.

SUPPLEMENTARY INFORMATION:

Agenda

Overview of Committee's activities
Congressional Centers Conference
Legislative records outside of official custody follow-up discussion
Activities report of the Center for Legislative Archives
Other current issues and new business

The meeting is open to the public.

Dated: May 27, 2003.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 03–13662 Filed 5–30–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Notice of Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The meeting will introduce the National Women's Business Council's agenda and action items for fiscal year 2003 included by not limited to procurement, access to capital, access to training and technical assistance, access to markets and affordable health care.

DATES: June 19, 2003.

ADDRESSES: U.S. Small Business Administration, 409 Third Street, SW, Eisenhower Conference Room B, 2nd Floor, Washington, DC.

TIME: 9 a.m. to 1 p.m.

STATUS: Open to the public. Attendance by RSVP only.

FOR FURTHER INFORMATION CONTACT: National Women's Business Council, 202/205–6695—Gilda Presley.

Anyone wishing to attend and make an oral presentation at the meeting must contact Gilda Presley, no later than Monday, June 6, 2003 at 202/205–6695.

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–13765 Filed 5–28–03; 4:28 pm]

BILLING CODE 8025–01–P

OFFICE OF PERSONNEL MANAGEMENT

Summary of Operation of Information Technology Exchange Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Section 209 of Pub. L. 107–347, the E-Government Act of 2002 established a semiannual reporting requirement for a new Information Technology Exchange Program. This notice constitutes the initial report.

FOR FURTHER INFORMATION CONTACT: LaVeen Ponds by TTY at (202) 418–3134, by fax at (202) 606–2329, phone at 202–606–1394 or e-mail at *lmponds@opm.gov*.

SUPPLEMENTARY INFORMATION: The intent of section 209 of Pub. L. 107–347, the E-Government Act of 2002 is to improve the skills and knowledge of the Federal workforce in using information technology to deliver Government information services. To that end, section 209 amends title 5, United States Code (U.S.C.) to create a new chapter 37, which provides for an Information Technology (IT) Exchange Program for Federal and private sector employees. The IT Exchange Program is envisioned to promote the interchange of Federal and private industry workers to enhance skills and competencies.

The new section, 5 U.S.C. 3706(a) requires the Office of Personnel Management to submit a report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate not later than April 30 and October 31 of each year, summarizing the operation of the new chapter during the immediately preceding 6-month period ending March 31 and September 30, respectively. Due to the enactment of this Act late in the session, regulations for the new program have only been drafted recently and are in final development. Accordingly, as they are not available for the administration of the new chapter 37, the program has not yet been implemented by agencies. Therefore, there is no information available concerning the numbers or nature of assignments under the program as required by 5 U.S.C. 3706.

These regulations are a top priority and will be issued as soon as possible. Consistent with the E-Government Act, the IT Exchange Program regulations set out eligibility criteria as well as terms and conditions of the detail for Federal participants; written agreement criteria and service agreement requirements; and reporting requirements.

The October 31 report will provide the status of the implementation of the IT Exchange Program and any applicable program information available at that time.

This report may also be viewed on OPM's Web page at *www.opm.gov*

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–13646 Filed 5–30–03; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Nonresident Questionnaire.

(2) *Form(s) submitted:* RRB–1001.

(3) *OMB Number:* 3220–0145.

(4) *Expiration date of current OMB clearance:* 9/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,300.

(8) *Total annual reporting hours:* 650.

(10) *Collection description:* Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98–21 and 98–76. The form obtains the information needed to determine the amount to be withheld.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–13668 Filed 5–30–03; 8:45 am]

BILLING CODE 7905–01—M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 18, OMB Control No. 3235–0121, SEC File No. 270–105.

Form F–80, OMB Control No. 3235–0404, SEC File No. 270–357.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form 18 is used for the registration of securities of any foreign government or political subdivision on a U.S. Exchange. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total burden of 40 annual burden hours.

Form F–80 is used by large publicly traded Canadian foreign private issuers registering securities offered in business combinations and exchange offers. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability. Form F–80 takes approximately 2 hours per response and is filed by 4 issuers for a total annual burden of 8 hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW Washington, DC 20549.

Dated: May 27, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13683 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 28302, May 23, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, May 28, 2003.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the Closed Meeting of Wednesday, May 28, 2003:

Litigation matter.

Commissioner Glassman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: May 28, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–13762 Filed 5–28–03; 4:28 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 2, 2003: Closed Meetings will be held on Tuesday, June 3, 2003 at 2 p.m., June 4, 2003 at 11 a.m., and on Thursday, June 5, 2003 at 10 a.m., and an Open Meeting will be held on Wednesday, June 4, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (4), (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, June 3, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; and Formal orders of investigation.

The subject matter of the Open Meeting scheduled for Wednesday, June 4, 2003 will be:

The Commission will hear oral argument on an appeal by Feeley & Willcox Asset Management Corp. (''FWAM'') and Michael J. Feeley from the decision of an administrative law judge. During the period covered by this Commission proceeding, Feeley was an associated person of FWAM, a registered investment adviser. The Commission subsequently cancelled FWAM's registration independently of this matter.

FWAM & Feeley have appealed the law judge's findings that (1) FWAM and Feeley engaged in fraud in the sale of securities to public customers, in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b–5 promulgated thereunder, and (2) FWAM committed fraud in the sales of securities to investment advisory clients and violated its fiduciary duty to these clients by failing to disclose conflicts of interest, in violation of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and Feeley aided and abetted and was a cause of those violations. Based on these findings of violation, and additional violations that respondents have not appealed, the law judge barred Feeley from association with a broker or dealer or investment adviser with a right to reapply after two years in a non-supervisory, non-

proprietary capacity; ordered Feeley to cease and desist from committing or causing any violations or any future violations of the antifraud provisions of the Securities Act and the Exchange Act; ordered Feeley to cease and desist from aiding and abetting and causing any violations or any future violations of the antifraud provisions or specified reporting and recordkeeping provisions of the Advisers Act; ordered FWAM and Feeley jointly and severally to disgorge $95,000 plus prejudgment interest; and ordered FWAM and Feeley to pay civil money penalties of $150,000 and $15,000 respectively.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations; and

2. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, June 4, 2003 will be: post-argument Discussion.

The subject matter of the Closed Meeting scheduled for Thursday, June 5, 2003 will be: institution of administrative proceedings of an enforcement nature; and institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 29, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–13935 Filed 5–29–03; 3:48 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47914; File No. SR–AMEX–2002–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Its Performance Evaluation and Allocations Procedures

May 23, 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 December 19, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by the Amex. On May 1, 2003, the Amex amended 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 Amex proposes to revise its performance evaluation and allocations procedures. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].[4]

* * * * *

Performance Committee

Rule 26. (a) The Committee on Floor Member Performance (the ''Performance Committee'') shall consist of *twelve* [16] persons comprised as follows: *three* [four] representatives of upstairs member firms and *nine* [twelve] Floor members divided as equally as possible among specialists, registered traders and brokers *provided, however, that in situations where specialist relations with listed companies or sponsors of Exchange Traded Funds (''ETFs'') are in issue a representative of issuers or ETF sponsors as applicable shall be substituted for one of the nine Floor members.* The Performance Committee shall be drawn from a roster of not less than 32 persons representing *issuers and ETF sponsors,* upstairs member firms, specialists, registered traders and brokers. The minimum quorum for the transaction of business by the Performance Committee shall be *seven* [nine] persons including at least one representative of an upstairs member firm. The Performance Committee shall be chaired by a Floor Governor who may not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee.

The Performance Committee may delegate any or all of its responsibilities to one or more subcommittees consisting of *four* [six] persons including at least one representative of an upstairs member firm, provided, however, that a subcommittee only may take the following actions: (1) Send admonitory letters, (2) refer matters to the Minor Floor Violation Disciplinary Committee for possible action pursuant to Exchange rule 590, (3) refer matters to the full Performance Committee with or without a recommendation, (4) prohibit registered option traders from effecting opening transactions for specific periods of time for failing to meet zone requirements, or (5) counsel members on how to improve their performance. The minimum quorum for the transaction of business by a subcommittee shall be *three* [four] persons including one representative of an upstairs member firm.

(b) through (d) No change.

(e) The Performance Committee may meet with one or more specialists, specialist units, registered traders or brokers that may have failed to meet minimum performance standards. In such an event, the member or members shall be notified in writing of the grounds to be considered by the Performance Committee and afforded an opportunity to make a presentation of relevant information in rebuttal. Such member or members shall *deliver to the Amex staff coordinator for the Performance Committee copies of all materials that they will provide to the Performance Committee and the names of any persons that they intend to present to the Performance Committee at least three business days prior to the meeting. Such member or members, likewise, shall* be given access to all written material to be *provided by the Amex staff to* [reviewed by] the Performance Committee *and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting.* [, and a]*All* persons appearing before the Performance Committee may be represented by counsel. However, formal rules of evidence shall not apply in Performance Committee meetings. A failure to meet minimum performance standards may form the basis for Performance Committee remedial action against one or more specialists, specialist units, registered traders or brokers. Any member or member organization affected by a decision of the Performance Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, any remedial

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 30, 2003 (''Amendment No. 1''). In Amendment No. 1 the Exchange submitted a new Form 19b–4 which replaced the original filing in its entirety.

[4] The Exchange requested that the Commission correct a typographical error in Amex rule 26(e) and Amex rule 29(d) of the proposed rule language. Telephone discussion between William Floyd-Jones, Assistant General Counsel, Amex, Christopher B. Stone, Special Counsel, and Mia C. Zur, Attorney, Division, Commission (January 30, 2003).

action to be taken (hereinafter ''written notification'').

(f) through end. No change.

Allocations Committee

Rule 27. (a) through (i) No change.

* * * Commentary

.01 No change.

.02 Contacts with Unlisted Companies. [Specialists and other members must submit a ''Notice of Marketing Interest'' (''NOMI'') (1) prior to contacting an unlisted company, or (2) within five business days of any unanticipated contact with an unlisted company where discussions regarding listing occur or are contemplated by the specialist or other member. The NOMI must identify the company that the specialist or other member would like to contact and is valid for no more than 12 months after Amex staff has given written approval to the request (the ''contact period''). Amex staff may decline to approve a specialist's or other member's request to contact an unlisted company where it is felt that such activity could hinder the Exchange's overall listing efforts. For example, a request to contact an unlisted company generally will not be granted where Amex staff have begun discussions with the company.]

[A specialist or other member may request one extension of the contact period. The request must be in writing and must describe the specific activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. If the request is deemed sufficient by Amex staff, the contact period may be extended up to an additional six months. After the expiration of the contact period and any extension, a specialist or other member may not request permission to again contact the company until six months have elapsed from the expiration of the contact period or extension as applicable. Amex staff may contact an unlisted company as to which there is an approved NOMI, provided the staff notify the subject specialist or other member prior to contacting the company.]

[Only one NOMI can be on file for any company. A designated senior officer of the Exchange, however, may approve a second NOMI with respect to a particular company when (1) sufficient evidence warrants a determination that the second NOMI would assist the Exchange's listing program, and (2) the second NOMI includes the written consent of the first specialist or other member to the approval of the second NOMI.]

Once an unlisted company has requested a listing qualification review, specialists and other members are prohibited from making any direct or indirect contact with the company for the purpose of influencing its decision in the choice of a specialist. This prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management.

The Allocations Committee only will be advised of a company's preference for a particular specialist where a specialist's or member's efforts actually have been instrumental in securing the listing as evidenced by the company filing a written preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review. The Allocations Committee, however, is not obligated to honor such requests.

Once the Allocations Committee has prepared the list of six specialists to be submitted to the new listing candidate, specialists and other members may not initiate any direct or indirect communications with management, the company's investment banker or other advisors, or any person in a position to influence the company. If the company wishes to interview individual specialists, the Exchange will arrange for such interviews. The Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate communications include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist either orally or in writing, except they may refer to overall floor-wide statistics.

.03 through end. No change.

Market Quality Committee

Rule 29. (a) through (c) No change.

(d) The Market Quality Committee may meet with a UTP Specialist that may have failed to meet minimum performance standards with respect to UTP Securities. In such an event, the UTP Specialist shall be notified in writing of the grounds to be considered by the Market Quality Committee and afforded an opportunity to make a presentation of relevant information. Such UTP Specialist shall *deliver to the Amex staff coordinator for the Market Quality Committee copies of all materials that they will provide to the Market Quality Committee and the names of any persons that they intend to present to the Market Quality Committee at least three business days prior to the meeting. Such UTP Specialist, likewise, shall* be given access to all written material to be *provided by the Amex staff to* [reviewed by] the Market Quality Committee *and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting.* [, and a]*A*ll persons appearing before the Market Quality Committee may be represented by counsel. However, formal rules of evidence shall not apply in meetings of the Market Quality Committee. A failure to meet minimum standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, and any remedial action to be taken (hereinafter ''written notification'').

(e) through end. 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, the Amex 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 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 [5]

The Committee on Floor Member Performance and Market Quality Committee review specialist performance may take remedial action

[5] The Amex requested that the Commission make minor non-substantive modifications to language in the purpose section. Telephone discussions between William Floyd-Jones, Assistant General Counsel, Amex, Christopher B. Stone, Special Counsel, and Mia C. Zur, Attorney, Division, Commission (January 30 and 31, 2003).

up to terminating a specialist's registration as such or reallocating securities when it identifies inadequate performance. The Committees protect both the interests of investors (by taking remedial actions to correct poor performance) and the institutional interests of the Exchange (by ensuring that the Amex is as competitive as possible with other markets).[6] The Allocations Committee allocates securities to qualified specialists. It, too, protects the interests of investors and the Exchange by ensuring that only qualified specialists receive allocations.

Performance Committee Size

The Exchange is proposing to reduce the size of the Performance Committee and to add issuer and ETF sponsor representatives to the Committee pool. Currently, the Performance Committee operates more slowly and less flexibly than it should due to the difficulties in coordinating the schedules of 16 persons (the current size of the Performance Committee). The Exchange also believes that issuer and ETF sponsor representatives should be added to the Performance Committee pool and used in situations where specialist relations with listed companies or ETF sponsors are in issue. This would occur, for example, where an issuer has expressed concerns regarding a possible lack of continuity and depth in the market for its securities. This would ensure that the perspective of issuers and sponsors is available to the Performance Committee in situations where it would be appropriate. The Amex, accordingly, is proposing to reduce the size of the Performance Committee from 16 to 12 persons. In line with that reduction, the Exchange proposes to reduce the size of any related subcommittees, the Performance Committee's minimum quorum, and the numbers of types of representatives on the Performance Committee. It also is proposing to add an issuer or ETF sponsor representative to the Performance Committee (in place of a floor member) in matters involving a specialist's relations with an issuer or ETF sponsor.

Exchange of Documents and Names

Exchange rules 26(e) and 29(d) provide that persons who are subject to a performance review receive a written notice of the matters to be considered by the Performance Committee or Market Quality Committee, and are given an opportunity to address the Committee and make a presentation of relevant information in support of their position. Persons that are the subject of performance reviews have a reasonable amount of time between delivery of the written notice and the Committee's meeting to prepare their presentation to the Committee.[7] With the addition of upstairs member firm personnel to the Performance Committee, and the proposed addition of an issuer or ETF sponsor representative to the Performance Committee in certain circumstances, the Exchange believes that it should establish deadlines for persons to submit materials to the Amex staff so that these materials may be distributed prior to the meeting to persons that participate in Committee meeting by telephone. The Exchange, accordingly, is proposing to amend its rules to require persons appearing before either the Performance Committee or Market Quality Committee to disclose the names of the persons whom they intend to present to the Committee and the materials that they wish to submit to the Committee, at least three business days prior to the Committee meeting. This is an administrative proposal intended to accommodate the transmission of these materials to persons participating by telephone and would allow either Committee to gauge the length of time required for a meeting. It also would be consistent with current Amex practice in which the Exchange staff provides specialists with the materials that the staff furnishes either Committee prior to the meeting. The pre-meeting disclosure rules for staff and persons appearing before either Committee would be identical.

Elimination of NOMI Process

The Exchange's rules currently require equity specialists to submit a Notice of Marketing Interest (''NOMI'') and receive written approval from the Exchange prior to contacting an unlisted company. Once a specialist has been approved to contact an unlisted company, no other specialist may contact that company without the consent of the first specialist. There is a 12-month sunset on the NOMI approval, which may be extended for one six month period. After the NOMI has expired, it can be resubmitted after six months have elapsed.

The original purpose of the NOMI process was to prevent an unseemly rush of specialists to contact unlisted companies. In practice, however, it has resulted in some specialist firms requesting NOMIs for companies without then undertaking substantial contact with them. The NOMI process, thus, has had the perverse result in some situations of inhibiting the Exchange's listing efforts. Management, accordingly, is proposing to eliminate the NOMI process.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b), [9] in particular, in that they 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; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[6] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17,* Administrative Proceeding File No. 3–7285, Exchange Act Release No. 31666 (December 29, 1992) which states:

We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.

We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

See also In re James Niehoff and Company, Administrative Proceeding File No. 3–6757, (November 30, 1986), and the other authorities cited in the Commission's *Post X–17* decision.

[7] A mutually convenient date for the performance review is selected by the person being reviewed and the Committee. Telephone discussions between William Floyd-Jones, Assistant General Counsel, Amex, Christopher B. Stone, Special Counsel, and Mia C. Zur, Attorney, Division, Commission (January 30 and 31, 2003).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Amex 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–112 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13608 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47913; File No. SR–BSE–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Exchange's Nasdaq Trading Rules

May 22, 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 May 21, 2003, the Boston Stock Exchange, Inc. (''BSE'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Nasdaq trading rules by deleting inapplicable and outdated sections and making certain additions to the rule text. Set forth below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Chapter XXXV

Trading in Nasdaq Securities

Sec. 1—no change.

Sec. 2 (a)(i) Each Exchange specialist shall provide direct telephone *or other means of* access to the specialist post to Nasdaq System market makers, acting in their capacity as market makers, for each Nasdaq security in which the market maker is registered as a market maker. Access shall include appropriate procedures which assure the timely response to telephonic *or other* communications. Nasdaq System market makers may use such telephone *or other* access to transmit orders for execution on the Exchange.

Any order received on the floor via telephone *or otherwise* from a Nasdaq System market maker shall be effected in accordance with the rules applicable to the making of bids, offers and transactions on the Floor (see Chapter II, Dealings on the Exchange, Chapter XV, Specialists). All limit orders shall be immediately displayed upon receipt, in accordance with Chapter II, Dealings on the Exchange, Section 40, Limit Order Display Rule.

(ii) Exchange specialists may send orders from the Floor for execution via telephone, *or otherwise,* to any Nasdaq System market maker in each Nasdaq security in which it is registered as specialist. All of the Boston Stock Exchange Rules related to the trading of securities shall be applicable to bids and offers transmitted by telephone*, or otherwise*, in the same way as they apply to orders transmitted via automated trading systems.

(iii) Comparisons of transactions effected with a Nasdaq System market maker via telephone access*, or otherwise,* will be made pursuant to procedures to be established between Nasdaq and the Exchange.

[(b)—Orders may be transmitted to a specialist via Nasdaq Workstation II (''NWII'') at the election of a Nasdaq market maker originating the order. Orders transmitted through NWII may be executed by the system automatically or on a manual basis in accordance with the provisions of this Chapter XXXV.]

([c]*b*)—[Specialists will have ''Level III Service'', as defined by the Nasdaq Unlisted Trading Privileges Plan, on the Nasdaq System. As such, specialists will have input and query ability with respect to quotations and sizes in securities included in the Nasdaq System. Access to the specialist via the Nasdaq System will be limited to floor brokers, BSE members, NASD members, NASD non-BSE members (including Electronic Communications Networks), and certain other member firms and other professionals represented by member firms (''clients''). Clients] *Members* may have access to enter orders to the specialist either electronically[, through the Nasdaq System,] or telephonically. Any order received by the specialist telephonically, or verbally in any manner other than electronically [through the Nasdaq System] must be memorialized in accordance with Chapter II, Dealings on the Exchange, Section 2, Recording of Sales, and Section 15, Record of Orders from Offices to Floor.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[(d)—Access to the specialist via the Nasdaq System, or electronic access, includes

(i) Orders sent by clients through Nasdaq'a ACES Pass Thru capability (which consolidates orders sent by various client systems to the Nasdaq System)

(ii) Orders sent by BSE floor brokers directly through the BSE Nasdaq trading system (currently Nasdaq Tools)

(iii) Orders sent by clients directly into the Nasdaq System and routed to the specialist; and,

(iv) Orders sent by Nasdaq and NASD Market Makers through the Nasdaq System.]

[Sec. 3—All transactions in Nasdaq securities shall be reported through the Automated Confirmation Transaction Reporting Service (''ACT''), in accordance with NASD Rule 4630, et. seq., unless other arrangements are made with, and approved by, the Exchange.]

Secs. 4–5—renumbered to become Sections 3 and 4, no substantive change.

Sec. [6]*5*—Pre-opening orders in Nasdaq securities must be accepted and filled at the Exchange opening trade price. In trading halt situations, orders will be executed based on the Exchange reopening price. [(**Note:** In the case of a trading halt in a Nasdaq security, notice will be provided via the Nasdaq ''NEWS'' frame, in accordance with NASD Rule 4120).]

Secs. 7–30—renumbered to become Sections 6–29, no substantive 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, the BSE included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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 proposes to update, through deletions and minor additions, certain of the Exchange's Nasdaq rules contained in Chapter XXXV (''Nasdaq Rule Set'') of the Rules of the Board of Governors of the BSE (''BSE Rules''). The Exchange's Nasdaq Rule Set was implemented in October, 2001, and was designed specifically for Nasdaq trading as it then existed on the Exchange. At the time, the BSE utilized a third-party Nasdaq trading system, and certain of the rules within the Nasdaq Rule Set were specifically designed to address functionalities of that system, and the manner in which BSE specialists were participating in the Nasdaq marketplace at that time.

The Exchange now seeks to make its Nasdaq Rule Set applicable to Nasdaq trading on the BSE in a more general manner, so that BSE specialists will not be limited in the ways that they participate in the Nasdaq marketplace, particularly due to the fact that rules which the Exchange is seeking to delete specifically addressed functionality which the Exchange no longer utilizes. None of the proposed deletions affect the manner in which BSE specialists are obligated to participate in the Nasdaq marketplace under the strictures of the Act or the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan''). Rather, the Exchange is merely deleting inapplicable language and making minor additions. The BSE has therefore designated the rule filing as non-controversial in nature. Moreover, the Exchange is requesting a waiver of both the five-day pre-filing notice and the thirty-day operative delay period.

The majority of the proposed deletions occurs in section 2 of the Exchange's Nasdaq Rule Set, and are with regard to the transmission of orders to a BSE Nasdaq specialist. As previously written, the provisions addressed access to the specialist through means provided as a result of BSE's participation in SuperSoes, a Nasdaq trading system. The BSE is no longer a participant in SuperSoes, or its successor system, SuperMontage, so the access provisions pertaining to such participation are no longer valid. However, the access provisions which remain in the BSE rules, are substantively the same provisions in existence on at least two other exchanges that participate in Nasdaq trading under the UTP Plan. Specifically, the access provisions which remain in the BSE rules after the proposed deletions relating to telephone access (*i.e.*, section 2 (a)) are essentially the same rules in place on the American Stock Exchange LLC (''Amex'') and the Cincinnati Stock Exchange, Inc. (''CSE'').[3] Moreover, the BSE is leaving in place a provision providing for electronic access to the BSE specialists. Again, such a provision leaves the BSE in a similar position as the Amex and CSE regarding electronic access.[4] Although the Rules of the AMEX and CSE do not specifically state that there shall be electronic access granted to their respective exchange specialists, their rules speak to functionalities of electronic access. The BSE actually goes further in specifically stating that there shall be electronic access to its specialists, while discussing essentially the same functionalities regarding automatic executions and other automated features as set forth in the Amex and CSE rules.

The BSE is also proposing to delete a section of its Nasdaq Rule Set regarding reporting through Nasdaq's Automated Confirmation Transaction (''ACT'') system. Again, ACT is a Nasdaq system, formerly utilized by BSE Nasdaq specialists who participated in the Nasdaq marketplace using functionality which enabled them to participate in SuperSoes. The Exchange no longer chooses to use ACT for the reporting of its transactions, and will thereby revert to its clearing rules as set forth elsewhere in its rules, and incorporated by reference. ACT usage was a specific exception to the Exchange's clearing and reporting rules, and that exception is simply being removed.

It is important to note that nothing in the Exchange's proposed deletions and additions will in any way effect the priority or in any other way effect how orders are treated on the Exchange. All other rules of the Nasdaq Rule Set, as well as applicable other sections of the BSE rules, will still apply. All of these provisions have been separately approved by the Commission at different times, and will not change as a result of the deletions and additions proposed herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and the provisions of section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be 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, is

[3] *See e.g.*, Amex Rule 118, Trading in Nasdaq National Market Securities, and CSE Rule 11.9, National Securities Trading System.

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 with respect to the proposed rule change.

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) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. At any time within 60 days of the filing of such 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.[9]

The BSE has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will permit the BSE to reinstate its previously approved Nasdaq trading program by making certain deletions and minor additions to its Nasdaq trading rules. Moreover, the Commission believes that waiving both the five-day pre-filing notice and the 30-day operative delay will facilitate the BSE's expeditious reinstatement of a Nasdaq trading program that includes electronic access and is substantially similar to the programs of other national securities exchanges that currently trade Nasdaq securities. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–06 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13606 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] For the purposes only of 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). In addition, the Commission notes that BSE has represented to the Commission that BSE members will be able to access BSE specialists' quotations in person on the floor of the Exchange, by telephone, or by electronic access via industry standard Financial Information Exchange (''FIX'') protocol interfaces. BSE has also represented that non-BSE members (*i.e.*, Nasdaq market makers) will be able to access the quotations of BSE specialists either by telephone or electronically through a major securities industry connectivity provider. Moreover, BSE's current rules regarding the priority of customer orders will remain in effect and will not be impacted by this rule filing. Finally, BSE has made assurances to the Commission that the BSE rule covering automatic execution of Nasdaq securities (BSE Nasdaq Rule Set, Section 4, Trading) will remain in effect. Meeting between Division of Market Regulation staff and BSE staff (May 9, 2003).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47927; File No. SR–DTC–2003–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement to the Reorg Deposits Service

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 14, 2003, The Depository Trust Company (''DTC'') 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 DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change enhances (DTC's Reorg Deposits service to allow participants to submit affidavits of loss relating to certificates for securities currently eligible for DTC's Reorg Deposits service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposal Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] For additional information concerning DTC's Reorg Deposits service, see Securities Exchange Act Release No. 34189 (June 9, 1994), 59 FR 30818 (June 15, 1994) [File No. SR–DTC–94–06].

[3] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's Reorg Deposits service enables participants to deposit at DTC certificates for securities that are the subject of a reorganization activity after the reorganization and to have DTC collect the entitlements on the participants' behalf. Cash and security entitlements are credited to the participants' accounts upon DTC's receipt of the entitlements. Participants sometimes receive affidavits of loss instead of certificates from their customers for securities that are the subject of a reorganization activity, and the participants must bear the operational burden of presenting the affidavits of loss to the issuer's agent and of collecting the entitlements. Beginning April 15, 2003, the proposed rule change will allow participants to submit through DTC's Regorg Deposits service affidavits of loss relating the securities eligible for DTC's Reorg Deposits service and to have DTC collect the entitlements on their behalf. The regular Reorg Deposits service fee will be charged for these deposits. In addition, in the prior Reorg Deposits service rule filing, participants could deposit certificates for securities at DTC that were subject of a reorganization activity only up to two years after the reorganization activity. DTC will no longer apply this two year limit after the reorganization activity to any deposits in the Reorg Deposits service including deposits of certificates or submissions of affidavits of loss.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will contribute to efficiencies in the handling of affidavits evidencing ownership of lost securities that are the subject of reorganization activities. The proposed rule change, which enhances DTC's existing reorganization and deposit services, will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(D) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not be solicited or received on the proposed rule change

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)(iii) of the Act [4] and Rule 19b–4(f)(4) [5] promulgated thereunder because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including the proposed rule changes 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-comment@sec.gov*. All comment letters should refer to File No. SR–STC–2003–05. 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 be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2003–05 and should be submitted by June 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13684 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47919; File No. SR–NASD–2003–86]

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 Reporting of SuperMontage Transactions through the Automated Confirmation Transaction Service (''ACT'')

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] 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

Nasdaq proposes to amend the fee schedule associated with the use of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

ACT.[5] Nasdaq will implement the proposed rule change on June 1, 2003.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

7000. Charges for Services and Equipment

7010. System Services

(a)—(f) No change.

(g) Automated Confirmation Transaction Service

[(1)] The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:	
Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions) *(''SuperMontage Transactions'')*.	[$0.029/side (subject to waiver under paragraph (2) below)]
Average daily volume of transaction reports for SuperMontage Transactions during the month to which a participant is a party.	*Fee per side for transaction reports of SuperMontage Transactions to which such participant is a party*
0 to 9,999	*$0.029*
10,000 or more	*$0.00*
Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT (''Covered Transactions'')	
Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party.	Fee per side for reports of Covered Transactions to in which such participant is a party
0 to 10,000	$0.029.
10,001 to 50,000	$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.
More than 50,000	$0.029 for a number of reports equal to 10,000 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.
Reporting of all other transactions not subject to comparison through ACT.	$0.029/side.
Comparison	$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
Late Report—T+N	$0.288/side.
Browse/query	$0.288/query.*
Terminal fee	$57.00/month (ACT only terminals).
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).**
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.
ACT Workstation	$525/logon/month.***

* 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.

*** 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.

[(2) The $0.029 fee for reporting of transactions executed through SuperMontage (and other transaction execution systems that make use of SuperMontage's functionality to report transactions) will be waived for an ACT participant during any month in which the participant:

(i) Executed an average daily volume of 10,000 or more transactions through SuperMontage or any other transaction execution system using SuperMontage's functionality to report transactions; (ii) reported to ACT at least 98% of the internalized transactions in Nasdaq National Market and SmallCap Market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center. Nasdaq may request that a participant provide data supporting the participant's certification that it is eligible for the foregoing waiver, and will deem a participant that fails to provide such data upon request to be ineligible for the waiver. If a participant has more than one market participant identifier (''MPID'') associated with the Central Registration Depository (''CRD'') number under which it conducts business, eligibility will be determined by aggregating activity associated with

[5] This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

all of its MPIDs (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).]

[The term ''internalized transaction'' refers to a transaction in which a customer order received by the participant is executed against another customer order received by the participant, or against the account of the participant as principal, but that is not facilitated or executed using a Nasdaq system or the system of any market center other than the participant. The term ''market center'' refers to any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.]

(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 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 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 filed a proposal,[6] effective as of April 1, 2003, to waive the usual $0.029 per side ACT fee for transactions executed through SuperMontage and other systems that use SuperMontage's functionality to report trades (collectively, ''SuperMontage Transactions'') during any month in which a member: (i) Executed an average daily volume of 10,000 or more transactions through SuperMontage; (ii) reported to ACT at least 98% of the internalized transactions in Nasdaq National Market and SmallCap market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center.

Nasdaq is now proposing to simplify the pricing for ACT reports of SuperMontage Transactions by basing the applicable fee on the average daily volume of ACT transaction reports for SuperMontage Transactions in which an ACT participant is identified as either the reporting party or the contra-party during the month.

Effective June 1, 2003, the basic ACT reporting fee of $0.029 per trade per side will be waived for all SuperMontage Transactions if an ACT participant is party to an average daily volume of 10,000 or more ACT transaction reports for SuperMontage Transactions during the month. Nasdaq represents that the price applicable to reports of SuperMontage Transactions will be directly related to the extent of such reports. Nasdaq represents that it must compete with other market centers that currently offer free trade reporting services, or that effectively share market data revenue in exchange for trade reports.[7] By associating the availability of free trade reporting with a firm's volume of trade reporting, Nasdaq hopes to ensure adequate funding for ACT, either through a member's direct payment of the standard ACT trade reporting fee, or by the member achieving a high volume of trade reporting that translates into other revenue sources. Specifically, when a firm achieves a high volume of trade reporting, Nasdaq represents that it receives the market data revenue associated with the trade reports and a high volume of transaction execution fees, and is also more likely to earn revenues from providing ancillary services to the firm, such as ACT trade comparison and ACT browse/query. Thus, Nasdaq believes that the proposed ACT fee schedule recognizes not only the economies of scale associated with higher volumes of trade reporting activity, but also the economies of scope and increased revenue streams associated with providing a range of related services to the firm.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general and with section 15A(b)(5) of the Act,[9] 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. The Nasdaq believes that the proposal bases the fees applicable to ACT reports of SuperMontage Transactions on the number of such reports to which a member is a party, and thereby recognizes the economies of scale and scope associated with higher volumes of such reports.

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 and 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 upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b-4 thereunder,[11] 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,

[6] Securities Exchange Act Release No. 47621 (April 2, 2003), 68 FR 17418 (April 9, 2003) (SR-NASD–2003–56).

[7] *See, e.g.*, Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003) (SR-NASD–2003–09) (eliminating trade reporting fees associated with the NASD's Alternative Display Facility); Securities Exchange Act Release No. 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR-CSE–2002–14) (describing the Cincinnati Stock Exchange's market data revenue sharing program for Nasdaq securities).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b-4(f)(2).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR–NASD–2003–86 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13607 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47929; File No. SR–NYSE–2003–15]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

May 27, 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 May 12, 2003 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rules 609 (Peremptory Challenge), 610 (Disclosures Required of Arbitrators), 619 (General Provisions Governing Subpoenas, Production of Documents, etc.), and the Voluntary Supplemental Procedures for Selecting Arbitrators (Pilot Program). The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

* * * * *

Rule 609. [Peremptory] Challeng[e]ing Potential Arbitrators

(a) In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple claimants, respondents and/or third party respondents, the claimants shall have one peremptory challenge, the respondents shall have one peremptory challenge and the third-party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would be best served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within ten (10) business days of notification of the identity of the person(s) named under Rule 619(d), (e) or Rule 608 whichever comes first.

(b) There shall be unlimited challenges for cause. *A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.*

Rule 610. Disclosures Required of Arbitrators

(a) No change.

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators [should] *shall* disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They [should] *shall* also disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators [should] *shall* make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.

(c) & (d) No change.

Rule 619. General Provision Governing Subpoenas, Production of Documents, etc.

(a) No changes.

(b) Document Production and Information Exchange.

(1) Any party may serve a written request for information or documents (''information request'') upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties [and file a copy with the Director of Arbitration]. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties [and filed with the Director of Arbitration].

(3) Any response to objections to an information request shall be served on all parties [and filed with the Director of Arbitration] within ten (10) calendar days of receipt to the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under

paragraph (d) of this section or to a selected arbitrator under paragraph (e) of this section. *Copies of the request, objections to the request and response to the objections, if any, must accompany the request to the Director of Arbitration.*

(c) through (g) No Changes

* * * * *

Voluntary Supplemental Procedures for Selecting Arbitrators

(a) No changes.

(b) Random List Selection

1. The Number and Type of Arbitrators

(i) Claims up to $[10]*25*,000. One public arbitrator will decide claims up to $[10]*25*,000 (not including costs and interest).

(ii) Claims above $[10]*25*,000 or where no dollar amount is claimed or disclosed. Three arbitrators will decide claims above $[10]25,000 (not including costs and interest) or where no dollar amount is claimed or disclosed. The arbitration panel shall consist of a majority of public arbitrators, unless the customer or non-member requests a majority from the securities industry.

(iii) No changes.

2. through 5. No changes.

(c) No changes.

* * * * *

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 the proposed rule change is intended to:

- Provide greater transparency with respect to challenges for cause by including the cause standard in the rules (NYSE Rule 609).
- Emphasize that all arbitrator disclosures are mandatory (NYSE Rule 610).
- Reduce paperwork by eliminating the requirement that parties in arbitration file with the Director of Arbitration copies of all requests for information, objections to requests and responses to objections until such time as a party requests a pre-hearing conference (NYSE Rule 619).
- Conform the Voluntary Supplemental Procedures for Selecting Arbitrators Pilot Program to the recently approved change in Simplified Arbitration (NYSE Rule 601) by increasing the ceiling from $10,000 to $25,000 for a single arbitrator to be selected to decide an arbitration claim.

The NYSE represents that the proposed amendments to NYSE Rules 609 and 610 are consistent with the recommendations of Professor Michael A. Perino as contained in his Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations (''Perino Report''). Commissioned by the then-Chairman of the Commission to assess the adequacy of current NASD and NYSE disclosure requirements, the Perino Report concluded that current SRO conflict disclosure rules are adequate. However, in order to provide additional assurance to investors that arbitrators are in fact neutral and impartial the Perino Report proposed four recommendations. The proposed amendments to NYSE Rules 609 and 610 are consistent with two of the Perino Report's recommendations that have been approved by the Securities Industry Conference on Arbitration (''SICA''). The other two recommendations are currently under consideration by SICA. The proposed amendment to NYSE Rule 609 codifies existing policy and provides greater transparency with respect to challenges for cause by including the cause standard in the rules. The proposed amendment to NYSE Rule 610 emphasizes that all arbitrator disclosures are mandatory and the NYSE represents that it is consistent with current self-regulatory organization interpretation of the rule.

NYSE represents that the proposed amendment to NYSE Rule 619 is intended to reduce the volume of paperwork the Exchange receives from parties by eliminating the requirement that all information requests, objections to the requests and responses be filed with the Director of Arbitration. Under the proposed amended rule, the parties will only be required to file the aforementioned documents at the time they request a pre-hearing conference to resolve a discovery dispute. NYSE represents that the proposed amendment is consistent with an amendment to the Uniform Code of Arbitration adopted by SICA.

The proposed amendment to the Voluntary Supplemental Procedures for Selecting Arbitrators will increase the ceiling from $10,000 to $25,000 for a single arbitrator to be selected to decide an arbitration claim. This amendment is consistent with the amendment to Simplified Arbitration (NYSE Rule 601) recently approved by the Commission.[5]

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 promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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 Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–894(f)(6) thereunder.[9] In addition, the NYSE requests that the proposed

[5] *See* Securities Exchange Act Release No. 47089 (December 23, 2002), 68 FR 139 (January 2, 2003) (SR–NYSE–2002–43).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

rule change become effective upon filing because:

i. The proposed amendment to NYSE Rule 609 codifies the Exchange's existing practice regarding challenges for cause and duplicates publicly available information in SICA's Arbitrator's Manual.

ii. The proposed amendment to NYSE Rule 610 codifies the Exchange's existing interpretation of NYSE Rule 610 and its practices regarding arbitrators' obligations to make a reasonable effort to inform themselves of any interests or relationships described in NYSE Rule 610(a) and to disclose such information.

iii. The proposed amendments to NYSE Rule 619 will eliminate the need for parties to file information requests and responses with the Director of Arbitration since those documents do not require action by arbitrators.

iv. The proposed amendment to the Voluntary Supplemental Procedures for Selecting Arbitrators will conform the threshold for single arbitrator cases under the Supplemental Procedures with the higher threshold approved by the Commission in NYSE Rule 601 (Simplified Arbitration).

A proposed rule change filed under Rule 19b–4(f)(6)[10] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[11] The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest. For this reason, the Commission has determined to make the proposed rule change operative as of the date of this notice.[12]

At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–2003–15 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13685 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47926; File No. SR–PCX–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

May 23, 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 29, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 22, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its schedule of Fees and Charges by changing the following fees for options: the trade match fees and the shortfall fee. The text of the proposed rule change is available at the principal office of the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to make changes to its Schedule of Fees and Charges with respect to the following fees effective for the May 2003 trading month: trade match fees and shortfall fees. Other than the fees listed herein, the Exchange does not seek to make any other changes to its fee schedule.

Trade Match Terminal and Table Fees. The Exchange currently charges ''trade match'' terminal and table fees in order to allow the Member Firms to use the PCX facilities to verify matched trades between buyers and sellers. Currently the Exchange charges a trade match terminal fee of $80 per month per terminal and trade match table fees in the amount of $120 per month for a six-foot table, $80 per month for a four-foot table, and $60 per month for a shared six-foot table.

With technological advances, the PCX is now able to offer Member Firms more flexibility in determining the location where they perform the trade match function. The Exchange will continue to offer Member Firms the opportunity to

[3] Amendment No. 1 replaced the original Form 19b–4 in its entirety.

use the Exchange's facilities and dedicated terminals for its trade match functions at the existing rates referenced above. The Exchange also intends to allow Member Firms to connect their own PCs via the Exchange to SIAC, the Exchange's provider of clearing-related processing. For this, the Exchange proposes a fee of $80 per month per user ID. This is identical to the fee that the Exchange currently charges for allowing Member Firms to utilize the Exchange's dedicated computer terminals for trade match. The Exchange proposes to apply a reduced fee of $50 per month per user ID if the Member Firm uses its own PCs that connect via the Member Firm's SIAC connection. For trade match table fees, the Exchange proposes to add another option that will allow Member Firms to pay $50 per month per dedicated booth on the options trading floor.

Shortfall Fee. The Exchange currently charges a shortfall fee of $0.35 per shortfall contract on the top 120 equity option issues if the PCX volume in the issue is less than 12% of the national volume in that issue for that month. The volume base for the fee is 12% of the monthly industry volume for each qualifying issue, less the PCX monthly volume for the issue. In order to defray the shortfall fee for Member Firms who are achieving greater than 12% volume in any of their top 120 issues, the Exchange proposes to apply a short fall fee credit of $0.35 per contract to offset the short fall fee of any Member Firm who achieves a market share of greater than 12% of the national volume in any top 120 equity option issue. The Exchange proposes that the volume base for the credit will be the PCX monthly volume for the issue less 12% of the monthly industry volume for each qualifying issue. The Exchange will apply the credit only to offset an individual Member Firm's obligation to pay a shortfall fee incurred by that particular Member Firm. The Exchange will not apply the credit to offset other fees or allow it to be carried forward or applied retroactively to the shortfall fee for other months.

(2) *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act in general and section 6(b)(4)[5] of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such 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 the 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 May 22, 2003, when Amendment No. 1 was filed.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–19 and should be submitted by June 23, 2003.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* note 3, *supra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13686 Filed 5–30–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2003–15170]

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed extension of collection of information.

SUMMARY: The Department of Transportation is submitting the following request for extension of public information collection to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35.) This notice announces that a request for an extension of the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

DATES: Comments must be received on or before August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kristin Thiriez, NHTSA 400 Seventh Street, SW., Room 6213, NPO.122, Washington, DC 20590. The telephone number for Ms. Thiriez is (202) 366–2837.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Automotive Sampling System (NASS)—Tire Pressure Monitoring System Study (TPMSS).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0626.

Affected Public: Passenger Motor Vehicle Operators.

Abstract: The National Automotive Sampling System Tire Pressure Monitoring System Study (TPMSS) is being conducted in support of the rulemaking that requires tire pressure monitoring systems on all new vehicles effective November 2003. The stringent requirement for enactment of the rule requires that the needed data on the frequency and pervasiveness of under-inflation be collected and provided in a short period. This study will assess the extent to which passenger vehicle operators are aware of the recommended air pressure for their tires, if they monitor air pressure, and to what extent actual air pressure differs from that recommended by the vehicle manufacturer. Data will be collected on vehicles equipped with the tire pressure monitoring systems and a set of peer vehicles. The two groups will be compared by extent of under-inflation.

To minimize data collection and training costs and to ensure accuracy of the data, the TPMSS is being conducted as a special study through the infrastructure of the National Automotive Sampling System (NASS). Trained NASS crash investigators will be the data collector for the TPMSS. NASS collects nationally representative data on motor vehicle crashes for the National Highway Traffic Safety Administration (NHTSA). The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, Title 1, Sec. 106, 108, and 112).

Estimated Annual Burden: 3,000 hours.

Number of Respondents: 12,000.

Issued on May 22, 2003.

H. Keith Brewer,

Director, Office of Advanced Safety Research.

[FR Doc. 03–13693 Filed 5–30–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 20, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0205.

Form Number: IRS Form 5452.

Type of Review: Revision.

Title: Corporate Report of Nondividend Distributions.

Description: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code (IRC) 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 1,700.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	28 hr., 13 min.
Learning about the law or the form.	35 min.
Preparing the form	1 hr., 05 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 50,830 hours.

OMB Number: 1545–0495.

Form Number: IRS Form 4506–A.

Type of Review: Extension.

Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	7 min.
Preparing the form	30 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 20,400 hours.

OMB Number: 1545–1251.

Regulation Project Number: PS–5–91 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: Section 1.613A–3(e)(6)(i) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500,000.

Estimated Burden Hours Per Recordkeeper: 2 minutes.

Estimated Total Recordkeeping Burden: 49,950 hours.

OMB Number: 1545–1814.

Form Number: IRS Form 1099–CAP.

Type of Review: Extension.

Title: Changes in Corporate Control and Capital Structure.

Description: Any corporation that undergoes reorganization under Regulation section 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099–CAP with the IRS shareholders.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 350.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 105 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–

03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–13675 Filed 5–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1800.

Form Number: IRS Form 8886.

Type of Review: Extension.

Title: Reportable Transaction Disclosure Statement.

Description: Regulation section 1.6011–4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	3 hr., 6 min.
Learning about the law or the forms.	2 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS.	2 hr., 39 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,115 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–13676 Filed 5–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Treasury Financial Management Advisory Committee (TFMAC)

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of intent to establish.

SUMMARY: The Department of the Treasury proposes to establish an advisory committee for financial management. The purpose of this committee is to provide oversight and recommendations regarding the Department's financial reporting process, management controls, audit process, process for monitoring compliance with laws and regulations, and its business conduct policies. This committee is one of six cabinet-level agency committees that the Joint Financial Management Improvement Program (JFMIP) has targeted to pilot the financial management committee concept at the agency level in the Federal government. The TFMAC will perform duties similar to an audit committee in the private sector. TFMAC members will review, analyze, and make recommendations on any matters within its scope of responsibility including the Department's annual audit, management controls, significant risks, performance of the auditors with respect to the audit of the Departmental financial statements, and major changes to the Treasury's auditing and accounting principles and practices as suggested by the auditors or management.

FOR FURTHER INFORMATION CONTACT: Stuart Levy, Designated Federal Official, (202) 622–1355 (not a toll free number).

Dated: May 27, 2003.

Stuart Levy,

Designated Federal Official.

[FR Doc. 03–13611 Filed 5–30–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Notice No. 9]

Establishment of COLAs Online Electronic Filing System

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau announces the establishment of the COLAs Online electronic filing system. This system will allow alcohol beverage bottlers and importers to file and receive approval of TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval (COLA), electronically over the Internet.

DATES: The COLAs Online system will be operational on June 2, 2003.

ADDRESSES: Access the COLA Online system via the Alcohol and Tobacco Tax and Trade Bureau Web site at *http://www.ttb.gov*.

FOR FURTHER INFORMATION CONTACT: If you have a question regarding the COLAs Online system, contact the Advertising, Labeling and Formulation Division (ALFD) toll free at 1–866–927–2533, via e-mail at *alfd@ttb.gov*, or write ALFD at 650 Massachusetts Avenue, NW., Suite 5200, Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is launching an online system for the electronic filing, processing, and approval of TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval (COLA). TTB created COLAs Online electronic filing system to comply with the Government Paperwork Elimination Act (GPEA), which requires Federal Government agencies to offer their customers e-filing solutions by October 2003.

The COLAs Online system provides alcohol beverage bottlers and importers with a streamlined, more expedient, and paperless means to obtain a COLA from TTB's Advertising, Labeling and Formulation Division (ALFD). The system allows registered users to submit COLAs to ALFD via the Internet, as well as provide a way for ALFD to review the application electronically. Submitted applications are electronically approved, returned for correction, or rejected. The system also allows industry members to obtain online

status updates on electronically filed forms and allows the public to view approved COLAs, including the electronically filed labels.

Please Note: Alcohol beverage industry members are *not* required to use the COLAs Online filing system. You may continue to submit paper COLA forms to ALFD.

Using the COLAs Online System

You may access the COLAs Online electronic filing system by visiting the Alcohol and Tobacco Tax and Trade Bureau Web site at *http://www.ttb.gov*. This site contains all the instructions and forms necessary to become a registered COLAs Online user.

To register for COLAs Online, we require industry members to complete the system's registration form, TTB F 5013.2, COLAs Online Access Request. As part of the registration process, we will issue each registrant a user ID and password allowing access to TTB's COLAs Online system.

We may also require applicants to complete ATF F 5000.8, Power of Attorney, if they do not have signature authority or power of attorney to sign the required documents on behalf of the company for which they are filing label applications. If the industry representative already has a power of attorney, they will need to submit a copy along with the registration form when applying to register as a COLAs Online user.

COLA forms are legally binding documents whether submitted on paper or electronically. The COLAs Online system requires users to agree to a penalty of perjury statement before completing the application process. Instead of hand signing the COLA form, the applicant will select a box titled ''I agree'' before finalizing the submission. The selection of this box legally binds the applicant and declares that all the statements appearing on the application and labels are true and correct and that the applicant has read, understood, and complied with the conditions and instructions on the COLA form, TTB F 5100.31.

If you have a question regarding the new COLAs Online electronic filing system, contact TTB's Advertising, Labeling and Formulation Division toll free at 1–866–927–2533, via e-mail at *alfd@ttb.gov*, or write the Division at 650 Massachusetts Avenue, NW., Suite 5200, Washington, DC 20226.

Signed: May 1, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–13669 Filed 5–30–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 25, 2003, from 12 noon e.d.t. to 1 p.m. e.d.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: IRS notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 27, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13736 Filed 5–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice to correct the date.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, May 28, 2003, from 12:00 noon EDT to 1:00 p.m. EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: IRS Notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 27, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13737 Filed 5–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of CCAC Public Meeting

SUMMARY: Pursuant to Public Law 108–15, enacted on April 23, 2003, the United States Mint announces a Citizens Coinage Advisory Committee (CCAC) meeting for June 2003. The meeting is open to the public. The purpose of the meeting is to conduct business associated with the CCAC's responsibility to advise the Secretary of the Treasury on themes and designs pertaining to the coinage of the United States and for other purposes.

Date: June 24, 2003.

Time: 9 a.m. to 11 a.m.

Location: United States Mint; 801 Ninth Street, NW., Washington, DC; 2nd floor Conference room.

Subject: Consider State commemorative quarter-dollar coin designs and other business.

The meeting completion time may be extended to accommodate additional business that may be conducted. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals produced by the United States Mint;
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the 5 calendar years succeeding the year in which a commemorative coin designation is made; and
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Melody Grimm; United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6424.

Authority: Public Law 108–15 (April 23, 2003).

Dated: May 23, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–13589 Filed 5–29–03; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 68, No. 105

Monday, June 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0010; MT–001–0028; FRL–7489–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

Correction

In rule document 03–12616 beginning on page 27908 in the issue of Thursday, May 22, 2003, make the following correction:

§52.1370 Identification of plan.

On page 27911, in the first column, in §52.1370 (c)(52)(i)(A), in the second line, ''or the flare'' should read ''or in the flare''.

[FR Doc. C3–12616 Filed 5–30–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 2, 2003

Part II

Environmental Protection Agency

40 CFR Part 51

Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7504–2]

RIN: 2060–AJ99

Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA is proposing two discrete frameworks to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). We are proposing this rule so that States may know which statutory requirements apply for purposes of developing State implementation plans (SIPs) under the Clean Air Act (CAA) to implement the 8-hour ozone NAAQS. The intended effect of the rule is to provide certainty to States regarding their planning obligations such that States may begin SIP development upon designation and classification for the 8-hour standard. Following are the principles that guided us in the development of these frameworks to implement the 8-hour ozone standard: To protect public health, provide incentives for expeditious attainment of the 8-hour ozone standard and avoid incentives for delay; to provide reasonable but expeditious attainment deadlines; to have a basic, straightforward structure that can be communicated easily; to provide flexibility to States and EPA on implementation approaches and control measures while ensuring that the implementation strategy is supported by the CAA; to emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures; and to provide a smooth transition from implementation of the 1-hour ozone NAAQS to implementation of the 8-hour ozone NAAQS. In addition, we intend to clarify the role of Tribes in implementing the 8-hour ozone NAAQS.

The two frameworks we are proposing are based on two different classification options, which affect the requirements that would apply to individual nonattainment areas. We prefer classification option 2 because it provides more flexibility to States and Tribes as they address their unique air quality problems. This is likely to allow some areas to attain the standard at a lower cost. However, we are also soliciting comments on option 1, in part because it is less complex and may be easier to communicate, as well as on other ways to classify nonattainment areas.

This proposed rulemaking does not propose to establish attainment/nonattainment designations nor does it address the principles that will be considered in the designation process; we have already issued guidance on the principles that States should consider in making designation recommendations, and we will issue further guidance separate from this rulemaking if appropriate. Finally, we are not taking comment at this time on appropriate tests under the 8-hour standard for demonstrating conformity of Federal actions to SIPs. We intend to conduct a separate rulemaking on this issue prior to designating areas under the 8-hour ozone standard.

In this proposal, we do not yet propose regulatory text, primarily because a number of options are being proposed for many of the implementation elements, and we believe it would be better to obtain public comment on the options conceptually first. After we receive and consider comment on the proposed options, but before publishing a final rule, we will issue proposed regulatory text.

DATES: Comments must be received on or before August 1, 2003. We have scheduled public hearings on this proposal for June 17, 2003, June 19, 2003, and June 27, 2003.

ADDRESSES: All comments should be submitted to Docket #OAR 2003–0079. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov.* The voice telephone number is (202) 566–1742. In addition, we have placed a variety of materials regarding implementation options on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.* While this Web site is not an exact duplicate of the Air Docket, we have placed materials that we have generated and materials that have been submitted in an electronic format on the Web site. We request that comments be submitted by e-mail to facilitate expeditious distribution within EPA and placement on the Web site.

The public hearings will be held from 8:30 a.m. to 5 p.m. at the following locations: Marriott Dallas/Ft. Worth Airport North, 8440 Freeport Parkway, Irving, Texas, 75063, on June 17, 2003; Palace Hotel, 2 New Montgomery Street, San Francisco, California 94105, on June 19, 2003; and Holiday Inn Select Old Town Alexandria, 480 King Street, Alexandria, Virginia 22314, on June 27, 2003. Persons wishing to speak at the public hearings should contact: Ms. Barbara Bauer, E. H. Pechan, at phone number (919) 493–3144 ext. 188 or by e-mail at *barbara.bauer@pechan.com.* Oral testimony may be limited to 3 to 5 minutes depending on the number of people who sign up to speak. Commenters may also supplement their oral testimony with written comments. The hearing will be limited to the subject matter of the proposal, the scope of which is discussed below. The public hearing schedule, including lists of speakers, will be posted on EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.* A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the Office of Air and Radiation Docket and Information Center at the above address listed for inspection of documents.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666 or by e-mail at: *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at: *gerth.denise@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice uses a number of acronyms and terms that are defined when first used. A list appears in appendix D for convenience.

In a number of places, this document refers to time periods (*e.g.,* so many years) after designation or after the designation date. By this, we mean the effective date of designation by EPA.

Outline

I. What is the 8-hour ozone problem and EPA's strategy for addressing it?
A. What is the ozone standard and the health problem?
B. What is the geographic extent of the 8-hour ozone problem?
C. What is EPA's overall strategy for reducing ozone pollution?
1. The SIP system
2. National rule
D. What is the relationship between the SIP system proposed and the proposed Clear Skies legislation?
II. What is the background on the 8-hour ozone standard?
A. What is the legal background?
B. What technical work influenced EPA's implementation approach?
III. How did EPA obtain stakeholder input for this effort?
IV. What is EPA's schedule for issuing an 8-hour ozone implementation rule?
V. In short, what does this proposed rulemaking contain?
A. Classification of areas
B. Attainment deadlines
C. Transition from the 1-hour to the 8-hour standard
D. Mandatory measures
E. Consequences of failure to attain
F. Interstate transport
G. Modeling and attainment demonstration
H. Reasonable Further Progress (RFP)
1. Requirement for 15 percent VOC reductions for moderate and above areas during the first 6 years after the base year
2. Base year
I. Reasonably available control measures/ Reasonably available control technology (RACM/RACT)
J. Conformity
K. New Source Review
VI. What are EPA's proposed frameworks for implementing the 8-hour ozone standard?
A. How will EPA reconcile subparts 1 and 2? How will EPA classify nonattainment areas for the 8-hour standard? What attainment dates would apply?
1. Statutory framework and Supreme Court decision
2. EPA's development of options
3. Options for classification
4. Under classification option 2, how would EPA classify subpart 1 areas?
5. Rationale for regulating all ''gap'' areas under subpart 1 only
6. Proposed incentive feature
7. Other options EPA considered
8. Implications for the options
9. Other considerations
B. How will EPA treat attainment dates and other dates including SIP submittal dates for the 8-hour ozone standard?
1. Background
2. How will EPA address the provision regarding 1-year extensions?
3. How do attainment dates apply to Indian country?
4. How will EPA establish attainment dates for areas classified as marginal under the ''incentive'' feature proposed under the classification section or areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date?
C. How will EPA implement the transition from the 1-hour to the 8-hour standard in a way to ensure continued momentum in States' efforts toward cleaner air?
1. Background
2. When will EPA revoke the 1-hour standard?
3. What obligations should continue to apply as an area begins to implement the 8-hour ozone NAAQS and what obligations should no longer apply?
4. Does the requirement for continued implementation of the obligations addressed above expire at some point?
5. How will EPA ensure that the public knows which areas must continue provisions under the 1-hour SIPs if EPA revokes the 1-hour standard?
D. Should prescribed requirements of subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility in application in certain narrowly defined circumstances?
1. Background
2. Approach being proposed
3. Other approaches considered
E. What is the required timeframe for obtaining emissions reductions to ensure attainment by the attainment date?
F. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?
1. Background
2. EPA's anticipated approach
3. Other concerns about transport
4. Other options considered
G. How will EPA address transport of ground-level ozone and its precursors for rural nonattainment areas, multi-State nonattainment areas, areas affected by intrastate transport, and international transport?
1. Rural transport nonattainment areas
2. Multi-state nonattainment areas
3. Intrastate transport
4. International transport
5. Additional ways of addressing transport
6. State-Tribal transport
H. How will EPA address requirements for modeling and attainment demonstration SIPs when implementing the 8-hour ozone standard?
1. Multi-pollutant assessments (one-atmosphere modeling)
2. Areas with early attainment dates
3. Areas with later attainment dates
4. Modeling guidance
5. Mid-Course review
I. What requirements for RFP should apply under the 8-hour ozone standard?
1. Background
2. Proposed features in general
3. For subpart 2 areas, should the initial 15 percent RFP requirement be limited to VOC emissions?
4. What baseline year should be required for the emission inventory for the RFP requirement?
5. Should moderate areas be subject to prescribed additional RFP requirements prior to their attainment date?
6. What is the timing of the submission of the ROP plan?
7. How should CAA restrictions on creditable measures be interpreted? Which national measures should count as generating emissions reductions credit toward RFP requirements?
8. For areas covered by subpart 1 instead of subpart 2, how should the RFP requirement be structured?
9. How should the RFP requirements be implemented for areas designated for the 8-hour ozone standard that entirely or in part encompass an area that was designated nonattainment for the 1-hour ozone standard?
10. Will EPA's ''Clean Data Policy'' continue to apply under the 8-hour standard for RFP?
11. How will RFP be addressed in Tribal areas?
12. How will RFP targets be calculated?
J. Are contingency measures required in the event of failure to meet a milestone or attain the 8-hour ozone NAAQS?
1. Background
2. Proposal
K. What requirements should apply for RACM and RACT for 8-hour ozone nonattainment areas?
1. Background
2. Proposed approach for RACT in general for areas covered under subpart 2
3. Proposed approach for RACT in general for areas covered under subpart 1
4. Proposed approach for previous source-specific major source RACT determinations
5. Proposed approach for NO_X RACT determinations in areas affected by the NO_X SIP Call
6. Proposed approach for NO_X as an ozone precursor
7. Proposed approach for RACM
8. Proposed submission date for RACT and RACM requirements
L. How will the section 182(f) NO_X provisions be handled under the 8-hour ozone standard?
M. What aspects of transportation conformity and the 8-hour ozone standard are addressed in this proposal?
1. What is transportation conformity?
2. Why is EPA discussing transportation conformity in this proposed rulemaking?
3. Are any changes being made to transportation conformity in this proposed rulemaking?
4. When does transportation conformity apply to 8-hour ozone nonattainment areas?
5. How does the 1-year grace period apply in metropolitan areas?
6. How does the 1-year grace period apply in ''donut'' areas?
7. How does the 1-year grace period apply in isolated rural areas?
8. Does conformity apply for the 1-hour ozone standard once the 1-hour ozone standard is revoked?
9. What are EPA's plans for amending the conformity rule to address the 8-hour ozone standard?
10. What impact will the implementation of the 8-hour ozone standard have on a State's Transportation Conformity SIP?
11. What other parts of this proposal could affect transportation conformity determinations?

N. What requirements for General Conformity should apply to the 8-hour ozone standard?
1. What is the purpose of the General Conformity regulations?
2. How is the General Conformity program currently structured?
3. Who runs the General Conformity program?
4. How does an agency demonstrate conformity?
5. General Conformity regulation revisions for the 8-hour ozone standard
6. How does the 1-year grace period apply to General Conformity determinations?
O. How should the NSR Program be implemented under the 8-hour ozone NAAQS?
1. Background
2. Nonattainment NSR under the 8-hour ozone standard
3. Under what circumstances is a transitional program needed during the interim period?
4. Elements of the Appendix S transitional program
5. Will a State be required to assure that the increased emissions from a new major source do not cause or contribute to a violation in a nearby nonattainment area before it issues a preconstruction permit under Appendix S?
6. What happens at the end of the interim period?
7. What is the legal basis for providing this transitional program?
8. How should the NSR requirements be implemented for new 8-hour ozone areas that encompass the old 1-hour ozone nonattainment areas after EPA revokes the 1-hour ozone standard?
9. NSR option to encourage development patterns that reduce overall emissions—Clean Air Development Communities
10. Tribal concerns
P. How will EPA ensure that the 8-hour ozone standard will be implemented in a way which allows an optimal mix of controls for ozone, $PM_{2.5}$, and regional haze?
1. Could an area's 8-hour ozone strategy affect its $PM_{2.5}$ and/or regional haze strategy?
2. What guidance has EPA provided regarding ozone, $PM_{2.5}$ and regional haze interaction?
3. What is EPA proposing?
Q. What emission inventory requirements should apply under the 8-hour ozone NAAQS?
R. What guidance should be provided that is specific to Tribes?
S. What are the requirements for Ozone Transport Regions (OTRs) under the 8-hour ozone standard?
T. Are there any additional requirements related to enforcement and compliance?
U. What requirements should apply to emergency episodes?
V. What ambient monitoring requirements will apply under the 8-hour ozone NAAQS?
W. When will EPA require 8-hour attainment demonstration SIP submissions?
1. Background
2. Option being proposed
VII. Proposal of integrated frameworks using various options
VIII. Other Considerations
A. Will EPA be contemplating incentives for areas that want to take early action for reducing ozone under the 8-hour standard?
1. What are the Ozone Flex Guidelines for the 1-hour ozone NAAQS?
2. What is the ''Early Action Compact'' for implementing the 8-hour ozone NAAQS?
3. What is EPA's response to the Texas ''Early Action Compact?''
4. Did EPA consider other options for incentives for areas that take early actions for reducing ozone?
5. What is the difference between the early action compact program and the transitional NSR program?
B. Clarification of how transition from 1-hour to 8-hour standard will work for early action compact areas, for conformity, and for NSR and PSD.
C. How will EPA's proposal affect funding under the Congestion Mitigation and Air Quality Improvement (CMAQ) Program?
D. Are there any environmental impact differences between the two major classification options being proposed?
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
X. Appendices
Appendix A—Comparison of Subpart 1 & 2 Requirements
Appendix B—''Applicable Requirements'' under Subpart 2
Appendix C—Comparison of Transitional NSR and Early Action Compact Programs
Appendix D—Glossary of Terms and Acronyms
Appendix E—Application of Conformity, New Source Review and Prevention of Significant Deterioration under Various Transition Cases

I. What Is the 8-Hour Ozone Problem and EPA's Strategy for Addressing it?

A. What Is the Ozone Standard and the Health Problem?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller ''area'' sources.

In 1979, we promulgated the 0.12 ppm, 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period (*i.e.*, the 8-hour standard). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard. At the time that we promulgated the revised 8-hour standard, we also promulgated a rule providing for the phase-out of the 1-hour standard, (62 FR 38856 (codified at 50.9(b)). That rule provided that the 1-hour standard would no longer apply to an area once we determined that the area had attained the 1-hour standard.[1]

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html*.

The focus of today's proposed rule is implementation of the revised 8-hour ozone air quality standard issued by EPA in 1997, including the transition from implementation of the 1-hour

[1] Due to the continued litigation over the 8-hour standard, EPA revised 40 CFR 50.9(b) in July 2000, to limit its authority to revoke the 1-hour standard until such time as the 8-hour standard became fully enforceable and no longer subject to legal challenge. (65 FR 45182, July 20, 2000).

standard to implementation of the 8-hour standard.

B. What Is the Geographic Extent of the 8-hour Ozone Problem?

Although the nation as a whole has made significant progress since 1970 in reducing ground-level ozone pollution (sometimes called ''smog''), ozone remains a significant public health concern. At present, unhealthy ozone levels—exceeding the 8-hour standard—occur over wide geographic areas including most of the nation's major population centers. These areas include much of the eastern half of the United States and large areas of California.

The geographic extent of the 8-hour ozone problem is expected to shrink between now and 2020 due to existing regulatory requirements. We estimate that existing control measures (*e.g.*, Federal motor vehicle standards, EPA's regional NO_X rule known as the NO_X SIP Call, and local measures already adopted under the CAA) will dramatically reduce the number of areas [2] not attaining the 8-hour ozone standard—from 122 in 2000 (using data from 1998, 1999, and 2000), to 51 in 2007, to 30 in 2010 and 13 in 2020. See Table 1 below.

The total population living in areas that we have hypothesized may be designated nonattainment is also projected to decline over time—from 178 million in 2000, to 143 million in 2007, to 116 million in 2010, to 82 million in 2020. However, the number of people living in areas with excessive ozone levels remains high for the foreseeable future because existing control programs alone will not eliminate unhealthy ozone levels in some of the nation's largest population centers.

Based on information in EPA's Trends Report issued in 2002,[3] over the past 20 years, national ambient ozone levels decreased 18 percent based on 1-hour data and 11 percent based on 8-hour data. Between 1982 and 2001, emissions of VOCs decreased 16 percent. During that same time period, emissions of NO_X increased 9 percent. For the period 1982 to 2001, the downward trend in 1-hour ozone levels seen nationally is reflected in every broad geographic area in the country. The Northeast and West exhibited the most substantial improvement over the last 20 years, while the South and North Central regions experienced the least rapid progress in lowering ozone concentrations. Similar to the 1-hour ozone trends, all regions experienced improvements in 8-hour ozone levels between 1982 and 2001 except the North Central region, which showed little change during this period.

TABLE 1.—8-HOUR OZONE HYPOTHETICAL NONATTAINMENT AREAS AND POPULATION

[Projected by modeling]

	2000	2007	2010	2020
Number of areas—base case (without Clear Skies Act controls)	122	51	30	13
Number of areas with Clear Skies Act controls	122	51	24	12
Population (millions)—base case (without Clear Skies Act controls)	178	143	116	82.4
Population (millions)—with Clear Skies Act controls	178	143	103	82.1

Note: The number of areas [1] projected to each future year is based on modeled projections without consideration of application of new emission control measures that would be required under the SIP process for areas designated nonattainment for the 8-hour NAAQS.

[1] See discussion below on how we have developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options.

C. What Is EPA's Overall Strategy for Reducing Ozone Pollution?

Our overall strategy for achieving the 8-hour ozone standard is based on the structure outlined in the CAA. The CAA gives both the States and EPA important roles in implementing national air quality standards.

States have primary responsibility for developing and implementing SIPs that contain local and in-State measures needed to achieve the air quality standards in each area. We assist States by providing technical assistance and guidance, including guidance on control measures. In addition, we set national emissions limits for sources such as motor vehicles. Where upwind sources contribute to downwind problems in other States, we can also ensure that the upwind States address these contributing emissions or regulate them federally, where a State fails to act to address them.

We intend to work closely with States and Tribes to use an appropriate combination of national, regional and local pollution reduction measures to meet the standard expeditiously and in a cost-effective manner.

1. The SIP System

States use the SIP process to identify the emissions sources that contribute to the nonattainment problem in a particular area, and to select the emissions reductions measures most appropriate for that area, considering costs and a variety of local factors. Under the CAA, SIPs must ensure that areas reach attainment as expeditiously as practicable. However, other programs, such as Federal controls, also provide reductions, and States may rely on those reductions when developing their attainment plans.

The SIP system for nonattainment areas is an important component of the CAA's overall strategy for meeting the 8-hour ozone standard, but it is not the only component. As noted below, the CAA also requires or anticipates the use of national rules that will reduce emissions and help achieve cleaner air.

2. National Rules

For the States to be successful in developing local plans showing attainment of standards, EPA must do its part to control the sources that are

[2] See discussion below on how EPA has developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options. Modeling analyses for projections to 2007 are found in: U.S. Environmental Protection Agency, Office of Air and Radiation, Technical Support Document for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Air Quality Modeling Analyses. EPA420–R–00–028. December 2000. Located at: *http://www.epa.gov/otaq/regs/hd2007/frm/r00028.pdf*.

Information on the modeling analyses for projections to 2010 and 2020 are found in ''Technical Addendum: Methodologies for the Benefit Analysis of the Clear Skies Initiative.'' September 2002. This can be found at the following Web site: *http://www.epa.gov/clearskies/Tech_adden.PDF*. Results are summarized in ''Human Health and Environmental Benefits Achieved by the Clear Skies Initiative.'' July 1, 2002. *http://www.epa.gov/clearskies/CSIhealth_env_benefits7-01.ppt*.

[3] Latest Findings on National Air Quality—2001 Status and Trends. U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Research Triangle Park, NC. September 2002. EPA 454/K–02–001. Found at: *http://www.epa.gov/airtrends/ozone.html*.

more effectively and efficiently controlled at the national level and to ensure that interstate transport is addressed through SIPs or other means. We already have issued key national and regional control requirements for motor vehicles, power plants and other sources that will enable many areas to meet the 8-hour standard in the near term.

Current emissions standards for new cars, trucks and buses are reducing motor vehicle emissions of VOCs (sometimes referred to as hydrocarbons) and NO_X as older vehicles are retired. Other rules are reducing emissions from several categories of non-road engines. EPA's Tier 2 motor vehicle emission standards, together with the associated sulfur in gasoline requirements, will provide additional benefits nationally within the time period of many 8-hour ozone nonattainment areas' anticipated attainment dates (65 FR 6698, February 10, 2000). Also, we published the heavy duty diesel rule on January 18, 2001 (66 FR 5002), which will contribute to reductions needed to meet the 8-hour ozone standard in areas with later attainment dates.

In the eastern U.S., dramatic reductions in NO_X emissions from power plants and large industrial sources will occur by May 2004 under our rules to reduce interstate transport of ozone pollution in the East. These rules are the NO_X SIP Call, published October 27, 1998 (63 FR 57356), and the Section 126 Rule, published January 18, 2000 (65 FR 2674).

Also, under the requirements of section 183(e) of the CAA, we are contemplating either Federal rules or control techniques guidelines (CTGs) for controlling VOCs from 15 additional categories of consumer and commercial products. The CTGs assist States in determining required controls for facilities in nonattainment areas. The 15 categories are in addition to 6 CTGs already published under this provision of the CAA (consumer products, architectural coatings, automobile refinishing coatings, aerospace coatings, wood furniture coatings, and shipbuilding and ship repair coatings). These additional rules or CTGs are expected to be completed over the next few years.

Control measures targeting hazardous air pollutants (HAPs) also result in control of VOCs and, in some cases, NO_X. Under section 112 of the CAA, EPA was required to identify and list categories of industrial facilities that emit significant quantities of one or more of 188 HAPs and establish maximum achievable control technology (MACT) standards for each category of sources. Because most of the organic HAPs are also VOCs, in many cases, control of organic HAP emissions also achieves reductions in VOC emissions.

Rules for most of the listed MACT categories have been promulgated. Although many of the earlier promulgated rules have already resulted in emissions reductions of VOCs, the more recent rules will not begin achieving reductions until the compliance date, which is generally 3 years following promulgation. Therefore, the amount of reductions achieved through control of HAPs that are VOCs will continue to grow over the next several years.

We see the potential for significant further emissions reductions from power plants and non-road engines at the national level. The Administration has proposed nationwide legislation, the ''Clear Skies Act'' (CSA), to reduce power plant emissions of NO_X nationwide, as well as sulfur dioxide and mercury. We are also proposing a national rule that would significantly reduce NO_X emissions from non-road diesel-powered equipment. These non-road sources constitute an important fraction of the NO_X emissions inventory.

D. What Is the Relationship Between the SIP System Proposed and the Proposed Clear Skies Legislation?

A basic issue for implementation of the 8-hour ozone standard is how to treat areas projected to attain the standard based on existing controls. We believe that an appropriate balance should be struck between two goals: Avoiding requirements for unnecessary additional controls that increase cost, and ensuring expeditious attainment to protect public health.

Today's proposal contains options that strive to balance these two goals under the authority of current law. The proposal contains two options for classifying areas under the 8-hour ozone standard. Both options contain features to ensure that areas projected to attain compliance in the near term based on existing requirements are not subject to additional prescribed control obligations. Of course, these areas would be subject to the same requirements that apply to all areas designated nonattainment, such as new source review (NSR) and conformity. However, we are considering options for providing for more flexible implementation of these requirements, as described elsewhere in this proposed rulemaking, and are actually proposing an option related to NSR in this proposed rulemaking.

The proposed Clear Skies legislation takes a different approach to requirements for areas projected to attain through controls that are already mandated. The proposed CSA includes a provision that would create a new designation of ''transitional'' for areas that are projected to attain compliance by 2015 based on existing controls, or with the aid of additional SIP controls approved by December 31, 2004. The proposed CSA provides that areas designated transitional would be subject to the requirements of the prevention of significant deterioration (PSD) program for new sources, which applies in attainment areas. Because ''transitional'' would be the designation for such areas, they would not be required to adopt additional control measures that would be required for areas designated nonattainment, nor would they be subject to conformity provisions. The provision includes a mid-course check to ensure that the area remains on-track toward attainment. In case of failure to attain by 2015, the area would be re-designated as a nonattainment area and would be subject to the nonattainment area requirements. We expect that most areas currently exceeding the 8-hour ozone standard could qualify for this designation, in many cases, without further local controls.

However, because the Clear Skies legislation has not been enacted, we have not considered it in this proposed rulemaking. Should the Clear Skies legislation be enacted into law, we would conduct further rulemaking on implementation of the 8-hour ozone standard under such law, if necessary.

II. What Is the Background on the 8-Hour Ozone Standard?

A. What Is the Legal Background?

On July 18, 1997, we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of 0.08 parts per million (ppm) as measured over an 8-hour period. At that time, we indicated that we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[4] In May

[4] On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

1999, the Appeals Court remanded the ozone standard to EPA on the basis that our interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc.* v. *EPA,* 175 F.3d 1027, 1034–1040 (ATA I) *aff'd,* 195 F.3d 4 (D.C. Cir., 1999) (ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.[5] We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman* v. *American Trucking Assoc.,* 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. Specifically, the Court noted we could not ignore the provisions of subpart 2 that ''eliminate[] regulatory discretion'' allowed by subpart 1. *Id.* at 918. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are ''ill-fitted'' to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit Court rejected all remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. *American Trucking Assoc.* v. *EPA,* 283 F.3d 355 (D.C. Cir. 2002) (ATA III). With that ruling, EPA began to move forward with programs to protect Americans from the wide variety of health problems that these air pollutants can cause, such as respiratory illnesses and premature death.

The implementation rule proposed herein will provide specific requirements for State, local, and Tribal air pollution control agencies to address as they prepare implementation plans to attain and maintain the 8-hour NAAQS. Each State with an area that is not attaining the 8-hour ozone NAAQS will have to develop—as part of its SIP—emission limits and other requirements to attain the NAAQS within the timeframes set forth in the CAA.[6] Tribes with jurisdiction over Tribal lands that are not attaining the 8-hour ozone standard could voluntarily submit a Tribal implementation plan (TIP) but would not be required to do so. However, in cases where a TIP is not submitted, EPA, working with the Tribes, would have the responsibility for planning in those areas.

B. What Technical Work Influenced EPA's Implementation Approach?

In developing our original approach for implementation of the 8-hour standard, we considered input from a variety of technical information sources and experts. We originally described the technical information of the physical processes that produce ozone, fine particles, and regional haze and relied on that in developing a proposed implementation approach. See ''Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations; Proposed Rule'' (December 13, 1996, 61 FR 65764). We also participated with States in the eastern United States in the Ozone Transport Assessment Group (OTAG), which documented that long-distance transport of nitrogen oxides across much of the OTAG study area contributed to high levels of ozone. For background on OTAG and the results from the study, see the following Web site: *http://www.epa.gov/ttn/naaqs/ozone/rto/otag/index.html.*

That OTAG process resulted in a report to EPA with the conclusions that included the following:

—Regional NO_X reductions are effective in producing ozone benefits; the more NO_X reduced, the greater the benefit.
—Ozone benefits are greatest where emissions reductions are made; benefits decrease with distance.
—Elevated and low-level NO_X reductions are both effective.
—Volatile organic compound controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.
—Air quality data indicate that ozone is pervasive, that ozone is transported, and that ozone aloft is carried over and transported from one day to the next.

As a result of these recommendations, EPA called for SIP revisions from 22 States and the District of Columbia and established Statewide budgets on NO_X emissions that those jurisdictions would have to meet by 2007. Stationary source emissions reductions to meet the budgets were required to be implemented by May 2004.[7] The purpose of the rule was to address long-range transport by eliminating the significant contribution that each State's NO_X emissions made to both 1-hour and 8-hour ozone nonattainment problems in downwind areas. The call for SIP revisions was challenged by a number of States, industry and interest groups but was largely upheld by the court and has remained a viable means for obtaining significant NO_X emissions reductions.

The OTAG report also recognized that VOC emissions reductions do not play much of a role in long-range transport, and concluded that VOC reductions are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.

Under the Federal Advisory Committee Act (FACA), we also formed a Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs that provided recommendations and ideas to assist us in developing implementation approaches for these programs. We have incorporated ideas from the FACA process for a number of SIP elements, particularly those related to transport of ozone, the process for demonstrating attainment of the ozone standard, and requirements for ensuring reasonable further progress. Further information on the FACA process and its reports is found at the following Web site: *http://www.epa.gov/ttn/faca/.*

As noted above, we have also promulgated national rules that reduce VOC and NO_X emissions (ozone precursors) from mobile and stationary sources, which also help address ozone nonattainment problems. A number of commenters recommended that we set additional national standards for more source categories such that States and Tribes do not have to control these sources locally. They suggest that such standards would eliminate the inconsistent regulation that occurs when each nonattainment area chooses how to regulate sources within its jurisdiction. We continue to review source categories for possible Federal measure development.

This technical backdrop led us to be guided by the principle of emphasizing national and regional measures to help areas come into attainment and, where possible, reducing the need for those

[5] The Court addressed a number of other issues, which are not relevant here.

[6] The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.

[7] The EPA's NO_X SIP Call mandated reductions by May 2003. However, the Court's stay of the rule pending litigation resulted in a 1-year delay to May 2004.

local controls that are more expensive than national and regional measures. However, as noted below, national and regional measures alone are not anticipated to bring all areas into attainment. Thus, some areas will need to adopt local controls through the SIP process.

III. How Did EPA Obtain Stakeholder Input for This Effort?

We initiated a process to obtain stakeholder feedback on options the Agency developed for implementation of the 8-hour ozone NAAQS. We held three public meetings in addition to a number of conference calls and meetings with State, local and Tribal governments, environmental groups and industry representatives. (The lists of the organizations with whom we had discussions are in the docket, in addition to meeting and conference call summaries.) The purpose of the meetings and conference calls was to obtain stakeholder feedback regarding the options that we had developed as well as to listen to any new or different ideas that stakeholders were interested in presenting.

We received comments in response to the meetings and conference calls. The comments from the public meetings addressed a number of issues related to the implementation approach.

In addition to comments received at the public meetings, we received a number of written comments on how to implement the 8-hour ozone NAAQS. We have considered these comments in the implementation approach proposed below.

IV. What Is EPA's Schedule for Issuing an 8-Hour Ozone Implementation Rule?

We plan to issue a final rule on an implementation approach by the end of 2003. While there is not a CAA deadline for promulgating a strategy to implement the 8-hour ozone NAAQS, the CAA does establish a deadline for EPA to promulgate designations of nonattainment areas under section 107 of the CAA.[8] We have entered into a consent decree that requires us to promulgate designations by April 15, 2004.[9]

The nonattainment designation for an area starts the process whereby a State must develop a SIP that demonstrates how the air quality standard will be attained by the attainment dates required in the CAA. We plan to have an implementation strategy in place prior to designating areas for the 8-hour ozone standard. This will enable areas that are designated nonattainment for the 8-hour ozone standard to understand the obligations that attach to nonattainment designations and associated classifications.

V. In Short, What Does This Proposed Rulemaking Contain?

This summary is intended to give an overview of our proposed rule. It should not be relied on for the details of the actual proposal. The proposed rule described in Section VI. below should be consulted directly. The order in which issues are described in this summary does not match exactly the order these issues are discussed in the actual proposal.

A. Classification of Areas

Under the CAA, an ozone nonattainment area's classification determines the minimum measures that must be included in the area's SIP for meeting the 8-hour standard and the maximum time period allowed for the area to meet the standard. We are proposing two options for classifying areas.

Under option 1, all areas would be classified under subpart 2 according to 8-hour ozone levels. As a result, all areas would be classified as marginal, moderate, serious, or severe or extreme (based on the most recent air quality data, no areas would fall in the ''extreme'' classification), and would be subject to control requirements specified in the CAA for each classification.

Under option 2, more than half the nonattainment areas would likely be regulated under subpart 1. All of these would be areas meeting the 1-hour ozone standard. The rest of the areas—those exceeding, and a few that may be meeting the 1-hour standard—would be classified under subpart 2 in the same manner as option 1.

We are also proposing an ''incentive feature'' that would allow areas to qualify for a lower classification under subpart 2 than their air quality would dictate if they demonstrate they will attain by the earlier attainment date of a lower classification. For example, an area that would be classified ''moderate'' could qualify for a ''marginal'' classification by showing it will attain within 3 years of designation. The ''incentive feature'' is proposed for use in conjunction with either classification option.

B. Attainment Deadlines

We are proposing that for areas classified under subpart 2, the periods for attainment (running from the date of designation/classification) would be 3 years for marginal areas, 6 years for moderate areas, 9 years for serious areas, and 15 years for severe-15 areas, and 17 years for severe-17 areas.

If classification option 2 were selected, some areas would be classified under subpart 1. Attainment dates for these areas would be no later than 5 years after designation, although they could be extended up to 10 years after designation depending on the severity of the area's air pollution and the availability and feasibility of pollution control measures.

For all areas, the CAA requires each plan to be designed to meet the standard as expeditiously as practicable, regardless of the maximum statutory period specified for attainment.

C. How Will EPA Implement the Transition From the 1-Hour to the 8-Hour Standard in a Way To Ensure Continued Momentum in States' Efforts Toward Cleaner Air?

This section discusses which obligations would remain in effect for areas that were designated nonattainment under the 1-hour ozone NAAQS on or after November 15, 1990, as areas begin to implement the 8-hour standard. It also proposes two alternatives for revoking the 1-hour ozone standard: revocation in whole and revocation in part.

1. *Areas designated nonattainment under the 8-hour standard.* We are proposing that all areas designated nonattainment for the 8-hour ozone NAAQS remain subject to certain obligations that applied by virtue of the area's classification for the 1-hour standard where the area's 1-hour classification was higher than the area's classification for the 8-hour standard. These obligations include major source thresholds, inspection and maintenance (I/M) programs and fuel programs. However, these obligations would not apply to portions of an 8-hour ozone nonattainment area that was not a part of a 1-hour ozone nonattainment area. We believe that Congress intended these requirements to continue to apply to areas as they move forward to address an ozone NAAQS. We are soliciting comment whether areas that have not yet met the attainment demonstration obligation for the 1-hour standard

[8] Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to publish nonattainment designations to provide an additional year (to July 2000), but HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

[9] *American Lung Association* v. *EPA* (D.D.C. No. 1:02CV02239).

should remain obligated to submit a 1-hour ozone attainment demonstration.

2. *Areas designated attainment under the 8-hour standard.* Since attainment areas are subject to PSD, not nonattainment NSR, we propose that these areas would not remain subject to the nonattainment NSR offset and major source thresholds that might otherwise apply due to their classification for the 1-hour standard. However, we are proposing that control obligations that applied based on an area's 1-hour classification would remain. We are proposing that these areas are obligated to submit a maintenance plan under section 110(a)(1). Consistent with EPA's ''Clean Data Policy,'' we are proposing that these areas not be required to meet outstanding attainment demonstration and rate-of-progress (ROP) requirements, so long as they remain in attainment. However, if the area violates the 8-hour standard and does not have an approved maintenance plan for the 8-hour standard under section 110(a)(1), those obligations will once again apply. We are proposing that these areas would need contingency measures in their section 110(a)(1) maintenance plans. However, unlike contingency measures under section 175A, these contingency measures need not include an obligation to implement all control obligations in the previously approved SIP. For all areas designated attainment for the 8-hour ozone NAAQS the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked or determined not to apply for that purpose.

3. *Concerning the NO_X SIP Call.* We are proposing that States must continue to adhere to the emission budgets established by the NO_X SIP Call after the 1-hour standard is revoked in whole or in part. Similarly, we are not proposing to revoke or modify the section 126 regulation.

4. *Obligations under part D of title I of the CAA that would not continue to apply.* We are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed. We are also proposing that we would no longer make findings of failure to attain the 1-hour standard and, therefore, also would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard.

5. *How long would the obligations discussed under the 1-hour standard last?* We are proposing that these measures would not expire. However, we are proposing two options for when the State may relegate these measures to contingency measures: *Option 1.* When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard). *Option 2.* When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the area attains the 1-hour standard).

6. *Mechanism to effect the transition from the 1-hour to the 8-hour standard.* We are proposing 2 mechanisms. For both of these mechanisms, we are proposing that the revocation of the 1-hour standard would occur 1 year following designations for the 8-hour NAAQS. *Option 1:* Complete revocation of the 1-hour standard. *Option 2:* Partial revocation of 1-hour standard.

D. Mandatory Measures

We believe that the CAA is clear that once an area is classified under subpart 1 or subpart 2, the area's State implementation plan must contain the measures enumerated in the CAA for its classification. However, today's proposal contains several features intended to provide States with flexibility on the measures included in SIPs for 8-hour areas. In addition, we are proposing to consider case-by-case waivers if the applicant can show, consistent with case law on this issue, that implementing a requirement in a particular area would cause ''absurd results.''

E. Consequences of Failure To Attain

The consequences of failure to attain the standard on time are specified by the CAA. If an area classified under subpart 2 fails to meet the standard by its deadline, the CAA requires that the area be bumped up to a higher classification and adopt a revised plan containing the additional measures specified by the CAA for that classification. If an area classified under subpart 1 fails to meet the standard by its deadline, the area would be required to adopt a new plan demonstrating attainment, including any requirement mandated by the Administrator.

F. Interstate Transport

EPA recognizes that ozone and ozone precursors are often transported across State boundaries, and that interstate transport can make it difficult—or impossible—for some States to meet their attainment deadlines solely by regulating sources within their own boundaries. To address this concern, the Agency recently adopted two rules (the NO_X SIP Call and the Section 126 Rule) to reduce interstate ozone transport in the eastern U.S. These rules were developed based on the level of reductions needed to address transport for both the 1-hour and 8-hour standards. For both rules, the compliance date for achieving the required emissions reductions is May 31, 2004. Thus, unlike in the past, States affected by transport can develop their local ozone implementation plans with the knowledge that the issue of interstate transport has already been addressed ''up front.''

The President recently proposed legislation known as the Clear Skies Act that, among other things, would further reduce interstate transport of ozone and NO_X (an ozone precursor) from the power sector through a cap-and-trade program similar to the acid rain program. These reductions are beyond the levels required under the NO_X SIP Call and the Section 126 Rule. The Clear Skies reductions would enable several additional areas to meet the 8-hour standard without imposing any additional local controls. A number of other areas would find it easier to meet the 8-hour standard because of the additional reductions in power plant emissions that would be required under Clear Skies. However, the Agency has not made a determination that such reductions are warranted under the transport provisions of the CAA. In order to evaluate this issue, the Agency intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the existing transport rules are implemented in 2004.

G. Modeling and Attainment Demonstration

An attainment demonstration SIP includes technical analyses to locate and regulate sources of emissions that are contributing to violations within nonattainment areas. Section 182(a) does not require marginal areas, which have an attainment date only 3 years following designation to perform any photochemical grid modeling. We are proposing to allow areas with attainment dates within 3 years after designation—regardless of whether they are covered under subpart 1 or 2—to rely on existing modeling. Areas with later attainment dates (more than 3 years after designation) would be required to do an attainment demonstration SIP. Modeling developed to support Federal or local controls may be used if the application of that modeling is consistent with our modeling guidance.

H. Reasonable Further Progress (RFP)

There are several issues related to the Act's RFP requirements.

1. Requirement for 15 Percent VOC Reductions for Moderate and Above Areas During the First 6 Years After the Base Year

We are proposing two ways to implement the 15 percent requirements for moderate-and-above areas to meet numerical emissions reductions milestones (also known as rate-of-progress, or ROP, requirements).

Under the first option, all such areas would be required to reduce baseline VOC emissions by 15 percent over the first 6 years after a baseline year.

Under the second option, areas that previously reduced VOC emissions by 15 percent as part of implementing the 1-hour standard would be viewed as having already met the requirement. Moderate areas meeting this criterion would comply with the general subpart 1 requirement to demonstrate ''reasonable further progress'' toward meeting the standard. Serious-and-above areas meeting the criterion would be required to achieve an 18 percent reduction in VOC and/or NO_X over the first 6 years and 9 percent over subsequent 3-year periods until the area's attainment date.

2. Base Year

We are proposing 2002 as the baseline year, and that the 6-year period for reductions would run from January 1, 2003 until December 31, 2008. We propose that States be allowed credit toward meeting the ROP requirements for all emissions reductions that occur after the 2002 base year—including reductions from all post-1990 Federal or other measures (except those specifically excluded under section 182(b)(1)) of the CAA. We have also recently issued a memorandum that sets forth 2002 as the baseline year for planning purposes.

We are also proposing options for other RFP issues, including:

- The timing of ROP reductions relative to attainment date for moderate areas.
- Timing of submission of ROP plan.
- CAA requirements for creditability of control measures.
- Subpart 1 RFP.
- Cases where 8-hr NA area encompasses and is larger than current 1-hr NA area.

I. RACM/RACT

In the event classification option 2 is selected, we are proposing an interpretation of the requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT) for areas covered by subpart 1.

For RACT, for areas with 8-hour ozone levels that would place them in a moderate or above classification under subpart 2, we are proposing two options. Under the first option, these areas would be required to meet the traditional technology-based RACT control requirement that are applicable to moderate and above areas under subpart 2. Under the second option, if the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available.

For subpart 1 areas with 8-hour ozone levels that would place them in a marginal classification if classified under subpart 2, the RACT requirement would be similar to that for marginal areas covered under subpart 2. This RACT approach also would be available to areas that qualified for marginal status via the incentive feature.

The RACT requirements for areas under subpart 1 would have to be submitted within 2 years after an area's nonattainment designation.

We are proposing that the State does not need to perform a RACT analysis for sources subject to the State's emission cap-and-trade program where we have approved the cap-and-trade program as meeting the NO_X SIP Call requirements and it does not need to submit a new NO_X RACT SIP for those sources.

We propose to formally recognize NO_X, as well as VOC, as an ozone precursor, so that RACT for NO_X would be required for areas classified under either subpart 1 or subpart 2 for the same kinds of sources covered under the 1-hour ozone standard.

For RACM, we propose to continue with the same interpretation that we have used for implementing the 1-hour ozone standard. To show that all RACM have been included in the plan, the State must show that there are no additional measures that are technically and economically feasible that will advance the attainment date.

J. Conformity

No changes to the transportation conformity rule are proposed in this rulemaking. Transportation conformity is discussed in this proposal for informational purposes. By statute, transportation conformity applies to 8-hour nonattainment areas 1 year after the effective date of an area's designation. Our proposal to revoke the 1-hour standard 1 year after 8-hour ozone area designations means that transportation conformity requirements under the 1-hour standard would end at the same time 8-hour transportation conformity requirements begin. We are proposing that conformity would not apply in 1-hour ozone standard maintenance areas after we revoke the 1-hour ozone standard.

For the general conformity program, which ensures that federal actions will not interfere with an area's air quality plan, we are not proposing to revise its General Conformity Regulations in this rulemaking. We plan to retain the existing *de minimis* emissions levels for actions exempt from the rule. Our proposal to revoke the 1-hour standard one year after 8-hour ozone area designations means that general conformity requirements under the 1-hour standard would end at the same time 8-hour general conformity requirements begin. We are proposing that general conformity would not apply in 1-hour ozone standard maintenance areas after we revoke the 1-hour ozone standard.

K. New Source Review

We are proposing three options for NSR, which could be implemented in conjunction with each other:

1. A ''status quo'' NSR program under which subpart 1 areas would be covered by subpart 1 NSR, while subpart 2 areas would be covered by subpart 2 NSR.
2. A more flexible ''Transitional'' NSR program for areas that submit early SIPs and that attain early. This program would be available to areas covered under subpart 1 and that are attaining the 1-hour ozone standard.
3. A ''Clean Air Development Community'' program that would allow a more flexible NSR program for areas that manage growth in emissions-producing activities.

VI. What Are EPA's Proposed Frameworks for Implementing the 8-Hour Ozone Standard?

As noted above, we originally intended to implement the 8-hour ozone standard under subpart 1 of part D, title I of the CAA. This would have allowed areas more flexibility to determine whether to regulate NO_X, VOC or both to address ozone nonattainment.

As also noted above, however, the Supreme Court determined that an approach that did not provide for classifying areas under subpart 2—and thus subjecting those areas to the subpart 2 control requirements—in implementing the 8-hour standard was unreasonable. In structuring a proposed implementation rule, we have tried to stay as close as possible to the principles noted above, particularly with regard to seeking flexible ways for States to address their 8-hour ozone

problems by avoiding measures that may be unreasonable for an area. We have spent a large amount of time investigating possible legal theories and policy options to find flexibility within the statute, as interpreted by the Supreme Court. We have also had the benefit of ideas and recommendations from many interested stakeholders, who also have spent much time developing their own theories and ideas. Based on these efforts, we believe that we have developed options for an implementation program that are workable under the constraints of the CAA. Nonetheless, we recognize that those constraints will still require a number of areas to adopt certain control measures that may not be as effective as others in achieving the 8-hour ozone standard. We are soliciting any further ideas for addressing this situation.

To describe our proposed frameworks for implementing the 8-hour ozone standard, it is necessary to examine all the components or elements of the process used to implement the standard. Therefore, the issues and options that we are proposing that deal with the aspects of preparing SIPs for the standard are presented below individually. Following that, we present two possible alternative frameworks that blend one or more options from each of the elements to illustrate how they may work in conjunction with each other. We are soliciting comment on the options presented for the individual elements, and also on how the options can be grouped into a consolidated implementation framework.

The proposal below describes only those options or approaches we are proposing. We considered a number of other options and approaches for the elements discussed below. These other options that were considered but are not being proposed are described in a separate document available in the docket.[10]

A. How Will EPA Reconcile Subparts 1 and 2? How Will EPA Classify Nonattainment Areas for the 8-hour Standard? What Attainment Dates Would Apply?

1. Statutory Framework and Supreme Court Decision

The CAA contains two sets of requirements—subpart 1 and subpart 2—that establish requirements for State plans implementing the national ozone air quality standards in nonattainment areas. (Both are found in title I, part D.) Subpart 1 contains general requirements for SIPs for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs.

Throughout this proposed rulemaking, we repeatedly discuss whether an area is subject to the planning requirements of subpart 1 or subpart 2. This language is convenient shorthand for purposes of this proposal. Actually, if an area is subject to subpart 2 requirements, it is also subject to subpart 1 requirements. In some cases, subpart 1 and subpart 2 requirements are inconsistent or overlap. To the extent that subpart 2 addresses a specific planning obligation, the provisions in subpart 2 control. For example, under section 182(b), moderate areas are subject to 15 percent ROP requirements rather than the more general RFP requirements of section 172(c)(2). However, moderate areas remain subject to the contingency measure requirement of section 172(c)(9), as that requirement is not addressed for moderate areas in subpart 2.[11]

When we published the 8-hour ozone standard on July 18, 1997, we indicated that we anticipated that States would implement that standard under the less prescriptive subpart 1 requirements. More specifically, we provided that areas designated nonattainment for the 1-hour ozone standard would remain subject to the subpart 2 planning requirements for purposes of the 1-hour standard until such time as they met that standard. But those areas and all other areas would only be subject to subpart 1 for purposes of planning for the 8-hour ozone standard.

As noted above, in February 2001, the Supreme Court ruled that the statute was ambiguous as to the relationship of subparts 1 and 2 for purposes of implementing the 8-hour NAAQS. However, the Court also ruled that our implementation approach, which provided no role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* Specifically, with respect to classifying areas, the Supreme Court stated:

> [D]oes subpart 2 provide for classifying nonattainment ozone areas under the revised standard? It unquestionably does.

Whitman, 121 S.Ct. at 917.

However, despite recognizing that subpart 2 does provide classifications applicable for the 8-hour standard, the Supreme Court also recognized that the subpart 2 classification scheme, specified in section 181, did not entirely fit with the revised 8-hour standard and left it to EPA to develop a reasonable resolution of the roles of subparts 1 and 2 in implementing a revised ozone standard. *Id.* at 482–486.

In particular, the Court noted three portions of section 181—the classification provision in subpart 2—that it indicated were ''ill-fitted to implementation of the revised standard.''

- First, the Court recognized that 1-hour design values used for establishing the classifications in Table 1 in section 181 ''would produce at best an inexact estimate of the new 8-hour averages * * *'' 121 S.Ct. at 918.
- Second, the Court recognized that the design values in Table 1 start at the level of the 1-hour NAAQS—0.12 ppm. The Court noted that ''to the extent the new ozone standard is stricter than the old one, * * * the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified by Table 1.'' *Id.*
- Third, the Court recognized that ''Subpart 2's method for calculating attainment dates—which is simply to count forward a certain number of years from November 15, 1990 * * * seems to make no sense for areas that are first classified under a new standard after November 15, 1990.'' More specifically, the Court recognized that attainment dates for marginal (1993), moderate (1996), and serious (1999) areas had passed. *Id.* at 483–484.

2. EPA's Development of Options

In light of the Supreme Court's ruling, we examined the statute to determine the manner in which the subpart 2 classifications should apply for purposes of the 8-hour ozone NAAQS. We paid particular attention to the three portions of section 181 that the Supreme Court noted were ill-fitted for implementation of the revised 8-hour standard. We examined those provisions in light of the legislative history and the overall structure of the CAA to determine what Congress intended for purposes of implementing a revised, more stringent ozone standard. We believe that we need to take a narrow reading consistent with what we believe Congress intended. Consistent with those principles, we developed several options.

[10] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

[11] State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' April 16, 1992 (57 FR 13498 at 13501 and 13510).

3. Options for Classification

We are proposing two options for comment. We prefer classification option 2 because it provides more flexibility to States and Tribes as they address their unique air quality problems. This is likely to allow some areas to attain the standard at a lower cost. However, we are also soliciting comments on option 1, in part, because it is less complex and may be easier to communicate, in addition to any other ideas on how to classify nonattainment areas.

a. *Option 1.* Under the first option, we would classify 8-hour ozone nonattainment areas according to the severity of their ozone pollution based on 8-hour ozone levels.

Under this option, all 8-hour nonattainment areas would be classified under subpart 2 as marginal, moderate, serious, severe-15, severe-17, or extreme. The CAA gives areas in higher classifications—which are those with more serious ozone pollution problems—longer time periods for attaining the standard, but also requires these areas to meet a longer list of requirements than areas in lower classifications.

A key feature of this option is the use of 8-hour ozone design values in determining the severity of an area's 8-hour ozone problem. However, the subpart 2 classification table (Table 1 of CAA section 181) is based on 1-hour ozone design values (because it was designed for implementation of the standard in effect in 1990—the 1-hour ozone standard). Therefore, this option would require us to adapt the subpart 2 classification scheme. Specifically, we would adopt by regulation a modified version of the subpart 2 classification table that contains 8-hour design value thresholds for each classification, rather than the statutory 1-hour ozone design value thresholds. Using 8-hour design values for classifying areas for the 8-hour standard would reflect the magnitude of the 8-hour ozone problem more accurately than would the 1-hour design values in Table 1.

We are proposing to translate the classification thresholds in Table 1 of section 181 from 1-hour values to 8-hour values in the following manner: Determine the percentage by which each classification threshold in Table 1 of section 181 exceeds the 1-hour ozone standard and set the 8-hour threshold value at the same percentage above the 8-hour ozone standard. For example, the threshold separating marginal and moderate areas in Table 1 is 15 percent above the 1-hour standard, so we would set the 8-hour moderate area lower threshold value at 15 percent above the 8-hour standard.

An examination of the percentages derived indicated that Congress set the classification thresholds at certain percentages or fractions above the level of the standard.[12] These are the percentages above the standard that we used and applied to the level of the 8-hour standard to yield new threshold levels for the 8-hour standard. Table 2 of this proposed rulemaking below depicts how the translation would be done and the results.

There are other ways of performing the translation as described further below, some of which have been suggested in public comment, but we believe that the translation described here is most consistent with the apparent intent of Congress in establishing the thresholds in the classification system in section 181.

As mentioned above, under this option all 8-hour nonattainment areas would be classified under subpart 2 and receive attainment dates consistent with their classification. Elsewhere in this proposed rule, we discuss how it would interpret the attainment dates in Table 1 of section 181 for purposes of areas classified under subpart 2 for the 8-hour standard. Areas that do not attain by their attainment date would be reclassified to a higher classification and be given a later attainment date and would be subject to the measures of the higher classification (section 181(b)(2)).

TABLE 2.—TABLE 1 OF SUBPART 2 1-HOUR OZONE CLASSIFICATION TABLE

[Translation to 8-Hour Design Values]

Area class		CAA design value thresholds 1-hour ozone ppm	Percent above 1-hour ozone NAAQS	Translated 8-hour design value thresholds ppm ozone
Marginal	from	0.121	0.833	[1] 0.085
	up to	0.138	15.000	0.092
Moderate	from	0.138	15.000	0.092
	up to	0.160	33.333	0.107
Serious	from	0.160	33.333	0.107
	up to	0.180	50.000	0.120
Severe-15	from	0.180	50.000	0.120
	up to	0.190	58.333	0.127
Severe-17	from	0.190	58.333	0.127
	up to	0.280	133.333	0.187
Extreme	equal to or above	0.280	133.333	0.187

[1] The percentages used were calculated based on the level of the 1-hour standard as it appears in 40 CFR 51.9, viz., 0.12 ppm. The percentages were applied to the 8-hour standard as it appears in 40 CFR 51.10, viz., 0.08 ppm. Our guidance uses a rounding convention for 1-hour air quality data such that values less than 0.125 round down to 0.12 and therefore represent attainment; values of 0.125 up to and including 0.129 round up to 0.13, and therefore indicate nonattainment. An exact translation of the 0.121 1-hour threshold would have produced 0.081 ppm as the corresponding 8-hour threshold; however, since any value less than 0.085 ppm would indicate an area is attaining the 8-hour ozone standard, the table's lowest value reflects the lowest value representing nonattainment, viz., 0.085 ppm.

b. *Option 2—2-step approach.* We are proposing a second option (our preferred option) under which some areas would implement the 8-hour standard under subpart 1, and other areas would implement the 8-hour

[12] The upper thresholds of the marginal, moderate, serious, severe-15, and severe-17 classifications are precise percentages or fractions above the level of the standard, namely 15.000 percent (3/20ths more than the standard), 33.333 percent (one-third more than the standard), 50.000 percent (one-half more than the standard), 58.333 percent (7/12ths more than the standard) and 133.333 percent (one and one-third more than the standard).

standard under subpart 2. This option relies on language in the Supreme Court decision, which is described in detail below.

In brief, the option that we are proposing would work as follows:

• First, we would determine which 8-hour areas must be classified under subpart 2. These would be areas with ozone levels that exceed the 1-hour ozone design values that Congress specified in Table 1 of section 181. For the remaining areas, we would have discretion to place them under subpart 1 or subpart 2.

• Second, we would classify all areas. Subpart 2 areas would be classified in the same manner described above under option 1. Options for classifying subpart 1 areas are described below.

(i) *Legal framework for 2-step approach.* Under this approach, we first determine the universe of areas that must be subject to the provisions of subpart 2 and the universe of areas that fall into a ''gap'' in subpart 2's classification scheme. Then, we proceed to determine how to classify the areas.

(ii) *Legal framework—Step 1—Which subpart applies for an area?* With respect to the first step, the Supreme Court noted that ''to the extent that the new ozone standard is stricter than the old one, * * * the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard * * * but less than the approximation of the old standard codified by Table 1 [in section 181(a)].'' 121 S.Ct. at 918. Thus, for those areas with a 1-hour ozone design value above the level identified in Table 1 (*i.e.*, 0.121 ppm), Table 1 ''specifies'' a classification for the area. For those areas, we would not have authority to establish classifications under subpart 1 because section 172(a)(1)(C) prohibits the use of the classification authority in section 172(a)(1)(A) for those areas.[13] However, for areas with 1-hour ozone design values below 0.121 ppm, Table 1 does not specify a classification, and those areas fall into a gap in the statute. Thus, we must reasonably determine whether such areas should be subject to the planning obligations of subpart 1 or subpart 2. This issue is discussed more fully below under ''Rationale for regulating all ''gap'' areas under subpart 1 only.''

In summary, under the first step of this approach, we examine each nonattainment area's most recent 1-hour design value at the time of designation under the 8-hour NAAQS to determine whether the area must be subject to the classification under subpart 2. If an area's 1-hour design value is 0.121 or higher, then it must be subject to a subpart 2 classification. If its 1-hour design value is lower than 0.121, it falls into a gap and we must determine a reasonable implementation scheme—either subpart 1 or subpart 2—for such area.

(iii) *Legal framework-—Step 2—How should areas be classified under subparts 1 and 2?* Under step 2 of this approach, we must determine how to classify areas subject to the classification provisions of subpart 2. For those areas subject to the classification provisions of subpart 2, we believe that it is most reasonable to use the area's 8-hour design value to determine the appropriate classification. This would be done in the same manner as option 1, proposed above, in which the Table 1 threshold design values are converted from 1-hour values to 8-hour values.

Another option would have been to apply Table 1 as it is written. Some might argue that this approach is better because it is consistent with the design value EPA would use under this option to determine whether Congress mandated that the area be subject to subpart 2. We do not believe that Congress would have intended the use of 1-hour design values for determining the classification '' and therefore the control obligations and attainment dates—of 8-hour areas. While we believe it is reasonable to use the 1-hour design values as a barometer of Congress' intent as to which areas should be subject to the more prescriptive requirements of subpart 2, we do not believe it makes sense to use the 1-hour values to establish each area's classification under that subpart. The area's classification identifies the specific control requirements applicable to each area within that classification and the period of time the area has to attain. As enacted, the Table provides that areas having a more significant ozone pollution problem for the 1-hour standard and thus a higher classification are subject to more stringent controls and have a longer period to attain. Because of the different form and averaging times of the 1-hour and 8-hour standards, areas with significant 1-hour problems may not have as significant an 8-hour problem and vice versa. Using the 1-hour design values to classify areas, therefore, could result in areas with less significant ozone problems being subject to stricter planning obligations (and later attainment dates) than those with a more significant problem. Thus, we believe it is more consistent with Congressional intent to use 8-hour design values as the means for specifying the stringency of controls needed to attain the 8-hour ozone standard and the associated attainment dates. We also believe that this is consistent with the Supreme Court decision, in which the Court recognized that the ''1-hour averages'' in Table 1 ''produce at best an inexact estimate of the new 8-hour averages.'' *See* 121 S.Ct. at 918.

As discussed in the following section, for areas that EPA determines would be subject only to subpart 1, section 172(a)(1)(A) grants EPA discretion to develop a classification scheme.

4. Under Classification Option 2, How Would EPA Classify Subpart 1 Areas?

a. *Background.* As noted above, classification option 2 above could result in a number of areas not being classified under subpart 2. Section 172(a)(1)(A) grants EPA discretion to establish a classification system for areas covered under subpart 1 but does not mandate classifications. Section 172(a)(1)(A) provides that

> on or after [the date of designation], the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

Prior to the Supreme Court's remand of our implementation approach, we had proposed that all 8-hour ozone nonattainment areas be subject only to subpart 1 for purposes of the 8-hour standard, and that areas would be classified as traditional, transitional, or international transport. These classifications were described in our November 17, 1998 draft implementation guidance.[14]

Because we are no longer considering an option where all areas would be

[13] Section 172(a)(1)(C) provides that the provisions of section 172(a) ''shall not apply with respect to nonattainment areas for which classifications are specifically provided'' in other sections of part D. Similarly, section 172(a)(2)(D) provides that the attainment date provisions in section 172(a)(2) do not apply ''to nonattainment areas for which attainment dates are specifically provided'' elsewhere in part D.

[14] Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and the Regional Haze Program. November 17, 1998. Found at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

classified under subpart 1, we have determined the classification scheme it proposed earlier is not appropriate. We are now proposing, as described below, two new options for classifying subpart 1 areas for the 8-hour standard.

b. *Options for classifying subpart 1 areas* (i) *Option 1—no classifications.* Under this option, subpart 1 areas would not have different classifications. When submitting an attainment demonstration, each area would need to establish an attainment date consistent with section 172(a)(2)(A), *i.e.*, demonstrating attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

(ii) *Option 2—create an overwhelming interstate transport classification.* This option could be implemented in addition to option 1 (no classifications) for areas that qualify; in other words, we would not classify areas that do not qualify for this transport classification. Under this option, an area could be classified as a ''Transport Area'' upon submission of a SIP that demonstrates, using modeling, that the nonattainment problem in the area is due to ''overwhelming transport'' emissions.

We are proposing that for subpart 1 areas to qualify for an overwhelming transport classification, the area would have to meet the same criteria as specified for rural transport areas under section 182(h) (of subpart 2). This section restricts treatment as a rural transport area to an area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census). The area may be treated as a rural transport area if we find that sources of VOC (and, where we determine relevant, NO_X) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.[15] Since this classification would only apply to subpart 1 areas, areas classified under subpart 2 would not qualify for this classification.

The following are features of this option:

- The area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements.
- Less restrictive NSR and conformity requirements could be proposed for the area. If we include the transport classification option in the final implementation rule, we would consider proposing a separate rulemaking on the details of NSR and conformity requirements.
- The area would receive an attainment date that is consistent with section 172(a)(2)(A), but that takes into consideration the following:
- The attainment date of upwind nonattainment areas that contribute to the downwind area's problem; and
- The implementation schedule for upwind area controls, regardless of their geographic scope (*e.g.*, national, regional, statewide, local).

This option would partially address Tribal concerns about designations where a Tribal area designated nonattainment does not contribute significantly to its own problem. This is one of the key issues for the Tribes who seek to have economic growth from new sources within their jurisdiction but that have difficulty obtaining emission reduction offsets from sources located either inside or outside Tribal areas.

Interstate, intrastate, and international transport are also discussed elsewhere in this proposed rulemaking.

5. Rationale for Regulating All ''Gap'' Areas Under Subpart 1 Only

This section is aimed solely at providing a rationale for why all gap areas should be placed under the subpart 1 regulatory framework rather than the subpart 2 regulatory framework. Issues regarding what specific requirements should apply to subpart 1 areas are addressed in later sections of this preamble.

In developing classification option 2, we explored a number of options regarding how to interpret the relationship of subpart 1 and subpart 2 for areas with 1-hour design values less than 0.121. These areas are referred to below as ''gap'' areas because their 1-hour design value falls below the lowest value in the subpart 2 classification table and thus Congress did not dictate whether subpart 2 or subpart 1 applies. The options we explored ranged from placing all of these areas into the subpart 2 classification scheme to placing none of these areas into the subpart 2 classification scheme. We are proposing the latter approach—that all areas that fall into the gap should be subject only to the planning obligations of subpart 1. When faced with a similar issue following enactment of the CAA Amendments of 1990, we determined that areas that Congress did not mandate fall into the classification scheme of subpart 2 should be subject to only the planning obligations of subpart 1.[16]

For classification option 2, we believe it is appropriate to continue that interpretation of the CAA for 8-hour ozone areas, despite the fact that a significant number of areas designated nonattainment for the 8-hour NAAQS will fall into this group. Congress enacted subpart 2 with the understanding that all areas (except marginal areas, for which no new controls were required) would have to employ additional local controls to meet the 1-hour ozone standard in a timely fashion. Since then, many control measures have been implemented, our understanding of the importance of interstate pollution transport has improved, and we have promulgated interstate NO_X transport rules. Regional modeling by EPA indicates that the majority of potential 8-hour nonattainment areas that fall into the gap will attain the 8-hour standard by 2007 based on reductions from the NO_X SIP Call, the Federal Motor Vehicle Emissions Control Program, and other existing Federal and State control measures, without further local controls.

Of the 76 hypothetical areas that would fall into the gap (and would thus be covered under subpart 1 under classification option 2), 27 would have been classified as moderate if classified under option 1 based on their 8-hour design values. Eighteen of these 27 areas are projected to attain by 2007 through existing regional or national measures. If these areas were to be classified as moderate (under classification option 1), these areas would nonetheless be required to implement statutorily specified controls for moderate areas. Using our discretion to regulate gap areas under subpart 1 is one way (the proposed incentive feature, discussed below in this section on classifications, is another way) to avoid requiring unnecessary new local controls in areas

[15] EPA's guidance on such determinations appears in ''Criteria for Assessing the Role of Transport of Ozone/Precursors in Ozone Nonattainment Areas,'' May 1991. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Technical Support Division, Research Triangle Park, NC 27711. Available at: *http://www.epa.gov/scram001/tt25.htm*. Look for zip file name UAMIVGUIDE. Unzip to access file name UAMCRIT.

[16] These areas included: (a) The transitional areas under section 185A (areas that were designated as an ozone nonattainment area as of the date of enactment of the CAA Amendments of 1990 but that did not violate the 1-hour ozone NAAQS between January 1, 1987, and December 31, 1989); (b) nonattainment areas that had incomplete (or no) recent attaining data and therefore could not be designated attainment; and (c) areas that were violating the 1-hour ozone standard by virtue of their expected number of exceedances, but whose design values were lower than the threshold for which an area can be classified under Table 1 of subpart 2 (submarginal areas). *See* 57 FR 13498 at 13524 col. 3 *et seq.* (April 16, 1992).

already projected to meet the standard in the near term.

The other 49 gap areas could be regulated either under subpart 1 (under option 2) or as marginal areas if classified by 8-hour design value under subpart 2 (under option 1). These areas already are meeting the 1-hour standard and are close to meeting the 8-hour standard. Because control requirements for marginal areas are similar to those for subpart 1 areas, and because most of these areas are projected to attain within 3 years, the difference in regulatory category may make no practical difference for many of these areas. A potential rationale for placing these areas under subpart 1 is to provide States and EPA with greater discretion to handle implementation difficulties that might arise in some of these areas. For example, a gap area might fail to attain within the maximum attainment date for marginal areas (3 years after designation) because of pollution transport from an upwind nonattainment area with a later attainment deadline. In that event, subpart 2 calls for the area to be reclassified as moderate and for the area to implement additional local controls specified for moderate areas. For areas under subpart 1, however, we could provide additional time for the area to attain while the upwind sources implemented required controls if this were determined to be a more effective or more appropriate solution. Although regional modeling projections indicate that the NO_X SIP Call will bring most gap areas into attainment by 2007, some States have voiced concern to us that interstate or intrastate pollution transport may affect future 8-hour areas with near-term attainment deadlines. Subpart 1 would provide States and EPA with more flexibility on the remedy in any such cases.

Although we believe that there are reasons to place gap areas in subpart 1, and have the legal authority to do so, we are not suggesting that subpart 2 is unreasonable for any area that would be subject to subpart 2 under either classification option. Also, our analysis here should not be taken as inconsistent with its proposal under classification option 1, whereby all 8-hour ozone nonattainment areas would be subject to the subpart 2 planning obligations. That simpler option, in conjunction with the incentive feature for classifications (if ultimately adopted), described below in this section on classification, could provide similar flexibility on control measures for most (though not quite all) areas. In addition, we are proposing ways in which to build some flexibility into some of the mandated VOC control obligations in subpart 2, in areas where it would make sense to provide such flexibility. A final observation is that Congress did recognize some benefit in prescribing measures for areas because of past failure to attain under less prescriptive provisions of the CAA.

Placing all gap areas in subpart 1 would result in over half of the hypothetical nonattainment areas being covered by subpart 1. To be fair, this option might appear to result in some areas being placed in subpart 1 even though they have 8-hour ozone design values as high or higher than some areas that fall under Table 1 in section 181 and thus are covered under subpart 2. As explained above, we believe the most effective way to deal with that issue is not to exercise our discretion and make those areas subject to subpart 2. Rather, we can use our discretion under subpart 1 to determine how to define the controls required under subpart 1 for such areas in order to assure the most equitable, yet effective, means for these areas to attain the 8-hour ozone NAAQS. For example, in the section of this proposed rulemaking addressing RFP under subpart 1, we explore an option of defining RFP in the same manner as it is defined under subpart 2. EPA is open to suggestions as to how to make the subpart 1 planning process that would apply to these areas effective and also equitable in light of the subpart 2 planning obligations to which areas with a similar 8-hour ozone problem may be subject.

6. Proposed Incentive Feature

In addition to the two basic classification options being proposed above, we are also proposing an early attainment incentive feature that could be applicable to either of the options proposed above. Under this feature, for areas classified under subpart 2, we would classify an area at a lower classification than it would receive based on its design value, if a modeled demonstration indicates the area will attain by an attainment date that is consistent with the lower classification. For instance, if a subpart 2 area has an 8-hour ozone design value of 0.094 ppm, it would ordinarily be classified as moderate, with an attainment date 6 years after the area's designation as nonattainment for the 8-hour standard. If modeling acceptable to EPA demonstrates that this area will attain within 3 years after designation, the area would be eligible for classification as a marginal area, since marginal areas would have a maximum attainment date of 3 years after their nonattainment designation date. (See our proposal on attainment dates elsewhere in this proposed rulemaking.)

The lower classification would provide additional flexibility to the area in that it would avoid the mandatory control requirements of the higher classification. Appendix A of this proposal provides a comparison of requirements under subparts 1 and 2.

In granting a lower classification to an 8-hour ozone nonattainment area based on this option, we propose to take into account the extent to which the area significantly contributes to downwind nonattainment or interferes with maintenance under section 110(a)(2)(D) of the CAA. We solicit comment on possible mechanisms for assessing this contribution for purposes of granting the lower classification, and possible tests for whether to grant or deny the lower classification.

In addition to soliciting comment on this proposed incentive feature itself, we are soliciting comment on whether such modeled demonstration would have to be made prior to the initial classification of areas, or whether it could be submitted after we have already classified the area initially at the higher classification, in which case we would have to revise the classification downward at a subsequent time.

We also solicit comment on whether EPA, prior to initial classifications, should use EPA regional-scale modeling (rather than urban-scale modeling) to make determinations of which areas would receive a lower classification. Under this suboption, an area would qualify for the lower classification if EPA's regional modeling indicated that, based on emissions reductions from existing national and regional programs, the area would attain the 8-hour standard by the attainment deadline for the next lower classification. In requesting comment on this suboption, EPA notes that regional-scale modeling alone is not considered sufficient for an approvable attainment demonstration. We request comment on whether regional-scale modeling would nonetheless be adequate for purposes of lowering an area's classification. (Under this approach, if regional modeling did not provide grounds for the lower classification, States would need to perform local attainment demonstrations to take advantage of the incentive feature.)

It should be noted that an option was presented and discussed at the public meetings similar to this incentive feature in conjunction with the option that would have classified all areas based on their 8-hour design values but also relied on modeled results to adjust the classification. The option received

criticism from a wide variety of commenters, who argued that modeling could be applied inappropriately in classifying areas. We nonetheless believe it is appropriate to propose this feature to alleviate some of the other concerns that many commenters raised about the mandatory measures required under the higher classifications of subpart 2. Furthermore, we believe this option is justified by the intent of the CAA, in which an area's classification is generally linked to the amount of time the area is anticipated to need to attain the NAAQS. We recognize that the CAA was not originally structured to allow lower classifications based on an area being projected to attain earlier. However, under the Supreme Court ruling that required that we interpret the law regarding subpart 2's application to the 8-hour ozone standard, we believe it may reasonably give areas that are projected to attain the 8-hour ozone standard by an earlier date a classification that is consistent with that attainment date.

7. Other Options EPA Considered

We considered many other options for classification and for the translation of the classification table in the CAA. These options are discussed in a separate document available in the docket.[17] These other possible ways of translating the classification table, in our opinion, do not have the same degree of consonance with the intent of Congress when it enacted subpart 2 as those we are proposing. We are therefore not proposing them.

8. Implications for the Options

To evaluate the potential impact of the various classification options, we developed a set of 122 hypothetical nonattainment areas based on the counties that have monitors measuring violations of the 8-hour ozone standard for the 3-year period of 1998–2000. Our inclusion and grouping of counties into hypothetical nonattainment areas was done only for illustrative purposes and does not have any implications for the location, number or boundaries of nonattainment areas that may ultimately be evaluated and recommended by States and Tribes or designated by EPA. The final designations would be affected by factors contained in EPA's guidance on boundaries of nonattainment areas (which is, as noted earlier, not a topic of discussion or comment for this notice of proposed rulemaking). As noted earlier, Table 3 illustrates a possible classification grouping of nonattainment areas based on counties with monitors based on the options proposed above. The list of these areas and the information we used in assessing the consequences of our proposal are available in the docket.[18]

TABLE 3.—PROPOSED CLASSIFICATION OPTIONS COUNTS OF HYPOTHETICAL NONATTAINMENT AREAS

	Subpart 2						Subpart 1	
	Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal		Total
Option 1 (8-hour design value)	0	1	1	6	53	61	0	122
Option 1 (8-hour design value)–with incentive feature*	0	1	1	6	30	84	0	122
Option 2 (2-step approach—areas < 0.121 ppm = subpart 1)	0	1	1	6	26	12	76	122
Option 2 (2-step approach—areas < 0.121 ppm = subpart 1)–with incentive feature[1]	0	1	1	6	21	17	76	122

[1] Areas that would be moderate using their 8-hour design value but that are projected to attain by 2007 would be classified marginal.

9. Other Considerations

In addition to the overall classification options being proposed, it should be noted that subpart 2 also provides that classifications may be adjusted upward or downward for an area if the area's design value is within 5 percent of another classification. This provision (section 181(a)(4)) reads:

If an area classified under [Table 1] would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, * * * adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

Thus, for example, if a downwind area is subjected to a subpart 2 classification and there is evidence that the area will not benefit significantly from local controls mandated by subpart 2 for the area's classification and can attain within the time period specified for the next lower classification, the area may obtain some relief based on the 5 percent rule in the CAA, if applicable.

This provision does not establish a mechanism for removing areas from the subpart 2 classification scheme.

B. How Will EPA Treat Attainment Dates and Other Dates Including SIP Submittal Dates for the 8-Hour Ozone Standard?

1. Background

Under subpart 2 of the CAA, maximum attainment dates and most SIP submittal dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be ''as expeditious as practicable but no later than'' the date prescribed in Table 1 for that area's classification. The statutory dates are specified as a number of years (*e.g.*, 6 years) from the date of enactment of the CAA Amendments, which was November 15, 1990. Because these dates are a set number of years after enactment of the CAA Amendments, one might initially

[17] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

[18] Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

conclude that the subpart 2 classifications, with their associated attainment dates, should not apply for the 8-hour standard. The Supreme Court, however, rejected a conclusion that the subpart 2 classifications do not apply, although it noted that the attainment dates ''seem[ ] to make no sense'' for areas classified under a new standard after November 15, 1990. 121 S.Ct. at 918.

We believe that applying the attainment dates as expressly provided under Table 1 would produce absurd results. For example, a strict application of Table 1 would result in areas classified as marginal for the 8-hour NAAQS as having an attainment date of November 15, 1993 and areas classified as moderate as having an attainment date of November 15, 1996. Since these dates have long passed, it makes no sense to establish them as the applicable dates.

Many provisions of the CAA, however, indicate what Congress' intent was in setting attainment dates. For example, section 181(b), provides that for areas designated attainment or unclassifiable for ozone immediately following enactment of the 1990 CAA Amendments and subsequently redesignated to nonattainment, the attainment date would run from the date the area is classified under subpart 2.[19] Thus, if an area designated as attainment for the 1-hour ozone standard in 1990 were redesignated to nonattainment for the 1-hour ozone standard in January 2002 and classified as moderate, the area's attainment date would be 6 years following January 2002, *i.e.*, January 2008. Similarly, section 172(a)(2) provides for attainment dates to be calculated from the time the area is designated nonattainment. We believe that Congress would have intended for areas designated nonattainment and classified under subpart 2 for the 8-hour standard to have attainment periods consistent with those in Table 1 (*e.g.*, 3 years for a marginal area, 6 years for a moderate area, etc.), but running from the date the area is designated and classified for purposes of the 8-hour NAAQS. We are proposing for areas classified under subpart 2, the period for attainment (running from date of designation/classification) would be:

- Marginal—3 years.
- Moderate—6 years.
- Serious—9 years.
- Severe—15 or 17 years.
- Extreme—20 years (no areas currently expected to be in this category for the 8-hour ozone standard).

Note that the CAA requires each area to demonstrate attainment as expeditiously as practicable, regardless of maximum statutory periods.

Most SIP submittal dates in subpart 2 run for a fixed period from the date of enactment of the 1990 CAA, which was also the date of designation and classification by operation of law for most subpart 2 areas. Under section 181(b)(1), the statute provides that any fixed dates will be extended by operation of law to a period equal to the length of time between that date of enactment and the date an area is subsequently designated and classified. Thus, unless EPA has reason to create a different time period, either as explained specifically below or in any subsequent specific rulemaking applicable to a particular subpart 2 requirement, subpart 2 SIP submittals will be due as a general matter by the same period of time after designation and classification under the 8-hour standard as provided in subpart 2 for areas designated and classified at the time of enactment of the 1990 CAA.

For areas classified under subpart 1, attainment dates would be set under section 172(a)(2)(A), which provides that the SIP must demonstrate attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

Note that in determining whether an area actually attains the NAAQS at the time of the attainment date, EPA would use the ambient air quality data for the three ozone seasons prior to the attainment date. As an example, if the effective date of the nonattainment designations is May 15, 2004, the maximum attainment date for an area classified marginal would be May 15, 2007. In this example, EPA would consider the 8-hour ozone data for the three previous ozone seasons—2004, 2005 and 2006.

2. How Will EPA Address the Provision Regarding 1-Year Extensions?

Both subpart 1 and subpart 2 provide for two brief attainment date extensions for areas in limited circumstances where they do not attain by their attainment date. Section 172(a)(2)(C) (under subpart 1) provides for EPA to extend the attainment date for 1 year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and no more than a minimal number of exceedances of the relevant NAAQS has occurred in the area in the attainment year. No more than two 1-year extensions may be issued under this subparagraph for a single nonattainment area. Section 181(a)(5) (under subpart 2) contains a similar provision, but instead of allowing a ''minimal'' number of exceedances, it provides for only one exceedance of the standard in the year preceding the extension year. This reflects the form of the 1-hour ozone standard, which is exceedance-based. The 8-hour ozone standard, however, is not an exceedance form of standard, but rather a concentration-based standard.[20] We have issued guidance on the portion of these two provisions relating to the State's compliance with all requirements and commitments pertaining to the area in the applicable implementation plan.[21] However, for purposes of section 181(a)(5), we need to determine a reasonable interpretation in light of the fact that the statute, as written, does not fit the form of the 8-hour standard. Because Congress has addressed this issue elsewhere in the statute, we believe it is reasonable to adopt that formulation. Therefore, we would apply the same test under subparts 1 and 2 for determining whether to grant a 1-year extension, *i.e.*, whether there was a minimal number of exceedances. For both subparts, we propose to interpret this to mean for the 8-hour standard, the area would be eligible for the first of the 1-year extensions under the 8-hour standard if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084

[19] Section 181(b) provides that ''any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the CAAA of 1990 and the date the area is classified under this paragraph.'' Under section 181(b), the date of classification is the same as the date of redesignation to nonattainment.

[20] *See* 40 CFR 50.9(a); the 1-hour standard for ozone ''* * * is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 μg/m^3) is equal to or less than 1 in order for the area to be considered attaining the standard, as determined by Appendix H to this part.'' Thus, the 1-hour standard is an ''exceedance'' based standard, since the number of exceedances of the standard (yearly average over 3 years under appendix H) must be equal to or less than 1. In contrast, *see* 40 CFR 50.10(b); the 8-hour standard for ozone is ''* * * met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I to this part.'' Thus, this is a concentration-based standard, because meeting the standard is determined by calculating the concentration, not the number of exceedances as under the 1-hour standard.

[21] Memorandum of February 3, 1994, from D. Kent Berry re: ''Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas.'' U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

ppm or less. An area that has received the first of the 1-year extensions under the 8-hour standard would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

3. How Do Attainment Dates Apply to Indian Country?

As discussed elsewhere in this proposed rulemaking, the Tribal Authority Rule (TAR), 40 CFR 49.9 provides that Tribes should not be treated in a manner similar to States with regard to schedules, including the attainment dates. However, the TAR also requires EPA to develop Federal implementation plans (FIPs) where necessary and appropriate. (40 CFR 49.11). Because we believe that public health considerations are of primary concern, the attainment dates for primary NAAQS should be met. Therefore, EPA, in consultation with the Tribes, will work to ensure that the standards are addressed as soon as possible, considering the needs of the Tribes, and ensure that attainment in other jurisdictions is not adversely affected.

4. How Will EPA Establish Attainment Dates for Areas Classified as Marginal Under the ''Incentive'' Feature Proposed Under the Classification Section or Areas Covered Under Subpart 1 With a Requested Attainment Date of 3 Years or Less After the Designation Date?

EPA would ordinarily have established attainment dates for areas through a review of the SIP and whether attainment is as expeditious as practicable but no later than the date prescribed in the CAA. Elsewhere in this proposal, we are providing that marginal areas (under subpart 2) and areas under subpart 1 with an attainment date within 3 years after designation would not actually have to submit an attainment demonstration within 3 years after designation. Therefore, we must establish another procedure for establishing the attainment dates for these areas. We are proposing the following procedure.

a. *Areas that are classified marginal based solely on their 8-hour ozone design value.* For these areas, we are proposing that the CAA attainment date under Table 1 of section 181 would be the area's attainment date (namely, 3 years after designation).

b. *Areas that are classified marginal based on the proposed incentive feature proposed elsewhere and areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date.* These are areas that are projected through modeling to attain within 3 years following designation. For these areas, we are proposing that these States must submit a SIP—within 1 year after designation—that provides documentation (viz., concerning the modeling and analyses that the area is relying on to support its claim) that the area will attain within 3 years following designation. Such a SIP submission must undergo the normal public hearing and comment procedures as for any SIP submission.

C. How Will EPA Implement the Transition From the 1-Hour to the 8-Hour Standard in a way To Ensure Continued Momentum in States' Efforts Toward Cleaner Air?

As areas are designated for the 8-hour ozone NAAQS, we must address how those areas will transition from current implementation of the 1-hour standard to implementation of the 8-hour standard. In addressing this issue, we considered a number of factors, including the existing ''anti-backsliding'' provisions of the CAA, Congress' intent, as evidenced in the statute, to ensure continued progress toward attainment of the ozone standard, and the Supreme Court's interpretation of the CAA and Congressional intent. In subsection 1 of this section, we provide background information on the transition process we set forth in 1997 (and subsequently amended through regulation) and we summarize the statutory anti-backsliding provisions and the Congressional intent in enacting these provisions and subpart 2 of the CAA. In subsection 2, we identify two proposed options to effect the transition from implementation of the 1-hour standard to the 8-hour standard that concern the revocation of the 1-hour standard in whole or revocation of the 1-hour standard in part. In subsection 3, we indicate—in light of the CAA provisions and Congressional intent—which requirements that applied for purposes of the 1-hour standard should continue to apply to areas after they are designated for the 8-hour standard. Next, in subsection 4, we consider whether there is a point at which the States should no longer be required to implement those obligations EPA determines continue to apply after areas are designated for the 8-hour standard. Finally, in subsection 5, we indicate how it will ensure through regulation that the public knows which ''1-hour'' obligations remain in place and for which areas.

1. Background

a. *Background on EPA's current regulation for governing the transition.* At the time we promulgated the 8-hour ozone NAAQS in July 1997, we issued a rule (40 CFR 50.9(b)) providing that the 1-hour standard would no longer apply to an area once we determined that the area had attained the 1-hour NAAQS. (62 FR 38856, July 18, 1997). This process became known as ''revocation'' of the 1-hour NAAQS. We interpreted that provision to mean that once the 1-hour standard was revoked, the area's 1-hour ozone designation no longer applied. Due to the ongoing litigation concerning the 8-hour ozone NAAQS and our implementation strategy for that standard, we subsequently modified 40 CFR 50.9(b) in part to provide that ''after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once we determine that the area has air quality meeting the 1-hour standard.'' (65 FR 45181, July 20, 2000).[22] Thus, currently, three criteria would need to be met before we could revoke the 1-hour standard for an area: (1) The 8-hour standard would need to be fully enforceable, (2) all legal challenges to the 8-hour ozone NAAQS would need to be resolved; and (3) we would need to determine that an area had attained the 1-hour standard.

In this section, we are proposing to revise 40 CFR 50.9(b) to reflect more appropriately the implementation strategy that we develop pursuant to this proposal. At the time that we initially promulgated 40 CFR 50.9(b), we contemplated that areas would not be subject to the planning obligations of subpart 2 for purposes of implementing the revised 8-hour ozone NAAQS. Furthermore, we stated that ''as a matter of law,'' areas should continue to be subject to the planning obligations of subpart 2 for purposes of implementing the 1-hour standard until such time as they attained the 1-hour ozone NAAQS. Thus, we contemplated that the 1-hour NAAQS—and the associated designation and classification under subpart 2 for an area, including any mandated control obligations—would continue to apply until the area attained that standard. At that time, the area would be subject only to the planning obligations of subpart 1. In light of the

[22] On December 27, 2002 (67 FR 79460), EPA proposed to stay the applicability of its authority to revoke the 1-hour standard pending rulemaking to consider whether to modify the approach for transitioning to the 8-hour standard.

Supreme Court's ruling that we cannot ignore subpart 2 for purposes of implementing a revised ozone NAAQS, we believe it is appropriate to reconsider how to transition from the 1-hour NAAQS to the 8-hour NAAQS in light of the statutory structure of the CAA, as amended in 1990.

Our principal objectives for the mechanism that would ensure a smooth transition to implementation of the 8-hour standard are to ensure (1) that there will be no degradation of air quality, (2) that areas continue to make progress toward ozone attainment, and (3) consistency with the intent of Congress when it originally established the implementation structure for ozone in subpart 2 of the CAA.

We believe the several alternative approaches proposed below are more consistent with the implementation path we are proposing in light of the Supreme Court's remand. These alternatives would more effectively continue the momentum towards cleaner air than would have been accomplished under the current 40 CFR 50.9(b) structure while allowing 8-hour ozone nonattainment areas to more readily focus on their 8-hour ozone standard SIP obligations.

b. *Background on the CAA's anti-backsliding provisions.* The CAA contains a number of provisions that indicate that Congress did not intend to allow States to alter or remove provisions from implementation plans if the plan revision would jeopardize the air quality protection provided in the approved plan. Section 110(l) provides that EPA may not approve a SIP revision if it interferes with any applicable requirement concerning attainment and ROP or any other applicable requirement of the CAA. Congress created a tougher test for areas that might want to relax control requirements that were in SIPs prior to the CAA Amendments of 1990. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (*i.e.*, enactment of the 1990 CAA Amendments), unless such a modification would ensure equivalent or greater emissions reductions.

We also believe that Congress set an additional statutory bar for 1-hour ozone areas that were designated nonattainment and classified at the time of the 1990 CAA Amendments. For these areas, Congress classified the areas ''as a matter of law'' and provided that even upon redesignation to attainment, such areas could not remove from the SIP control measures specified in subpart 2 (''applicable requirements''), but could shift them to contingency measures that would be implemented to ''promptly correct any violation of the standard.''

For these reasons, we believe that although Congress gave EPA the power to revise the existing ozone standard, Congress did not open the door for States to remove SIP-approved measures or to avoid control obligations with which they have not yet complied.

One other provision, though not directly applicable, sheds light on Congress' intent. In 1990, Congress enacted section 172(e), which applies when EPA revises a NAAQS and makes it less stringent. This provision specifies that in those circumstances, States cannot relax control obligations that apply in nonattainment area SIPs or avoid adopting those that they have not yet adopted.[23] Because Congress specifically mandated that such control measures need to be adopted or retained even when EPA relaxes a standard, we believe that Congress did not intend to permit States to remove control measures when EPA revises a standard to make it more stringent, as in the case of the 8-hour standard.

We also note that in finding EPA's subpart 1-only implementation approach unlawful, the Supreme Court voiced concern that EPA not render subpart 2 ''abruptly obsolete'' because ''Subpart 2 obviously was enacted to govern implementation for some time. * * * A plan reaching so far into the future was not enacted to be abandoned the next time EPA reviewed the ozone standard—which Congress knew could happen at any time, since technical staff papers already had been completed in 1989.'' In response to the decision, we are now proposing (as noted above in the discussion on classifications) to use subpart 2 in implementing the 8-hour standard. However, the classification systems we are proposing today would result in the majority of ozone nonattainment areas that are currently classified for the 1-hour standard being placed in a lower classification for the 8-hour standard. Our proposed anti-backsliding approaches, discussed below, would not render obsolete the congressionally-specified control measure requirements of subpart 2 for 1-hour ozone nonattainment areas at a time when those areas have not yet met either of the health-based ozone standards.

[23] Specifically, section 172(e) requires EPA to promulgate regulations providing for controls that ''are not less stringent than the controls applicable to areas designated nonattainment'' before relaxation of the standard.

2. When Will EPA Revoke the 1-Hour Standard?

We are proposing to revoke the 1-hour standard either in part or in whole 1 year following designations for the 8-hour NAAQS. As discussed below, we are proposing two different legal mechanisms for achieving the revocation. Under either approach, however, the same stipulations continue to apply to areas currently or formerly designated nonattainment for the 1-hour standard.

The deciding factor supporting the schedule for the revocation in our proposal is to ensure areas do not have to perform conformity analyses for both the 1-hour and 8-hour standards at the same time. As background, areas designated nonattainment for the first time for a new standard (*e.g.,* the 8-hour ozone standard) have a 1-year grace period before conformity applies for that standard (*i.e.,* a 1-year grace period before conformity applies for the 8-hour ozone standard). This 1-year grace period before conformity is required for the 8-hour standard applies to all areas designated nonattainment for the 8-hour standard, regardless of their 1-hour NAAQS designation status. Thus, under either of the mechanisms described below, we are proposing that conformity for the 1-hour standard no longer apply 1 year following the effective date of the 8-hour designation (*i.e.,* when the standard is revoked in whole or in part). However, conformity obligations for the 1-hour ozone standard would remain applicable during the grace period and would not be affected by the designation of areas for the 8-hour standard. Our intentions regarding conformity—as well as a more complete discussion of transportation conformity appear elsewhere in this proposal.

(i) *Option 1: Revocation in whole of the 1-hour standard.* Under this option, which is our preferred option, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year following the effective date of the designations for the 8-hour NAAQS. The complete revocation of the 1-hour standard would occur in late spring of 2005 on the effective date of the 8-hour NAAQS designations, which will be issued by April 15, 2004. In order to address the anti-backsliding issues discussed in section 3, below, EPA would promulgate regulations specifying those requirements that would continue to apply after the revocation of the 1-hour standard. The regulations would also specify the geographic areas in which those obligations continue to apply, since areas designated nonattainment

for the 8-hour standard may include counties that were not designated nonattainment for the 1-hour standard. The anti-backsliding regulations would apply only to the portion of the 8-hour nonattainment area that was designated nonattainment for the 1-hour standard.

(ii) *Option 2: Partial revocation of 1-hour standard.* Under this mechanism, EPA would retain the 1-hour standard and its associated designations and classifications for limited purposes (viz., those discussed and proposed below in section 3) until the area meets the 1-hour standard. For many areas, this is likely to extend well beyond May 2005, the date of likely revocation under option 1.[24] For all remaining purposes, EPA would revoke the 1-hour standard and the associated designations and classifications 1 year after the effective date of designations for the 8-hour standard. As noted above, we believe that Congress initially intended the State's obligations under subpart 2 to continue to apply ''as a matter of law,'' and the 1-hour designations and classifications—established for the circumstances present when the requirements were enacted—are the mechanism Congress identified for triggering the applicability of these requirements. Under this theory, Congress would have intended the standard to remain in place for purposes of control measures and NSR requirements, as discussed above.

While the partial retention of the standard itself and the associated designations and classifications would be the mechanism used to retain the specified obligations, we would need to promulgate regulations similar to those described in option 1 to ensure that it is clear for which purposes the standard is being retained.

(iii) *Request for comment.* Both of these options would achieve the same result—ensuring the continued applicability of certain control requirements in subpart 2 and ensuring continued improvement in air quality, while shifting the focus from modeling and other planning requirements for the 1-hour standard to analyses for the 8-hour standard. We solicit comment on which mechanism is preferable for accomplishing the overriding objective of preventing backsliding from statutory and SIP requirements while achieving a smooth transition to implementation of the new standard. In addition, EPA also solicits comment on whether to retain the limit in current 40 CFR 50.9(b) that the 1-hour standard will not be revoked for any area until the 8-hour standard is no longer subject to legal challenge.

(iv) *Other possible approaches for the transition from the 1-hour to the 8-hour standard.*

EPA considered other approaches for the timing of the revocation of the 1-hour ozone standard; these are discussed in a separate document available in the docket.[25]

3. What Obligations Should Continue To Apply as an Area Begins To Implement the 8-Hour Ozone NAAQS and What Obligations Should no Longer Apply?

In this section, we consider what obligations from subpart 2 relative to the 1-hour ozone standard should continue to apply to areas after they have been designated for the 8-hour standard. We are proposing that the continuity of particular obligations should vary depending on the attainment status of an area for both the 1-hour and 8-hour standard. We first discuss those obligations that we propose should continue to apply to an area that is designated nonattainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour ozone standard on or after November 15, 1990. Second, we discuss those obligations that should continue to apply to an area that is designated attainment for the 8-hour NAAQS, and that was designated nonattainment for the 1-hour standard on or after November 15, 1990. (This section addresses only the continued application of requirements that applied by virtue of an area having been designated nonattainment for the 1-hour standard at some point following enactment of the CAA Amendments of 1990. It does not address areas that have been designated attainment for the 1-hour standard at all times since November 15, 1990, because they would not have any continuing obligations under subpart 2 for purposes of the 1-hour standard.) Finally, we address States' continued obligations with respect to the NO_X SIP Call. We address this issue separately since this obligation applies statewide and without respect to the designation status of areas within the State.

In general, the types of obligations that apply to areas by virtue of their 1-hour classification can be broken into three groups: control obligations; measures to address growth in new sources; and planning obligations. Control measures include specific emission reduction obligations such as NO_X RACT, I/M, and fuel programs, which are mandated in subpart 2. Measures to address growth are NSR (required under subpart 1 and subpart 2) and conformity (required by subpart 1). Planning obligations consist of attainment and maintenance demonstrations and RFP plans. For purposes of clarifying what we are proposing with respect to control measures, we also discuss in this section ''discretionary'' control measures that are not specified in subpart 2. Generally, these are control measures or other obligations the State selected and adopted into the SIP for purposes of attainment, ROP or any other goal to benefit air quality, but which are not specifically mandated by subpart 2.

a. *What obligations should continue to apply for an area that is designated nonattainment for the 8-hour NAAQS and that was designated nonattainment for the 1-hour ozone NAAQS on or after November 15, 1990?* We believe that Congress intended each area that was classified for the 1-hour ozone NAAQS under subpart 2 to adopt the specified control obligations in subpart 2 for the area's 1-hour classification. We interpret the mandated obligations in subpart 2 for purposes of an area's 1-hour ozone classification to remain applicable to such areas by virtue of the area's classification ''as a matter of law'' in 1990. (Appendix B of this proposed rulemaking contains a list of the subpart 2 requirements that remain applicable.) The three types of obligations described above (control obligations, measures to address growth in new sources, and planning obligations) are discussed separately below.

(i) *Control measures.* We are proposing that all areas designated nonattainment for the 8-hour ozone NAAQS remain subject to control measures that applied by virtue of the area's classification for the 1-hour standard. To the extent the area has met the obligation and the control measure is a part of the approved SIP, the State could not modify or remove that measure except to the extent that it could modify or remove that measure for purposes of the 1-hour standard and subject to a demonstration under section 110(l) that modification or removal would not interfere with attainment or maintenance of the 8-hour ozone

[24] A number of commenters in the pre-proposal phase recommended an approach premised on retention of the standard. See, *e.g.,* Letter of December 5, 2002 from Michael P. Kenny, Executive Director, California Air Resources Board, to Jeffrey R. Holmstead, EPA Assistant Administrator for Air and Radiation. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/.*

[25] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

NAAQS.[26] For control measures that the State has not yet adopted, the State remains obligated to adopt and submit such controls. And, once adopted into the approved SIP, the State could not modify or remove that measure except to the extent that it could modify or remove that measure for purposes of the 1-hour standard and subject to a demonstration under section 110(l) that modification or removal would not interfere with attainment or maintenance of the 8-hour ozone NAAQS. This obligation would apply only to the part of the 8-hour ozone nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS.

To illustrate what we are proposing, we provide the following example, which will also be used in the next section discussing discretionary control measures. Assume an area is classified as marginal for the 8-hour ozone NAAQS and was classified as serious for the 1-hour ozone NAAQS at the time of the 8-hour designations. Also assume RACT for a particular source category is considered an 80 percent reduction in uncontrolled emissions of VOCs at all major sources. In its 1-hour SIP, the State chose to require emissions reductions of 90 percent and the RACT requirement applied to all major stationary sources, which for a serious area includes all sources that emit greater than 50 tons/year VOCs. After designation for the 8-hour standard, the State wants to modify this RACT requirement to require only 80 percent reduction in emissions and to limit the requirement to sources that emit 100 tons/year of VOCs. Because the State could not have modified the RACT obligation to apply only to sources emitting 100 tons/year or more of VOCs for purposes of the 1-hour standard, the State could not change the source cut-off from 50 tons/year for purposes of the 8-hour standard. The 50 tons/year major source threshold would continue to be an ''applicable requirement'' for the part of the area that was designated nonattainment for the 1-hour NAAQS. The State, however, could apply RACT only to sources that emit 100 tons/year or more for any portion of the area that was not a part of the 1-hour serious nonattainment area. While the 80 percent control level would be considered mandatory, the 90 percent control level was not mandated by the CAA and thus is considered a ''discretionary control measure.'' We address below how modification of a discretionary control measure would be treated under this proposal.

The same principle would hold true for control measures in a maintenance plan for an area that was designated nonattainment for the 1-hour standard at or after November 15, 1990 and that was subsequently redesignated to attainment under the 1-hour ozone standard.[27] Subpart 2 control measures (including those that had been shifted to contingency measures) could not be removed from the SIP and could be modified only to the extent that they could have been modified if the 1-hour standard remained in effect for the area. If the State had previously shifted a mandated subpart 2 control measure to its contingency plan, we would not require that the area begin to implement that measure as part of its 8-hour implementation plan, if the measure was not required under its classification under the 8-hour standard. However, the measure would need to remain as a contingency measure for the area and could not be removed from the SIP.

(ii) *Discretionary control measures.* Many approved SIPs contain control measures that are not specified under subpart 2 for the area, but that the State chose to adopt as part of the demonstration of attainment or part of the ROP requirement for the 1-hour NAAQS. For these kinds of measures, we are proposing that no additional burden be placed on the State. For purposes of the 1-hour standard, States may currently revise or remove those requirements so long as they make a demonstration consistent with section 110(l) that such removal or modification would not interfere with attainment of or progress toward the 1-hour ozone NAAQS (or any other applicable requirement of the CAA). Under the CAA, for purposes of the 8-hour standard, the same obligation would apply except the State would need to make the demonstration with respect to the 8-hour standard instead of the 1-hour standard.

In the example above, if a State wants to revise the control level for certain sources from 90 percent control to 80 percent control, the State may do so because subpart 2 mandated RACT in this example is an 80 percent level of control rather than a 90 percent control level. The 90 percent control level thus was ''discretionary.'' We are proposing that no additional burden, beyond the statutory section 110(l) test, be placed on the State to alter this requirement. Thus, to revise the control level, the State would need to demonstrate, consistent with section 110(l), that the lower control level of 80 percent would not interfere with attainment of the 8-hour standard or RFP for the 8-hour standard (or any other applicable requirement of the CAA).

A number of SIPs contain enforceable commitments to adopt additional discretionary emission reduction control measures in the future. The State remains obligated to these commitments to the same extent as if they were adopted measures. The only way a State may modify or remove such a commitment is through a demonstration under section 110(l).

(iii) *Measures to address growth.* For 1-hour nonattainment NSR requirements in place at the time an area is designated nonattainment for the 8-hour standard, we are proposing that the major source applicability cut-offs and offset ratios continue to apply to the extent the area has a higher classification for the 1-hour standard than for the 8-hour standard. We see no rationale under the CAA—given the Congressional intent for areas ''classified by operation of law''—why the existing NSR requirements should not remain ''applicable requirements'' for the portion of the 8-hour nonattainment area that was classified higher for the 1-hour standard. However, if an area has been redesignated to attainment for the 1-hour standard as of the date of designation for the 8-hour standard, and is thus no longer implementing the nonattainment NSR program for its previous 1-hour ozone classification, it would not need to revert back to the program it had for purposes of the 1-hour standard. For example, if an area is classified moderate under the 8-hour standard, but was classified severe under the 1-hour standard at the time of the 8-hour designations, the portion of the 8-hour nonattainment area that was classified severe for the 1-hour standard would remain subject to an offset ratio of 1.3:1 and a major source threshold of 25 tons/year. The remaining portions of the 8-hour area would be subject to the offset ratio for moderate areas (1.15:1)

[26] In addition, for a revision to an obligation that was in effect prior to November 15, 1990, section 193 prohibits a SIP revision without a showing that it would result in equivalent or greater emission reductions. For purposes of avoiding repetition, we do not mention section 193 in each of the examples discussed in this section. However, States remain obligated to make the section 193 demonstration for any revision to a requirement that applied prior to November 15, 1990.

[27] A maintenance plan, which is a SIP revision required under sections 107(d)(3)(E) and 175A as a prerequisite for redesignating a nonattainment area to attainment, must provide for maintenance of the NAAQS for 10 years after redesignation and must contain contingency measures to promptly correct any violation of the standard that occurs after redesignation. Contingency measures must provide for implementation of all measures that were contained in the SIP for the area before redesignation of the area as an attainment area.

and the moderate area major source threshold (100 tons/year). If the severe 1-hour area had been redesignated to attainment prior to the time of the 8-hour designations and was subject to PSD rather than NSR, however, the entire designated area for the 8-hour standard would be subject to the offset ratio and major source threshold for a moderate area.

(iv) *Planning SIPs.* Most areas that are nonattainment under the 1-hour standard have already adopted attainment and ROP plans. However, there are a few areas that remain obligated to submit attainment or ROP SIPs. We have outlined our proposal for addressing ROP elsewhere in this proposed rulemaking and will not repeat those options in detail here. In general, however, we are proposing that States are still obligated to address separately ROP that does not overlap with ROP obligations for the 8-hour NAAQS. Where the ROP obligations overlap, the area need not separately address ROP for the 1-hour standard. For ROP already adopted into the SIP, we are proposing that the State may remove or revise control measures needed to meet the ROP milestone if such control measures were ''discretionary,'' as discussed above. But, a State could not revise or remove control measures if they would interfere with meeting the ROP goals. In other words, the CAA-mandated ROP emission reduction targets that applied for the 1-hour standard would still have to be met, but discretionary measures adopted to meet those targets could be modified, if the State makes the necessary showing under section 110(l).

With respect to attainment demonstrations, we are soliciting comment on the interpretation we should take for the two scenarios we believe exist. The first scenario would be a State that does not have a fully approved attainment demonstration under the 1-hour standard because it has failed to act in a timely manner. The second scenario is an area subject to an obligation to submit an attainment demonstration under the 1-hour standard in the future. In general, since attainment demonstrations are planning SIPs, and States must now be planning to attain the 8-hour NAAQS, one might argue that Congress could not have intended areas to continue to plan to meet a standard that EPA no longer considers to be adequately protective of public health. This is especially true when to do so would divert resources from planning to meet the 8-hour standard. In contrast, one could argue that allowing areas to bypass planning obligations under the 1-hour standard will delay attainment of health protection since States have more time to submit attainment plans under the 8-hour standard than under the 1-hour standard.[28]

There are some cases where a State does not have a fully-approved attainment demonstration because it has failed to act in a timely manner. To lift that obligation from those areas simply because EPA had adopted a more stringent NAAQS could result in a more preferential treatment of those areas over areas that did adopt fully-approvable attainment demonstrations with the requisite controls. For example, if an area has adopted controls to demonstrate attainment of the 1-hour standard, it may not remove those controls from its SIP without a demonstration that those controls would not interfere with attainment or progress toward the 8-hour standard (or any other applicable requirement of the CAA). Such an area likely would have more stringent control obligations in place than the area without a fully-approved attainment SIP and would have a high hurdle to removing or altering those controls. In contrast, the area without a fully-approved attainment demonstration would likely make slower progress toward attaining the 8-hour NAAQS (at least in the short-term) because it does not have all necessary measures in its approved SIP and—without a clear requirement to the contrary—would be under no pressure to have those measures in its SIP until its attainment demonstration for the 8-hour NAAQS is due.

For the following examples of actual situations, we are soliciting comment on whether to retain the obligation to develop a 1-hour attainment demonstration or to determine that the requirement no longer applies. In addition, we are soliciting comment on two alternatives that might address some of the inequities, while not subjecting States to the more complicated planning associated with developing two separate attainment demonstrations (one under the 1-hour standard and another under the 8-hour standard). Under the first alternative approach, areas that are subject to an obligation to submit a new or revised attainment demonstration would instead be required to submit a SIP revision that would obtain an advance increment of emissions reductions toward attainment of the 8-hour ozone standard within a specified, short-term timeframe. For example, we could require these areas to submit within 1 year of promulgation of the implementation rule a plan revision that requires a specific percentage of emissions reductions (*e.g.*, 5 percent or 10 percent) from the baseline emissions for the 8-hour NAAQS. In addition, we could require that the measures be implemented in the near term, *e.g.*, no more than 2 years after the required submission date. Under the second alternative, areas with an outstanding obligation to submit a 1-hour attainment demonstration would be required to submit their 8-hour ozone attainment demonstration early in lieu of being required to submit a 1-hour attainment demonstration. Submittal of an early 8-hour attainment demonstration would likely prevent the inequity of areas avoiding emissions reductions in the short term, as described in the preceding footnote.

- *Example 1:* An area has not met in part or in full a past-due obligation to submit a 1-hour attainment demonstration required because EPA reclassified the area to a higher classification after it failed to attain the 1-hour standard by its attainment date.
- *Example 2:* An area is subject to an obligation to submit an attainment demonstration in the future, as is the case where EPA applied its attainment date extension policy rather than reclassifying an area that failed to meet its attainment date and EPA has subsequently reclassified the area or soon will do so, because of the courts' rejection of the extension policy.

(v) *Other obligations.* A number of areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS (in some cases, these are called ''mid-course reviews''). These SIP-approved commitments are enforceable, and EPA and the States can use these mid-course reviews to ensure that progress is being made consistent with the analysis in the area's 1-hour attainment demonstration. The State remains obligated to honor these commitments.

b. *What obligations continue to apply for areas that are designated attainment under the 8-hour standard and that were designated nonattainment for the 1-hour standard on or after November 15, 1990?*

[28] For instance, an area with a past-due obligation to revise its SIP to develop a new attainment demonstration for the 1-hour standard could possibly submit such a revision within the next year or so (2004–2005), with emissions reductions beginning to occur likely within 1 or 2 years (by 2006–2007). If this area were now only required to address the 8-hour standard, it would not have to submit a new attainment demonstration until 2007, as proposed elsewhere in this proposed rule, with emissions reductions occurring from that demonstration likely a year or more after 2007, which is several years after the time period possible by fulfilling the existing obligation.

(i) *Obligations related to NSR.* Areas that are in attainment for the 8-hour ozone NAAQS would not be subject to nonattainment NSR for the 8-hour standard. We believe it makes little sense to require nonattainment NSR to continue simply because these areas were previously designated nonattainment for the 1-hour standard. Thus, we propose that these areas would be subject to PSD and would not be subject to the nonattainment NSR offset and major source thresholds that applied under their classification for the 1-hour standard.

(ii) *Obligations related to planning obligations other than maintenance plans.* With respect to SIP planning obligations (ROP plans and attainment demonstrations), we are proposing that the SIP planning requirements that applied for purposes of the 1-hour standard would not continue to apply to these areas as long as they continue to maintain the 8-hour NAAQS. Thus, even if these areas have failed to meet ROP or attainment plan obligations for the 1-hour standard, they would not be required to meet them for so long as they remain in attainment with the 8-hour standard. (As discussed below, however, we are proposing that such areas develop a maintenance plan under section 110(a)(1).) This approach is consistent with EPA's ''Clean Data Policy'' [29] under the 1-hour standard, which provides for these planning obligations to be stayed once an area attains the standard, but only for so long as an area remains in attainment of the 1-hour standard. If such an area violates the 8-hour NAAQS-prior to having an approved maintenance plan in effect (as proposed below to be required for these areas)—those obligations would once again apply in the same manner that they apply in areas designated nonattainment for the 8-hour ozone NAAQS.

(iii) *Obligations related to control measures and maintenance plans.* The issue of what obligation remains with respect to ''non-discretionary'' control measures approved into the SIP or required under the CAA is more difficult. Our approach for these is based on the CAA's requirements for maintenance plans. (Consistent with our proposal for discretionary control measures in areas designated nonattainment for the 8-hour NAAQS, we would permit areas to modify discretionary measures for areas designated attainment for the 8-hour NAAQS so long as section 110(l) is met.)

If EPA determined that these areas [30] were required to develop maintenance plans pursuant to section 175A, then they would need to keep (or to adopt and then keep) those control measures in the SIP, though they could shift them to contingency measures. Some commenters urged us to require all areas previously designated nonattainment for the 1-hour NAAQS to retain (where the area had been redesignated to attainment) or develop (where the area was still designated nonattainment for the 1-hour NAAQS at the time of 8-hour designations) a section 175A maintenance plan. However, we do not believe that a section 175A maintenance plan is mandated or is necessary for areas initially designated attainment for the 8-hour NAAQS.

Section 175A maintenance plans are required for areas that were designated nonattainment for a NAAQS and then subsequently redesignated to attainment for that NAAQS. The areas addressed in this section have never been designated nonattainment for the 8-hour ozone NAAQS. Moreover, they have a maintenance obligation that already applies: Section 110(a)(1) requires areas to demonstrate how they will attain and maintain a new or revised NAAQS.[31] Therefore, we do not believe that Congress mandated that such areas be subject to the section 175A maintenance plan obligation for the 8-hour NAAQS, nor do we believe it is necessary to interpret that provision to apply.

For an area that was never redesignated to attainment for the 1-hour standard and never had a section 175A maintenance plan, we are proposing that if the area wants to revise any part of its current 1-hour SIP, the area must first adopt and submit a maintenance plan consistent with section 110(a)(1). Moreover, even if the State elects not to revise its existing SIP, we are proposing that the area submit a section 110(a)(1) maintenance plan within 3 years of designation as attainment for the 8-hour NAAQS. We believe that the maintenance plan should provide for continued maintenance of the 8-hour standard for 10 years following designation for the 8-hour NAAQS and should include contingency measures. Unlike section 175A, section 110(a)(1) does not address contingency measures and thus does not specify that mandated controls in the existing SIP must be shifted to contingency measures if modified or removed. We are proposing that if the State adopts sufficient contingency measures, and if it makes a demonstration consistent with section 110(1), it can modify or remove control measures in the approved SIP.

We are also proposing that areas with approved 1-hour section 175A maintenance plans will be able to modify those maintenance plans consistent with their obligation to have a maintenance plan for the 8-hour NAAQS under section 110(a)(1). For these areas, we are proposing that the following obligations could be removed from the SIP if the State demonstrates that the area will maintain the 8-hour standard consistent with section 110(a)(1) for a period of 10 years following designation for the 8-hour NAAQS:

- the obligation to submit a maintenance plan for the 1-hour standard 8 years after approval of their initial 1-hour maintenance plan;
- the requirement to implement contingency measures upon a violation of the 1-hour ozone standard; however, such areas would need contingency measures as part of a maintenance SIP for the 8-hour NAAQS and States could elect to modify the existing contingency measure trigger so that it is based on a violation or exceedance of the 8-hour standard.

(iv) *Obligations related to conformity.* For all areas designated attainment for the 8-hour ozone NAAQS, the requirement to demonstrate conformity to the 1-hour standard would no longer apply once the 1-hour standard is revoked in whole or determined not to apply for that purpose under a partial revocation of the 1-hour standard (as proposed below). Under section 176 of the CAA, conformity applies to areas designated nonattainment or subject to the requirement to develop a maintenance plan pursuant to section 175A. Areas designated attainment for the 8-hour standard would no longer be subject to the obligation to demonstrate conformity to the 1-hour emissions budgets in an approved attainment or ROP SIP or an approved section 175A maintenance plan for the 1-hour standard. The reason for this is that, under the options proposed below, they would either no longer be designated nonattainment for the 1-hour standard or the nonattainment designation would

[29] Memorandum of May 10, 1995, ''RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf.*

[30] Areas that are designated attainment under the 8-hour standard and that were designated nonattainment for the 1-hour standard on or after November 15, 1990.

[31] Based on ambient ozone data for the period 1998 to 2000 for the hypothetical nonattainment areas, we identified approximately 20 areas that are currently designated nonattainment under the 1-hour standard but that will likely be designated attainment under the 8-hour standard).

no longer apply for purposes of conformity, and the area would no longer be required to develop a maintenance plan under section 175A for purposes of the 1-hour standard.

c. *What happens with respect to the NO_X SIP Call?*

Section 110(a)(2)(D) of the CAA establishes requirements for States to address the problem of transport. It requires a SIP to prohibit the State's sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. As noted above in section I of this proposal, in 1998, EPA called on 22 States and the District of Columbia (''States'') to reduce emissions of NO_X consistent with budgets set for each State. (63 FR 57356, October 27, 1998). Furthermore, EPA granted petitions under section 126 and thus directly regulated certain sources of NO_X emissions in many of the States covered by the NO_X SIP Call. (65 FR 2674, January 18, 2000). Below, we refer to these collectively as the ''NO_X transport rules.''

The NO_X transport rules were designed to prevent upwind NO_X emissions from contributing to nonattainment in a downwind area for both the 1-hour and 8-hour ozone NAAQS. EPA, however, stayed the 8-hour basis for the NO_X transport rules in response to the extensive and extended litigation (described above) that occurred concerning the establishment of the 8-hour ozone standard. We intend to take rulemaking action to lift the stay of the 8-hour basis for these rules.

We believe it important to ensure that the transition to the 8-hour standard does not have the effect of jeopardizing the controls required to be in place under the NO_X transport rules. Regardless of whether EPA lifts the stay of the 8-hour basis for these rules, the controls required have substantial benefits for reductions of both 1-hour and 8-hour ozone levels. We believe that relaxing such controls would be contrary to the principles we identified above for an effective transition. Consequently, we are proposing that States must continue to adhere to the emission budgets established by the NO_X SIP Call after the 1-hour standard is revoked in whole or in part, as proposed below. Similarly, we are not proposing to revoke or modify its section 126 regulation.

However, States retain the authority to revise the control obligations they have established for specific sources or source categories, if they continue to meet their SIP Call budgets. In addition, consistent with section 110(l), the States would need to demonstrate that the modification in control obligations would not interfere with attainment of or progress toward the 8-hour NAAQS or with any other applicable requirement of the CAA.

d. *What additional obligations under part D of title I of the CAA would not continue to apply after the 1-hour standard is revoked in whole or in part?*

As discussed elsewhere in this proposal, we are proposing that areas would not be obligated to continue to demonstrate conformity for the 1-hour standard once the 1-year grace period for application of conformity for the 8-hour standard has elapsed.

In addition, EPA would not take certain actions with respect to the 1-hour ozone NAAQS. First, we are proposing that we would no longer make findings of failure to attain the 1-hour standard and, therefore, would not reclassify areas to a higher classification for the 1-hour standard based on a failure to meet the 1-hour standard. We believe that areas should focus their resources on attainment of the 8-hour standard and that it would be counterproductive to establish new obligations for States with respect to the 1-hour standard after they have begun planning for the 8-hour standard. (Moreover, we note that the attainment dates for marginal, moderate and serious areas have passed and the CAA does not provide for reclassification of severe areas in the absence of a request by the State.) EPA must ensure that areas are continuing to make progress toward cleaner air. If EPA determines that a State is not adequately implementing an approved SIP and achieving air quality reductions in a timely manner, EPA may enter into an informal process to ensure the State takes any necessary action [32] or, alternatively, may take more formal action such as making a finding of failure to implement the SIP or issuing a SIP Call to require action. As noted above, many areas have SIPs that contain commitments to review their progress toward attaining the 1-hour NAAQS (''mid-course review''). These SIP-approved commitments are enforceable, and EPA and the States can use these mid-course reviews to ensure that progress is being made consistent with the analysis in the area's 1-hour attainment demonstration.

[32] For instance, upon discussion between EPA and States, some States have in the past voluntarily agreed to revise their SIPs when it appears that the SIP is inadequate to attain or maintain the NAAQS.

4. Does the Requirement for Continued Implementation of the Obligations Addressed Above Expire at Some Point?

The SIP obligations under the 1-hour standard for an area's classification under the 1-hour standard would not expire after the 1-hour standard is revoked in whole or in part. However, for those mandatory requirements that continue to apply to an area due to the area's classification for the 1-hour NAAQS, we are proposing two options for when the State may move the mandatory measures to a maintenance plan in the SIP and treat them as contingency measures:

a. *Option 1.* When the area achieves the level of the 1-hour ozone standard (even if the area has not yet attained the 8-hour standard). The rationale for this option is that Congress intended an area to continue to implement these obligations until it attained the 1-hour standard, at which time the area would be able to discontinue implementation upon a showing of continued maintenance. However, in such a case, the area could not remove the measures from the SIP; rather, it could shift such measures to contingency measures.

b. *Option 2.* When the area attains the 8-hour standard and is designated attainment (regardless of when, if ever, the area attains the 1-hour standard). The rationale for this option is that the 8-hour standard is the standard that EPA has determined will protect public health and the environment. Once an area demonstrates it has met and can maintain the health protective standard, it would be appropriate to remove or modify those controls.

It should be noted that either of these two options could apply for either of the transition options, discussed in section 2, above.

It should also be noted that the SIP obligations would include not only requirements in the 1-hour nonattainment area but also for the SIP in general, including the SIP requirements to address the NO_X SIP Call. We are proposing under the anti-backsliding provision in section 110(l) to require that the SIP retain the NO_X SIP Call controls that have already been approved. In the absence of appropriate regional scale modeling that would demonstrate that changing a SIP Call control to a contingency measure would not interfere with attainment or maintenance in any other State, the State could not shift SIP Call control strategies to contingency measures. The State would, of course, also have to submit a demonstration that the SIP change would not interfere with attainment or reasonable further

progress for any air quality standard or other applicable requirement of the Act.

5. How Will EPA Ensure That the Public Knows Which Areas Must Continue Provisions Under the 1-Hour SIPs if EPA Revokes the 1-Hour Standard?

EPA would promulgate regulatory provisions identifying the obligations to which areas remain subject, and identifying the areas. If EPA ultimately chooses to revoke the 1-hour standard and the associated designations and classifications shortly after designations for the 8-hour standard (as proposed below), EPA would ensure that there are provisions in the Code of Federal Regulations (CFR) that continue to define the boundaries for those areas. The reason for this is that boundaries for 8-hour ozone nonattainment areas may not be coextensive with those for the 1-hour standard, and EPA would need to make clear which areas or portions of areas must continue to implement obligations due to their 1-hour classification.

D. Should Prescribed Requirements of Subpart 2 Apply in all 8-Hour Nonattainment Areas Classified Under Subpart 2, or Is There Flexibility in Application in Certain Narrowly Defined Circumstances?

1. Background

The 1990 CAA Amendments overhauled the CAA's requirements for ozone nonattainment areas and, in doing so, specified new mandatory measures for many areas. The new approach embodied in subpart 2 was to classify areas according to the severity of their pollution. Areas with more serious ozone pollution were allowed more time to meet the standard—but were required to adopt more numerous and stringent measures depending on their classification. Congressional proponents of this approach argued that specifying mandatory measures in the statute was necessary because States and EPA, prior to 1990, had failed to ensure that SIPs achieve steady reasonable progress in reducing emissions or to require readily available measures that were cost effective and needed to meet the standard.

Mandatory subpart 2 requirements for moderate and higher-classified areas include, for example, specific ROP requirements (including a 15 percent VOC reduction for moderate and above areas), basic I/M programs, a requirement that sources subject to NSR obtain emissions offsets at a ratio of 1.15-to-1, and RACT for NO_X sources as well as VOC sources. Serious and severe areas are subject to additional measures such as further ROP requirements, applicability of NSR to smaller sources, enhanced I/M, and applicability of RACT to smaller sources. (Appendix A presents a summary comparison of measures under subparts 1 and 2.)

For the proposed 8-hour ozone implementation strategy, EPA has examined the issue of mandatory measures from both legal and policy standpoints. EPA's legal view is guided by the Supreme Court decision. The Court held that Congress drastically limited EPA's discretion on whether the mandatory requirements of subpart 2 will apply to 8-hour areas by concluding that the classification scheme of subpart 2 applied for purposes of a revised ozone NAAQS. *ATA I,* 175 F3d at 1048–1050.

As discussed elsewhere, the Supreme Court decision states that subpart 2 provides for classification of areas under the 8-hour standard. With respect to the requirements of subpart 2, the Supreme Court stated, ''The principal distinction between Subpart 1 and Subpart 2 is that the latter eliminates regulatory discretion that the former allowed.'' *Whitman* 121 S.Ct. at 918. The Court went on to state, ''Whereas Subpart 1 gives EPA considerable discretion to shape nonattainment programs, Subpart 2 prescribes large parts of them by law.'' *Id.* The Court also stated, ''EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion.'' *Id.* 918–919.

Once an area is classified under subpart 2, the subpart 2 requirements apply. EPA may have some limited ability to change or limit subpart 2 controls, consistent with the statutory language, but EPA cannot broadly waive those requirements. For example, EPA may have some flexibility to modify regulatory requirements for programs such as NSR (discussed elsewhere in this proposed rulemaking). Furthermore, subpart 2 provides discretion to EPA in implementing certain provisions already, such as waivers for stage II vapor recovery, NO_X RACT and NO_X NSR. In addition, case law may provide EPA with some flexibility to waive federally applicable requirements on a case-by-case basis where application of those requirements would produce an ''absurd result.''

With respect to policy considerations, some commenters at public meetings or in written submissions to EPA have expressed the view that mandatory measures are needed to ensure actions are taken, but a number of commenters have raised concerns. These include whether mandated VOC controls will be appropriate for all areas in the future, and whether mandatory measures are appropriate in areas projected to attain in the near term. A number of commenters recommended that EPA allow for flexibility in implementing the 8-hour ozone standard and not require mandatory measures, such as local VOC measures, where they would not be very effective in achieving attainment of the standard. In many cases, particularly for areas that would be new nonattainment areas under the 8-hour standard, region wide NO_X controls and national controls on mobile sources are predicted to greatly reduce the areas' ozone levels and to bring many into attainment without additional local emission controls.

Although a number of comments were received on the issue of flexibility, many commenters on this issue took the position that they would prefer areas to be classified under subpart 1 rather than subpart 2. Some commenters did recommend that EPA make the argument that new information about the relative benefits of NO_X and VOC control would lead to allowing more tailored controls for a number of areas, rather than the one-size-fits-all approach of subpart 2. However, commenters did not suggest how the CAA could be interpreted to allow the flexibility they were advocating for the mandatory requirements of subpart 2. Other commenters argued that the subpart 2 measures are mandatory under the CAA for areas classified under subpart 2 and that the CAA does not provide flexibility to waive those requirements.

Regarding the VOC/NO_X issue, we observe that scientific understanding of ozone pollution and the impact of control strategies has improved over time. Prior to 1990, the main focus of ozone control strategies was VOC control. Since then, scientific studies have more clearly recognized the role of NO_X, biogenic emissions, and transport of ozone and NO_X in ozone nonattainment. In response, EPA's ozone strategy for the 1-hour standard evolved to put greater emphasis on controlling NO_X in addition to VOC and to require control of NO_X emissions that contribute to interstate ozone problems.

We recognize that the relative effectiveness of VOC and NO_X controls will vary from area to area, depending significantly upon VOC/NO_X ratios in the atmosphere. Current scientific information shows that VOC reductions will reduce ozone in urban areas and in other areas where there is excess NO_X available for reaction. Ozone levels in areas that are less urban and have lower NO_X emissions, or that have high biogenic VOC levels, may be more sensitive to NO_X control and less

sensitive to VOC control. Because ozone formation is greatly affected by meteorological conditions and source/receptor orientation, ozone formation may be limited by either VOC or NO_X concentrations at different times and locations within the same area.

In order to support the approach proposed below, we solicit relevant technical information on this issue from States and others.

2. Approach Being Proposed

In line with the legal interpretation above, we are proposing that subpart 2 requirements would apply to each area classified under subpart 2 consistent with the area's classification. However, today's proposal contains several features intended to provide States with flexibility on the measures required to be included in SIPs for 8-hour areas.

First, as explained in the section on classifications above, proposed classification option 2 would result in a number of areas being classified under subpart 1 rather than under subpart 2. Second, for both classification options, we are proposing an incentive feature that would allow areas to qualify for a lower classification with fewer mandatory requirements if the area could show it will meet the standard by the deadline for the lower classification. This would, for example, allow any area projected to attain by 2007 based on existing Federal measures and any State or local measures approved into the SIP to be classified as marginal and to avoid subpart 2 mandatory measures—some of which may be significant—that apply to higher classifications.

Under either of our proposed classification frameworks, a majority of potential 8-hour areas would *not* be subject to significant subpart 2 mandatory measures because they would be classified marginal or lower. Based on our analysis of hypothetical nonattainment areas, there would be fewer than 10 potential 8-hour nonattainment areas classified ''serious'' or above, and these areas already are implementing requirements applicable to serious or above areas for the 1-hour standard. Therefore, the main impact of subpart 2 mandatory measures in 8-hour implementation would be on (1) areas that are classified as moderate, and did not have to meet moderate or above requirements for the 1-hour standard, (2) areas classified as moderate or above that would be subject to ROP requirements for the 8-hour NAAQS, and (3) new counties or areas included as part of a serious or higher classified nonattainment area.

As a third flexibility mechanism, we are proposing to consider allowing case-by-case waivers when sufficient evidence is presented that application of a specific requirement in a particular area would cause absurd results. Evidence of an absurd result might, for example, include a modeled demonstration that future VOC reductions required under subpart 2 for a particular area would actually cause ozone to increase more than a *de minimis* amount and therefore increase the amount of NO_X emissions reductions needed for the attainment demonstration. Such a showing would also have to account for the potential benefits of the mandated controls in downwind areas in determining whether on the whole the application of the subpart 2 measure would produce an absurd result.

We believe that absurd results will happen only rarely in those cases where application of the requirement in that area would thwart the intent of Congress in enacting the relevant provisions of the CAA. In such cases, EPA may be able to provide limited relief to the area, but only to the degree needed to protect Congressional intent. For example, we believe that the purpose of the 15 percent VOC ROP requirement is to ensure that areas make progress cleaning up their air and moving toward their goal of attainment in the first 6 years following the emissions baseline year. If an area could demonstrate that reductions in VOC would provide no progress toward attaining the standard, EPA may be allowed to interpret the statute to allow for reduction in NO_X emissions instead. EPA could not, however, simply waive the requirement for the area to meet the ROP goals of the CAA. Moreover, it would not be sufficient for the area to show that VOC reductions would be less beneficial than NO_X reductions. While one might contend that such a result is not the most logical result, it is not absurd. The above example is a simplistic example—application of the absurd results test in any specific situation would likely be more complex. In any specific situation, we would need to consider all of the facts in light of various statutory provisions. For example, we would need to consider that another goal of the SIP provisions in the CAA is to mitigate transport of ozone (and ozone precursors). Therefore, in determining whether there is an ''absurd result,'' we would not only need to consider the implications for the specific area asserting an absurd result, but also the effects on downwind areas.

A State attempting an absurd results demonstration would have to work very closely with EPA to ensure that the demonstration passes the highest standards of technical credibility. If we had information that the agency believes supports an absurd results showing, we would make that information available to the State. The State would, of course, have to subject this demonstration to the same public process carried out for the SIP submission itself prior to submission to EPA of the SIP containing the demonstration. In no way would this waiver exempt an area from the requirement to demonstrate attainment by the attainment date or to demonstrate RFP toward attainment consistent with the area's classification. We would have to review the State's demonstration as to whether the result is ''absurd'' in light of the particular statutory requirement at issue and within the context of the statute as a whole. Simply because a State may demonstrate an absurd result for purposes of meeting one statutory provision, such as the requirement for a 15 percent VOC reduction within 6 years after a base year, this does not imply that some other provision of the CAA that requires VOC reductions is automatically considered ''absurd.''

3. Other Approaches Considered

We considered a number of other options for allowing additional flexibility for subpart 2 requirements. These other options that were considered but are not being proposed are described in a separate document available in the docket.[33]

E. What Is the Required Timeframe for Obtaining Emissions Reductions To Ensure Attainment by the Attainment Date?

Section 172(c)(2) of the CAA requires that emissions reductions needed for attainment be phased in such that RFP toward attainment is achieved. For areas classified as moderate under subpart 2, their attainment date would be as expeditiously as practicable but no later than 6 years after the date of classification. Their ROP requirement would be at least a 15 percent VOC emissions reduction from the base year to be achieved no later than 6 years after the base year. However, if the area needed more than 15 percent VOC reductions in order to demonstrate attainment, then any additional reductions would also have to be achieved by the beginning of the ozone season prior to the area's attainment date.

[33] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

States should be aware of the consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of the attainment date. For areas covered under subpart 2, section 181(a)(5) of the CAA does allow for up to two 1-year attainment date extensions in certain circumstances. We are proposing how those extension provisions would be implemented elsewhere in this proposal under the discussion of attainment dates. To obtain the first of the 1-year extensions, the CAA basically requires that the area be meeting the level of the standard in the attainment year itself, even if the area has not actually attained considering the most recent 3 years of data. Thus, the States should ensure that the emissions reductions be implemented to ensure that ozone levels for the ozone season preceding the attainment date are below the level of the standard. If an area does not meet the eligibility requirements for a 1-year extension (as proposed elsewhere in this rulemaking) in the attainment year, then the area would not be eligible for an attainment date extension, and EPA would have an obligation to reclassify the area to a higher classification (''bump-up''). A marginal area with an attainment date 3 years after its nonattainment designation that fails to attain would be subject to bump-up to at least moderate, and would then have to prepare a plan to attain within 3 years afterward (6 years after their nonattainment designation).

There is further discussion of this situation as it relates to the 1-hour ozone standard in the General Preamble of April 16, 1992 (57 FR 13498, 13506); this discussion may have some applicability to the 8-hour standard.

Areas covered under subpart 1 are also able to obtain up to two 1-year extensions of the attainment date (see section 172(a)(2)(C)). There is no provision for bump-up in classification similar to that under subpart 2. However, if an area fails to attain, section 179 of the CAA provides that EPA publish a finding that the area failed to attain. The State then must submit within 1 year after that publication a revision to the SIP that provides for attainment within the time provided under section 179. Section 179 also provides that the SIP revision must also include any additional measures that EPA may prescribe.

Elsewhere in this notice of proposed rulemaking, we also refer to requiring that emission reductions needed for attainment need to be implemented by the attainment date. By this, we mean that they must be implemented by the beginning of the ozone season prior to the attainment date. In other words, if the attainment date is April 15, 2010, the reductions would need to be implemented by the beginning of the ozone season in the previous year (2009). Ozone seasons are defined in 40 CFR Part 58, Appendix D; for many States, the ozone season starts March 1 or April 1.

F. How Will EPA Address Long-Range Transport of Ground-Level Ozone and Its Precursors When Implementing the 8-Hour Ozone Standard?

1. Background

Although much progress has been made over the last decade to improve air quality, many States contain areas that have not yet attained the 1-hour ozone standard and/or that are violating the 8-hour ozone standard. Some of these areas are significantly affected by interstate ozone transport from upwind areas. Wind currents can transport ozone and NO_X, a primary precursor to ozone, long distances, affecting multiple States downwind of a source area. EPA recognizes that this type of interstate transport can make it difficult—or impossible—for some States to meet their attainment deadlines solely by regulating sources within their own boundaries. The 1990 Amendments to the CAA reflect Congress' awareness that ozone is a regional, and not solely a local problem. Section 110(a)(2)(D) provides an important tool for addressing the problem of transport. It provides that a SIP must contain adequate provisions to prohibit sources in a State from emitting air pollutants in amounts that contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement, including the requirements of section 110(a)(2)(d). If EPA makes such a finding, it must require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution in section 126, which authorizes any State to petition EPA for a finding designed to protect the State from significant upwind sources of air pollutants from other States.

In the past several years, EPA has conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_X SIP Call, which requires certain States in the eastern U.S. to meet statewide NO_X emissions budgets (63 FR 57356, October 27, 1998.) State programs to implement the rule have focused on reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126, EPA issued a separate rule (usually known as the Section 126 Rule) to establish Federal control requirements for certain electric power generators and industrial boilers and turbines in upwind States (64 FR 28250, May 25, 1999 and 65 FR 2674, January 18, 2000). For both rules, the compliance date for achieving the required NO_X reductions is May 31, 2004. These two transport rules overlap considerably, with the NO_X SIP Call being the broader action affecting more States. All the States affected by the Section 126 Rule are covered by the NO_X SIP Call. Therefore, EPA coordinated the two rulemakings and established a mechanism under which the Section 126 Rule would be withdrawn for sources in a State where EPA has approved a SIP meeting the NO_X SIP Call.[34]

In both the NO_X SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP Call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards.[35] Thus, unlike in the past, States affected by transport can develop their new ozone implementation plans with the knowledge that the issue of interstate transport has already been addressed up front. This approach will provide these States with certainty that they will benefit from substantial emissions reductions from upwind sources and give them significantly improved boundary conditions that they

[34] As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_X SIP Call have been delayed and the NO_X SIP Call has been divided into two phases. The EPA recently issued a proposed rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances (68 FR 16644, April 4, 2003).

[35] The Agency stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. (65 FR 56245, September 18, 2000 and 65 FR 2674, January 18, 2000). Recently, however, the Administrator signed a final rule on the UV–B issue and reaffirmed the 8-hour ozone standard (68 FR 614, January 6, 2003), which was remanded to EPA in ATA I, 175 F.3d 1027. Having now reaffirmed the 8-hour standard, the Agency plans to take action in the near future to reinstate the 8-hour bases for both the NO_X SIP Call and the Section 126 Rule. Such action would provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.

can rely on as they work to identify additional emission reductions they will need to include in a local area's attainment SIP.

2. EPA's Anticipated Approach

In providing their views to EPA on the 8-hour ozone implementation rule, the Ozone Transport Commission (OTC) and other State commenters have argued that the NO_X SIP Call and the Section 126 Rule are not fully adequate. In their view, additional steps are needed to reduce interstate transport of ozone and NO_X to assist downwind areas in meeting the 8-hour ozone standard. In particular, these commenters have expressed continued concern about upwind emissions from power plants and other major sources and transported pollution from upwind cities.

As described above, EPA has already taken two actions to address the issue of interstate transport for purposes of the 8-hour standard. The NO_X SIP Call and the Section 126 Rule require that States within the SIP Call make significant emissions reductions from power plants and other major sources that contribute to ozone nonattainment in downwind areas. For both rules, the compliance date for achieving the required emissions reductions is May 31, 2004.

EPA intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the NO_X SIP Call and the Section 126 Rule are implemented in 2004. The Agency believes that it may be appropriate to consider the need to reduce interstate transport that contributes to unhealthy levels of $PM_{2.5}$ in downwind nonattainment areas when looking at any additional requirements for reducing the transport of ozone or ozone precursors.

As noted above, the President recently proposed the CSA that, among other things, would achieve significant reductions—beyond those required under the SIP Call and the Section 126 Rule—in the regional transport of ozone and ozone precursors. Detailed modeling by EPA for the year 2010 shows that the 2008 Phase I NO_X limits in the CSA would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to be designated nonattainment for the 8-hour standard. The modeling results are available on the Web at *http://www.epa.gov/clearskies.*

The Clear Skies reductions would enable several additional areas to meet the 8-hour standard without imposing any additional local controls. A number of other areas would find it easier to meet the 8-hour standard because of the additional reductions in power plant emissions that would be required under Clear Skies. However, the Agency has not made a determination that such reductions are warranted under the transport provisions of the CAA. As noted above, in order to evaluate this issue, the Agency intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the existing transport rules are implemented in 2004.

The Agency welcomes input from States and other interested parties as to how to deal with ozone transport effectively and equitably and on the technical and other issues that will have to be confronted as part of an evaluation of what further steps should be taken beyond the existing NO_X SIP Call to deal with ozone transport.

3. Other Concerns About Transport

EPA realizes that, whatever measures may be taken in the future, attainment demonstrations for some areas would continue to be complicated by the effects of ozone and transport from upwind sources and other nonattainment areas in cases where upwind source controls are scheduled for implementation after the downwind area's attainment date (*e.g.,* 2007 attainment date).

Downwind areas could be in one of two situations. In the first situation, an area might be receiving such high levels of transported ozone or ozone precursors that even if it totally eliminated its own emissions, the incoming ozone and precursors would be sufficient to continue to cause violations of the standard beyond the applicable attainment date. In the second situation, the area might be able to achieve additional local reductions sufficient to demonstrate attainment. In this second case, the question arises as to whether it is equitable to require those reductions or to allow more time for the reductions in the ''upwind'' area to take place.[36]

EPA solicits comment on how to address this issue. EPA believes that a subpart 1 area could be granted a later attainment date if warranted considering transport. For areas classified under subpart 2, the statute provides no express relief for these situations. The area does have the option of requesting to be classified to the next higher classification. Thus, where the demonstration of attainment is complicated by transport between two areas of different classifications, the State is still responsible for developing and submitting demonstrations which show that the standard will be attained by the applicable date. In other words, the State must provide for sufficient emissions reductions on a schedule that will ensure attainment in its area.

One approach would be for States to work together in a collaborative process to perform the necessary analyses to identify appropriate controls that provide for attainment throughout the multi-State area. EPA believes that the wording in sections 172(c)(1) and 182(b)(1)(A)(i) requires the State to develop a plan providing such emissions reductions. States working together in a collaborative process could perform a comprehensive assessment of the impacts of all control measures being implemented in both the local and upwind areas. The analysis may show the extent to which the downwind area is dependent on upwind strategies while fully meeting its own requirements associated with its classification. Upwind areas may provide a comprehensive assessment of the impacts of all control measures being implemented on the downwind areas.

4. Other Options Considered

We considered a number of other options and approaches for addressing transport. The other options that were considered but are not being proposed are described in a separate document available in the docket.[37]

G. How Will EPA Address Transport of Ground-level Ozone and its Precursors for Rural Nonattainment Areas, Multi-State Nonattainment Areas, Areas Affected by Intrastate Transport, and International Transport?

1. Rural Transport Nonattainment Areas

Section 182(h) recognizes that the ozone problem in a rural transport area is almost entirely attributable to emissions from upwind areas. Therefore, the only requirements for the rural area are the minimal requirements specified for areas expected to attain within 3 years of designation, the assumption being that the controls in

[36] The CAA's requirement for RACM in section 172(c)(1) does require the SIP to include RACM; EPA has noted in policy elsewhere that a measure is RACM if it is technologically and economically feasible and if it would advance the attainment date. Thus, if there are measures available in the nonattainment area that would advance the attainment date—even if attainment is likely at a later date due to upwind emissions reductions that occur later—then the CAA requires such measures to be in the SIP.

[37] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

the upwind area will solve the remaining nonattainment problem in the rural transport area as well. In these cases, the timing for attainment will depend on the schedule for adoption and implementation of control measures in the upwind areas.

2. Multi-State Nonattainment Areas

Section 182(j)(2) for multi-State nonattainment areas (*i.e.,* portions of the nonattainment area lie in two or more States) recognizes that one State may not be able to demonstrate attainment for the portion of the nonattainment area within its borders if other States containing the remaining portions of the nonattainment area do not adopt and submit the necessary attainment plan for their portions of the nonattainment area. In such cases, even though the area as a whole would not be able to demonstrate attainment, the sanction provisions of section 179 shall not apply in the portion of the nonattainment area located in a State that submitted an attainment plan.

Section 182(j) defines a multi-State ozone nonattainment area as an ozone nonattainment area, portions of which lie in two or more States. Section 182(j)(1)(A) and (B) set certain requirements for such areas. First, each State in which a multi-State ozone nonattainment area lies, must take all reasonable steps to coordinate the implementation of the required revisions to SIPs for the given nonattainment area [section 182(j)(1)(A)]. Next, section 182(j)(1)(B) requires the States to use photochemical grid modeling or any other equally effective analytical method approved by EPA for demonstrating attainment. EPA is prevented by section 182(j) from approving any SIP revision submitted under that section if a State has failed to meet the above requirements.

Pursuant to section 182(j)(1)(A), States that include portions of a multi-State ozone nonattainment area are required to develop a joint work plan as evidence of early cooperation and integration. The work plan should include a schedule for developing the emissions inventories, and the attainment demonstration for the entire multi-State area. Each State within a multi-State ozone nonattainment area is responsible for meeting all the requirements relevant to the given area. Care should be taken to coordinate strategies and assumptions in a modeled area with those in other, nearby modeled areas in order to ensure that consistent, plausible strategies are developed.

3. Intrastate Transport

Several State air agency representatives have voiced a concern about intrastate transport of ozone and precursor emissions and have asked EPA to address this concern. One State, for instance, notes that it has upwind areas that are affecting downwind areas and in some cases may be preventing a downwind area from attaining the standard by its statutory date.

We believe that the CAA requires individual States, as an initial matter, to deal with intrastate transport. We realize that some States are structured with semi-autonomous local air agencies that are empowered to address major elements of the SIP process, including preparation of the attainment demonstration. In those situations, the CAA provides that the State retain sufficient backstop authority to ensure all areas within its borders reach attainment, (110(a)(2)(E)). A State could, of course, recommend designation of nonattainment areas that are large enough to encompass upwind and downwind areas of the State and require that the individual jurisdictions work together on an attainment plan that accounts for transport and results in attainment by the attainment date for the entire nonattainment area. Or a State could require the individual agencies to work together in the same manner as multi-State organizations. In this case, there would be separate nonattainment areas with independent agencies expected to work together to address transport among the nonattainment areas. To facilitate this process, the State could require the agencies to sign a memorandum of agreement which describes the technical and administrative approach for performing the modeling analysis and identifying the appropriate controls measures. Upon a State's request, we would be willing to provide support for these activities.

We also solicit comments on other ways of addressing intrastate transport within the context of the CAA provisions.

4. International Transport

a. *International transboundary transport.* International transboundary transport of ozone and ozone precursors can contribute to exceedances of the NAAQS. It is likely that the international transport of air pollutants will affect the ability of some areas to attain and maintain the 8-hour ozone NAAQS. As States and EPA implement control strategies and national emission reduction programs, the impact of high background levels emanating from outside the U.S. may play a larger role in future attainment demonstrations. We have developed an information document on ''International Transboundary Influences and Meeting the NAAQS,'' which is located in the Docket to this proposed rulemaking. This document provides information on efforts with Canada and Mexico to address transboundary air pollution as well as additional information for intercontinental modeling work currently underway within EPA.

b. *Section 179B and the SIP approval process.* Section 179B of the CAA (International Border Areas), applies to nonattainment areas that are affected by emissions emanating from outside the United States. This section requires EPA to approve a SIP for a nonattainment area if: It meets all of the requirements applicable under the CAA, other than a requirement that the area demonstrate attainment and maintenance of the ozone NAAQS by the applicable attainment date; and the affected State establishes to EPA's satisfaction that the SIP would be adequate to attain and maintain the ozone NAAQS by the applicable attainment date but for emissions emanating from outside the United States. Further, any State that establishes to the satisfaction of EPA that the State would have attained the 8-hour ozone NAAQS, but for emissions emanating from outside the U.S., would not be subject to the attainment date extension provided in section 181(a)(5), the fee provisions of section 185, and the bump-up provisions for failure to attain for 8-hour ozone NAAQS specified in section 181(b)(2).[38]

In demonstrating that an area could attain the 8-hour ozone NAAQS but for emissions emanating from outside the U.S., approved EPA modeling techniques should be used to the best extent practicable. An emission inventory incorporating vehicle emissions released in the U.S. by foreign vehicles, *i.e.,* those vehicles registered in the adjacent foreign country, must be completed by the States before modeling the U.S. side only and attempting to demonstrate attainment.[39] We recognize that adequate data may not be available for mobile and stationary sources outside the United States. Therefore, modeling, per EPA's ''modeling

[38] The statute contains a typographical error referring to section 181(a)(2) instead of 181(b)(2).

[39] As noted elsewhere in this notice, the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) has established basic emission inventory requirements for all areas of the country and generally requires periodic inventories of emissions that actually occur in the year of the inventory in the U.S. area of interest. This would include emissions from foreign-registered vehicles.

guidance'' described elsewhere in the section on attainment demonstrations, may not be possible in all cases. Because very few areas are likely to be affected by this provision, EPA will determine on a case-by-case basis whether the State has satisfactorily made the required demonstration. The State is encouraged to consult with EPA Regional Office in developing any alternate demonstration methods. Methods that the State may want to consider include: Using ozone episodes that do not involve international transport of emissions for modeling (see guidance document entitled ''Criteria for Assessing Role of Transported Ozone/Precursors in Ozone Nonattainment Areas''), running the model with boundary conditions that reflect general background concentrations on the U.S. side, analyzing monitoring data if a dense network has been established, and using receptor modeling. States should confer with the appropriate EPA Regional Office to establish appropriate technical requirements for these analyses.

5. Additional Ways of Addressing Transport

Additional approaches to address transport are discussed in the section on classifications.

6. State-Tribal Transport

States have an obligation to notify Tribes as well as other States in advance of any public hearing(s) on their State plans that will significantly impact such jurisdictions. Under 40 CFR 51.102(6)(i), States must notify the affected States of hearings on their SIPs; this requirement extends to Tribes under 301(d) of the CAA and the TAR. (40 CFR Part 49). Therefore, affected Tribes that have achieved ''treatment as States'' status must be informed of the contents of such plans and the extent of documentation to support the plans. For example, in the case where the State models projected emissions and air quality under the SIP, the Tribes should be made aware of these modeling analyses. Tribes may wish to determine if the Tribal area has been affected by upwind pollution and whether projected emissions from the Tribal area have been considered in the modeling analyses.

Generally, Tribal lands have few major sources, but in many cases, air quality in Indian country is affected by the transport—both long range and shorter distance transport—of pollutants. In many cases, Tribal nonattainment problems caused by upwind sources will not be solved by long-range transport policies, as the Tribes' geographic areas are small. Tribes are sovereign entities, and not political subdivisions of States. Strategies used for intrastate transport are not always available. Most of the strategies and policies used by States in dealing with short-range transport are not available to Tribes, *e.g.,* requiring local governments to work together and expanding the area to include the upwind sources. Unlike Tribes, States can generally require local governments to work together, or make the nonattainment area big enough to cover contributing and affected areas. We believe that it is also unfair to Tribes to require disproportionate local regulatory efforts to compensate for upwind emissions. In many cases, attainment could not be reached even if emissions from the Tribe were zero.

To address these concerns, we propose to take comment on the following: EPA will review SIPs for their effectiveness in preventing significant contributions to nonattainment in downwind Tribal areas with the same scrutiny it applies to reviewing SIPs with respect to impacts on downwind States. Where a Tribe has ''treatment in the same manner as States,'' EPA will support the Tribe in reviewing upwind area SIPs during the State public comment period.

H. How Will EPA Address Requirements for Modeling and Attainment Demonstration SIPs When Implementing the 8-Hour Ozone Standard?

An attainment demonstration SIP consists of (1) technical analyses to locate and identify sources of emissions that are causing violations of the 8-hour NAAQS within nonattainment areas (*i.e.*, analyses related to the emissions inventory required for the nonattainment area), (2) adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment, (3) commitments, in some cases, to perform a mid-course review, and (4) contingency measures required under section 172(c)(9) of the CAA that can be implemented without further action by the State or the Administrator to cover emissions shortfalls in RFP plans and failures to attain. We are soliciting public comment on the following guidance. Associated with the attainment demonstration also are the RFP/ROP plans and the SIP submission concerning RACM, for which we are proposing rules elsewhere in this proposal.

1. Multi-Pollutant Assessments (One-Atmosphere Modeling [40])

Many factors affecting formation and transport of secondary fine particles (*i.e.*, $PM_{2.5}$ components) are the same as those affecting formation and transport of ozone. For example, similarities exist in sources of precursors for ozone and secondary fine particles. Sources of NO_X may lead to formation of ozone as well as nitrates which contribute to the formation of secondary fine particles. Sources of VOC may contribute to ozone formation and may also be sources or precursors for organic particles. Presence of ozone itself may be an important factor affecting secondary particle formation. As ozone builds up, so do hydroxyl (OH) radicals as a result of equilibrium reactions between ozone, water and OH in the presence of sunlight. Hydroxyl radicals are instrumental in oxidizing gas phase SO_2 to sulfuric acid, which is eventually absorbed by liquid aerosol and converted to particulate sulfate in the presence of ammonia. Therefore, strategies to reduce ozone can also affect formation of secondary fine particles which contribute to visibility impairment.

Therefore, models and data analysis intended to address visibility impairment need to be capable of simulating transport and formation of both secondary fine particles and ozone. At a minimum, modeling should include previously implemented or planned measures to reduce ozone, secondary fine particles, and visibility impairment. An integrated assessment of the impact controls have on ozone, secondary fine particles, and regional haze provides safeguards to ensure ozone controls will not preclude optimal controls for secondary fine particles and visibility impairment.

The concept of modeling control impacts on all three programs is further strengthened by the alignment of the implementation process for ozone and secondary fine particles. As the dates for attainment demonstration SIPs begin to coincide, the practicality of using common data bases and analysis tools for all three programs becomes more viable and encourages use of shared resources.

States that undertake multi-pollutant assessments as part of their attainment demonstration would assess the impact of their ozone attainment strategies on

[40] Use of models that are capable of simulating transport and formation of multiple pollutants simultaneously. For example, for ozone and fine particles, it is critical that the model simulate photochemistry, which includes interactions among the pollutants and their precursors.

secondary fine particles and visibility or perform a consistent analysis for ozone, secondary fine particles, and visibility. To facilitate such an effort, we would encourage States to work closely with established regional haze Regional Planning Organizations (RPOs) and the jurisdictions responsible for developing $PM_{2.5}$ implementation plans. Though the CSA, if enacted as introduced, would provide substantial improvement in air quality for ozone, $PM_{2.5}$ and visibility, States are encouraged to follow EPA's lead and perform similar multi-pollutant assessments as part of their ozone attainment demonstrations, considering the programs that are in place at the time of the assessment. Multi-pollutant assessments are discussed elsewhere in this proposed rulemaking.

2. Areas With Early Attainment Dates

Under section 182(a), marginal areas, which have an attainment date of only 3 years after designation, are not required to perform a complex modeling analysis using photochemical grid modeling. Areas covered under either subpart 1 or 2 with ozone concentrations close to the level of the NAAQS (*e.g.*, within 0.005 ppm), will most likely come into attainment within 3 years after designation as nonattainment without any additional local planning as a result of national and/or regional emission control measures that are scheduled to occur. We have good reason to believe these areas will come into attainment. Regional scale modeling for national rules, such as the NO_X SIP Call and Tier II motor vehicle tailpipe standards, demonstrates major ozone benefits for the 3-year period of 2004–2006. This period would be relevant for demonstrating attainment within 3 years of designation, assuming designations occur in early 2004. Many similar areas classified as marginal for the 1-hour ozone NAAQS in 1990 came into attainment within the initial 3-year period. As an additional safeguard, if attainment demonstration modeling is performed using multi-State geographic areas, most of these areas with early attainment dates will be included in the modeling analyses conducted by areas with later attainment dates. This will provide an opportunity for review of the impact control programs will have on areas with early attainment dates.

Experience with the 1-hour ozone attainment demonstrations has shown that 3 years is not enough time to perform the detailed photochemical grid modeling needed to develop the demonstration and complete the regulatory process needed to adopt and implement control measures sufficiently before the attainment date. It would not be reasonable to require these areas to expend the amount of resources needed to perform a complex modeling analysis given how close these areas are to meeting the level of the NAAQS. Therefore, we propose that no additional modeled attainment demonstration would be required for areas with air quality observations close to the level of the standard as described above and where regional or national modeling exists and is appropriate for use in the area demonstrates that an area will attain the 8-hour standard within 3 years after designation. This proposal would apply for areas covered under either subpart 1 or subpart 2.

Areas with early attainment dates with air quality observations that are not close to the level of the NAAQS (as described above) and regional scale modeling for national rules that demonstrates they will not be in attainment within 3 years of designation should consider requesting reclassification to the next higher classification. This reclassification would provide additional time for developing an attainment demonstration SIP and adopting and implementing the control measures needed.

3. Areas With Later Attainment Dates

Areas with later attainment dates (more than 3 years after designation), regardless of whether they are covered under subpart 1 or subpart 2, would be required to do an attainment demonstration SIP. Local, regional and national modeling developed to support Federal or local controls may be used provided the modeling is consistent with EPA's modeling guidance, described below. Several States have invested considerable time and resources in regional 8-hour ozone modeling projects following this guidance. Since exceedances of the 8-hour ozone NAAQS are more pervasive than 1-hour ozone exceedances, we encourage multi-State applications of the modeling guidance. States should work together and leverage off work under development and resources spent on these projects. This will be most beneficial in developing attainment demonstrations to achieve attainment.

4. Modeling Guidance

Section 182 (b)(1)(A) requires ozone nonattainment areas to develop an attainment demonstration which provides for reductions in VOC and NO_X emissions ''as necessary to attain the national primary ambient air quality standard for ozone.'' Section 172(c), requires areas covered under subpart 1 to demonstrate attainment. As noted above, if a subpart 1 area has an attainment date beyond 3 years of designation, we would require the State to develop an attainment demonstration.

Section 182(c)(2)(A) provides that for serious and higher-classified areas the ''attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' A photochemical grid model should meet several general criteria for it to be a candidate for consideration in an attainment demonstration. Note that, unlike in previous guidance (U.S. EPA, 1991), we are not recommending a specific model for use in the attainment demonstration for the 8-hour NAAQS for ozone. At present, there is no single model which has been extensively tested and shown to be clearly superior or easier to use than other available models. General criteria for attainment demonstrations are contained in 40 CFR part 51, appendix W (*i.e.*, ''*EPA's Guideline on Air Quality Models*'', 68 FR 18440, April 15, 2003). Appendix W refers to EPA's May 1999 draft ''Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS'' for a set of general requirements that an air quality model should meet to qualify for use in an attainment demonstration for the 8-hour ozone NAAQS.[41] Thus, States may choose from several alternatives. These include having received a scientific peer review, being applicable to the specific application on a theoretical basis, and having an adequate database to support its application. It is also important that past applications indicate model estimates are not likely to be biased low and that the model is applied consistently with a protocol on methods and procedures. We plan to finalize this guidance at the same time the final implementation rule is published. Comments on this document are solicited as part of this proposal.

The guidance describes how to apply air quality models. The output from such a model is used to support an attainment demonstration. The recommended procedure for applying a model includes developing a conceptual description of the problem to be addressed; developing a modeling/analysis protocol; selecting an appropriate model to support the demonstration; selecting appropriate

[41] U.S. EPA, (May 1999), Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS, EPA–454/R–99–004, *http://www.epa.gov/ttn/scram,* (Modeling Guidance, File name: DRAFT8HR).

meteorological episodes or time periods to model; choosing an appropriate area to model with appropriate horizontal/vertical resolution; generating meteorological and air quality inputs to the air quality model; generating emissions inputs to the air quality model; evaluating performance of the air quality model; and performing diagnostic tests. After these steps are completed, the model is used to simulate effects of candidate control strategies.

The guidance recommends procedures for estimating if a control strategy to reduce emissions of ozone precursors will lead to attainment of the 8-hour NAAQS for ozone. It explains what is meant by a modeled attainment demonstration, a modeled attainment test, a screening test, and a weight of evidence determination. It also identifies additional data which, if available, should enhance the credibility of model results and results of other analyses used in a weight of evidence determination. States should work closely with the appropriate U.S. EPA Regional Office(s) in executing each step.

We are planning to make substantial changes to the draft version of this document. Changes include: (1) The future year of emission estimates to model, (2) the recommended length of time period to model (*i.e.*, up to full ozone season), and (3) the use of spatial fields of ambient concentrations as part of the ''modeled attainment test.'' We welcome public comments on the guidance at any time and will consider those comments in any future revision of the document. Comments submitted on the modeling guidance document should be identified as such and will not be docketed as part of this rulemaking, nor will a comment/response summary of these comments be a part of the final 8-hour ozone implementation rule since they will not affect the rule itself. The final version of the guidance is scheduled for release by December 2003 and will be posted on EPA's Web site (*http://www.epa.gov/ttn/scram/*).

5. Mid-Course Review (MCR)

A MCR provides an opportunity to assess whether a nonattainment area is or is not making sufficient progress toward attainment of the 8-hour ozone standard, as predicted in its attainment demonstration. The review utilizes the most recent monitoring and other data to assess whether the control measures relied on in a SIP's attainment demonstration have resulted in adequate improvement in air quality. We believe that a commitment to perform a MCR is a critical element in an attainment demonstration that employs a long-term projection period and relies on weight of evidence. Because of the uncertainty in long-term projections, we believe such attainment demonstrations need to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed.

A number of States have participated in a consultative process with EPA, which resulted in the development of the 1-hour MCR guidance.[42] We are updating the 1-hour MCR policy and technical guidance to include 8-hour metrics and are soliciting comment on appropriate revisions; final MCR guidance incorporating 8-hour metrics will be available at the time we issue our final implementation rule. States should consult with EPA prior to using a methodology other than the one developed through the public consultative process.

The procedure for performing a MCR contains three basic steps: (1) Perform an administrative test (*e.g.,* demonstrate whether the appropriate emission limits were adopted and implemented); (2) analyze available air quality, meteorology, emissions and modeling data and document findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination (which may or may not include new modeling analyses).

EPA does not request that States commit in advance to adopt new control measures as a result of the MCR process. Based on the MCR, if EPA determines sufficient progress has not been made, EPA would determine whether additional emissions reductions are necessary from the State or States in which the nonattainment area is located or upwind States, or both. EPA would then require the appropriate State or States to adopt and submit the new measures within a specified period. We anticipate that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. Thus, States should complete the MCR 3 or more years before the applicable attainment date to ensure that any additional controls that may be needed can be adopted in sufficient time to reduce emissions by the start of the ozone season in the attainment year.

I. What Requirements for RFP Should Apply Under the 8-Hour Ozone Standard?

1. Background

Section 172(c)(2), which is located in subpart 1 of part D of title I, requires State plans for nonattainment areas to require RFP. Section 171(1) of the CAA defines RFP to mean ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

Subpart 2 of part D of title I provides more specific RFP requirements for ozone areas classified under section 181. (In general, we have used the term ''RFP'' as the more generic progress requirement, whereas it has used the term ''rate of progress'' or ''ROP'' to denote the specific subpart 2 progress requirements that are defined as specific percent reductions from a baseline emissions inventory.) In particular, it specifies the base year emission inventory upon which ROP is to be planned for and implemented, the increments of emissions reductions required over specified time periods, and the process for determining whether the ROP milestones were achieved.

Subpart 2 does not specify ROP requirements for marginal areas. Section 182(b)(1)(A) mandates a 15 percent VOC emission reduction, accounting for growth, between 1990 and 1996 for moderate and above ozone nonattainment areas. Furthermore, section 182(c)(2)(B) of the CAA requires each serious and above ozone nonattainment area to submit a SIP revision providing for an actual VOC emission reduction of at least 3 percent per year averaged over each consecutive 3-year period beginning in 1996 until the area's attainment date (the post-1996 ROP plan). Section 182(c)(2)(C) of the CAA allows for substitution of NO_X for VOC emissions reductions in the post-1996 ROP plan. EPA's policy, the NO_X Substitution Guidance (December 15, 1993; available at *http://www.epa.gov/ttn/oarpg/t1pgm.html),* addresses the substitution of NO_X emissions reductions for VOC emissions reductions. The baseline emission inventory for determining the required ROP reductions is specified as 1990.

The requirements for RFP under subparts 1 and 2, as described above, are

[42] Memorandum of March 28, 2002, from Lydia N. Wegman and J. David Mobley, re: ''Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration.'' Located at URL: *http://www.epa.gov/scram001/guidance/guide/policymem33d.pdf.*

the minimum required for an area. More reductions may be necessary for attainment within the nonattainment area or where the area contributes to a downwind area's nonattainment problem. Moreover, an upwind area that contributes to nonattainment in a downwind area may need more reductions in a shorter time in order for the downwind area to reach attainment by its required attainment date.

2. Proposed Features in General

In developing an approach for addressing the RFP requirements for the 8-hour ozone standard, we propose the following:

—The same baseline year would be used both to address growth (in emissions, vehicle miles traveled (VMT) or otherwise) and to calculate the RFP target level.

—Emissions reductions from outside the nonattainment area up to 100 km for VOC and 200 km for NO_X (and statewide if under a regional strategy) would be allowed consistent with EPA's existing December 1997 interim implementation policy for 1-hour ozone NAAQS.[43]

—For areas classified under subpart 2, the ROP requirements specified in subpart 2 would apply, namely a 15 percent VOC emission reduction, accounting for growth, in the first 6 years after the baseline year for moderate and above ozone nonattainment areas. In addition, for areas classified as serious and above, the ROP provisions in subpart 2 require a VOC or NO_X emission reduction of at least three percent per year averaged over each consecutive 3-year period beginning 6 years after the baseline year (specified as under the 1990 CAAA). Areas classified under subpart 2 as marginal, which are required to attain 3 years following classification, are subject only to such RFP as necessary to attain. We believe the periods for RFP under subpart 2 for the 8-hour ozone NAAQS should run from the date of the baseline year under subpart 2, and would be equivalent to the periods under the 1-hour ozone NAAQS. Thus, the first 15 percent reduction would be required for the 6-year period starting from the last day (December 31) of the baseline year and the first 3-year period for the subsequent three percent per year emission reduction requirement in serious areas would begin 6 years after the last day (December 31) of the baseline year. The baseline issue is discussed in section 4 below.

3. For Subpart 2 Areas, Should the Initial 15 Percent RFP Requirement Be Limited to VOC Emissions?

Currently, for many areas of the country, particularly in the Eastern U.S. outside major metropolitan areas, there is a greater need for NO_X reductions rather than VOC reductions. However, under the prescribed requirements of the CAA, NO_X substitution is only allowed for the post-1996 ROP requirement (three percent per year averaged over 3 years), not for the initial 15 percent ROP requirement. We are proposing 2 options to address this issue.

a. *Option 1.* Continue to require 15 percent VOC reductions within 6 years after the baseline year for all areas designated moderate and above for the 8-hour ozone NAAQS. After 6 years, all serious and above areas would be required to achieve a nine percent reduction in VOC and/or NO_X emissions every 3 years, *i.e.,* an average of three percent per year.

b. *Option 2.* For those areas that have approved 15 percent plans for their 1-hour ozone SIPs, an additional 15 percent VOC reduction is not necessary. Areas that are classified as moderate under the 8-hour standard that have already implemented their 15 percent plans under their 1-hour ozone SIPs would be considered to have met the statutory 15 percent requirement and would be covered under the more generic RFP requirements of subpart 1. Subpart 1 RFP requirements are discussed below. Areas that are classified as serious and above under the 8-hour standard that have already implemented their 15 percent plans under the 1-hour ozone standard would have to include in their SIPs an additional RFP plan that would achieve an average of three percent per year of VOC and/or NO_X over each 3-year period until their attainment year. We recognize that it would be difficult to submit a plan that provides for the first nine percent emission reduction within 3 years after nonattainment designation. Therefore, consistent with what Congress did under section 182(b)(1), we propose to allow the first ROP increment to be averaged over 6 years. We propose that an area classified serious or above submit its ROP plan within 2 years after designation that provides for 18 percent emissions reductions (VOC and/or NO_X) over the first 6 years from the baseline year and then submit within 3 years after designation a ROP plan that provides nine percent emissions reductions (VOC and/or NO_X) over each of the next 3-year periods until the area's attainment date.

This option recognizes previous efforts by areas that submitted 15 percent plans as required under the 1-hour ozone NAAQS and provides flexibility to States to use a mix of NO_X and VOC reductions to meet the additional ROP/RFP requirements. We believe that the statute can be interpreted to require the mandatory 15 percent VOC reduction only once for a given area. Once 15 percent VOC reduction requirements have been met, an area would actually have to achieve greater emissions reductions, *i.e.,* an average of three percent per year, but could choose either VOC or NO_X reductions as appropriate. We prefer this second option because it provides more flexibility for the ROP plan to be consistent with the area's needs in attaining the standard.

c. *Other options that EPA considered.* We considered other options for addressing this issue that are not being proposed here; discussion of them appears in a separate document, available in the docket.[44] However, we solicit comments on other options and what possible rationales—legal and scientific—might be used to justify those options.

4. What Baseline Year Should Be Required for the Emission Inventory for the RFP Requirement?

The baseline inventory for RFP (under subpart 2) is used as the starting point for the determination of a target level of emissions for the future year RFP and as the baseline from which creditable reductions are determined. We currently anticipate designating nonattainment areas in 2004. Under the ''Consolidated Emissions Reporting Rule'' (67 FR 39602, June 10, 2002) revised emissions inventories are required for the years 2002 and 2005; therefore, we propose to require use of the 2002 inventory as the baseline inventory for the RFP requirement. This would be the most recently available inventory at the time of designation. We recently issued a memorandum identifying 2002 as the anticipated emission inventory base year for the SIP planning process to

[43] Memorandum of December 29, 1997 from Richard D. Wilson to Regional Administrators, Regions I–X re: ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Located at URL: *http://www.epa.gov/ttn/oarpg/t1/memoranda/iig.pdf.* The distances used resulted from FACA discussions cited earlier and generally represent transport of 1 to 2 days.

[44] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

address the 8-hour ozone and the $PM_{2.5}$ standards.[45]

We considered other options for addressing this issue that are not being proposed here; discussion of them appears in a separate document, available in the docket.[46]

5. Should Moderate Areas Be Subject to Prescribed Additional RFP Requirements Prior to Their Attainment Date?

For areas initially classified moderate and higher under the 1-hour ozone standard, the baseline inventory was defined as 1990 in the CAA Amendments of 1990. Therefore, the 6-year period for the initial 15 percent ROP requirement ended in the same year as the attainment date for moderate areas, viz., 1996. For areas classified moderate and higher under the 8-hour ozone standard, however, we are proposing that the 15 percent ROP target level of emissions would be calculated for the 6-year period after the 2002 baseline year, *i.e.,* 2003–2008. Moderate areas would be required to meet an attainment date no later than 6 years after the area is designated nonattainment for the 8-hour standard. If the effective date of designation of nonattainment areas is, for instance, May 15, 2004, the attainment date would be May 15, 2010. This leaves approximately a 1½ year gap between the end of the 6-year period for the 15 percent ROP requirement (*i.e.,* December 31, 2008) and the attainment date. If we were to also require moderate areas to obtain an additional three percent per year reduction beyond 2008 for the 1½ additional years until 2010, the ROP requirement would be more than what we believe Congress intended for moderate areas under subpart 2. Additional three percent per year reductions were only required for serious and higher classified 1-hour ozone nonattainment areas. We are proposing that the only specific ROP requirement applicable for moderate areas is the 15 percent VOC requirement between the end of 2002 and the end of 2008. However, section 172(c)(2) also applies, requiring areas to meet RFP generally. Therefore, a moderate area would also have to provide any additional emissions reductions—VOC and/or NO_X—needed to provide for attainment by the area's attainment date. In proposing this approach, we are interpreting the subpart 1 RFP requirement to mean that the area must achieve whatever further reduction is needed for attainment in the remaining period prior to the attainment date (2009 and 2010).

We are proposing that serious and higher classified areas would need to provide in their SIPs an additional average of three percent per year emissions reductions over each subsequent 3-year period beyond the initial 6-year period through the attainment year, consistent with what Congress specified in section 182(c)(2)(B) of the CAA.

6. What Is the Timing of the Submission of the ROP Plan?

Section 182(b)(1) requires that moderate and higher classified areas submit their 15 percent ROP plans within 3 years after 1990. For the attainment dates under the 8-hour ozone standard, we propose interpreting the CAA's language referring to the date of enactment of the 1990 CAA Amendments to mean the date of designations for the 8-hour standard. If we were to require the ROP plans to be submitted within 3 years after their nonattainment designation date (*i.e.,* in 2007 if we designate in 2004), the plans would have to be implemented within 1 year after submission to ensure the 15 percent emissions reductions are achieved by the end of the relevant 6-year period (*i.e.,* December 2008). We believe this would likely not be sufficient time to ensure that the reductions would occur by the required deadline. Therefore, we propose that the ROP SIP be submitted within 2 years after nonattainment designation—by 2006. This would provide 2 years for the State to develop and submit its ROP plan, and another 2 years for the control measures to be implemented.

7. How Should CAA Restrictions on Creditable Measures Be Interpreted? Which National Measures Should Count as Generating Emissions Reductions Credit Toward RFP Requirements?

Section 182(b)(1) contains provisions that limit creditability toward meeting RFP for certain limited emission reduction measures required prior to the enactment of the CAA Amendments of 1990. We believe these specific restrictions should continue to apply for purposes of the 8-hour NAAQS as written in the CAA. We believe that Congress intended to prevent areas from taking credit for RFP only for those specific measures that were already adopted and in place (or required to be in place) prior to the date of enactment of the CAA Amendments of 1990 (November 15, 1990). We believe that this same logic holds true for the RFP requirement as it applies to the 8-hour ozone standard, namely preventing credit toward the mandatory RFP percent reductions for continuing reductions from those specific measures cited in the CAA that were already adopted and in place prior to the date of enactment of the CAA Amendments of 1990. There is no indication in the CAA that this exclusion should be changed. Congress mandated many emissions reductions in the 1990 CAA Amendments with no indication that they should not be credited to meeting RFP or attainment of any existing or revised NAAQS. Therefore, we are proposing that all emissions reductions that occur after the baseline emission inventory year from all Federal and any other measures (not otherwise identified in section 182(b)(1)(D)) would be creditable to the RFP requirement. For example, emissions reductions that occur after the 2002 baseline emission inventory year that result from the Tier 2 and sulfur in gasoline rules that were issued by EPA after the CAA Amendments of 1990 are creditable toward the RFP requirement for the 8-hour ozone standard. Another example of emissions reductions that would be creditable toward the RFP requirement for the 8-hour ozone standard would be VOC emissions reductions from certain MACT standards that will not produce emissions reductions until after the 2002 baseline; these would include several recently promulgated MACT standards (such as those covering several surface coating operations) and also MACT standards that are expected to be promulgated in the summer of 2003. Reductions that occur prior to the baseline year would be incorporated into the baseline and could not be credited.

8. For Areas Covered by Subpart 1 Instead of Subpart 2, How Should the RFP Requirement Be Structured?

As described above, the RFP requirement under subpart 1 is more general than that under subpart 2, and EPA thus has more flexibility in determining what RFP means under subpart 1. For instance, the State may rely on emissions reductions of VOC or NO_X or a combination of both to meet its RFP requirement. However, we are also mindful of the need for ensuring equity between areas with similar 8-hour ozone problems covered under

[45] Memorandum on November 18, 2002, from Lydia Wegman and Peter Tsirigotis, ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs.'' This document is available at the following Web site: *http://www.epa.gov/ttn/oarpg/meta.442.1.2002baseinv.pdf.*

[46] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

subpart 1 and those covered under subpart 2. We are proposing rules for three kinds of areas: (a) Areas with attainment dates 3 years or less after designation; (b) Areas with attainment dates between 3 and 6 years after designation; and (c) Areas with attainment dates beyond 6 years after designation. Note that the CAA requires that attainment dates for areas subject only to subpart 1 be no longer than 10 years after designation.

a. *Areas with attainment dates 3 years or less after designation.* We propose a RFP requirement for these areas similar to that for areas under subpart 2 that are classified as marginal. Such an area would not be subject to a separate RFP requirement, but would have to attain the standard by its attainment date.

b. *Areas with attainment dates between 3 to 6 years after designation.* These areas would have attainment dates similar to subpart 2 areas classified as moderate. We propose two options for these areas:

(i) *Option 1.* This option would require the RFP plan to be submitted with the attainment demonstration within 3 years after designation of the nonattainment area. The SIP would have to show that all emissions reductions needed for attainment would be implemented by the attainment date. This situation would occur, for example, for an area with a base year inventory of 2002, designation in 2004, a required attainment SIP submission date of 2007 and an attainment date of 2010. Where areas have only 3 years after SIP submission before attainment, this option recognizes that there may be only a short amount of time available to achieve any specified emissions reductions beyond that needed to demonstrate attainment and therefore would not require a showing that a specified amount of emissions reductions occur between the time of SIP submission and the attainment date.

(ii) *Option 2.* This option would require these areas to be treated in a manner similar to subpart 2 areas classified as moderate. The RFP SIP would have to provide for a 15 percent emission reduction from the baseline year within 6 years after the baseline year. The RFP SIP would have to be submitted within 2 years after designation. However, since the area is subject only to subpart 1, NO_X emissions reductions could be substituted for some or all of the 15 percent reduction requirement, consistent with EPA's NO_X substitution policy.[47] Also, we are soliciting comment on whether a percentage other than 15 percent should be required as the minimum. Additional measures that would provide the remaining portion of the emissions reductions needed for attainment would have to be submitted with the area's attainment demonstration within 3 years after designation.

c. *Areas with attainment dates beyond 6 years after designation.* These areas are similar in attainment dates to areas classified under subpart 2 as serious or higher. We are proposing that the RFP plan show increments of progress from the baseline emission inventory year until the attainment date. The RFP SIP would first have to provide for a 15 percent emission reduction from the baseline year within 6 years after the baseline year. The 15 percent RFP SIP would have to be submitted within 2 years after designation. However, since the area is subject only to subpart 1, NO_X emissions reductions could be substituted for some or all of the 15 percent reduction requirement, consistent with EPA's NO_X substitution policy. Also, we are soliciting comment on whether a percentage other than 15 percent would be more appropriate. Then, for each subsequent 3-year period out to the attainment date, another RFP SIP would have to provide for an additional increment of progress no less than the amount of emissions reductions that would be proportional to the time between the end of the first increment (in 2008) to the attainment date. This second RFP SIP would have to be submitted at the same time as the attainment demonstration, namely within 3 years after designation.

9. How Should the RFP Requirements Be Implemented for Areas Designated for the 8-Hour Ozone Standard That Entirely or in Part Encompass an Area That Was Designated Nonattainment for the 1-Hour Ozone Standard?

We are proposing the following approach to address this issue. Develop a new baseline and new ROP/RFP emission reduction targets for the entire 8-hour standard nonattainment area (the old 1-hour standard nonattainment area and the newly added portion of the 8-hour standard nonattainment area). Emissions reductions from measures in the 1-hour ozone SIP that are achieved after the 8-hour ozone NAAQS baseline year could count (subject to creditability restrictions as discussed above in this proposed rulemaking) toward meeting the RFP requirement for the entire 8-hour area.

This approach would set a ROP target for the entire 8-hour ozone nonattainment area. The State would have to ensure that the target is at least as stringent as the 1-hour ROP/RFP target, thus ensuring no backsliding on the 1-hour NAAQS requirements. Under this approach, the new ROP/RFP target for the 8-hour standard would replace the previous 1-hour ozone target (while ensuring that, at a minimum, the emissions reductions required to meet the old target are met). For example, the 1-hour ozone NAAQS nonattainment area may comprise four counties and have a target level for one future RFP increment of 350 tons/day of VOC and 300 tons/day of NO_X. The 8-hour ozone nonattainment area may comprise the initial 1-hour ozone standard nonattainment area and two more counties. The target for the same increment period for the entire six county nonattainment area may now be, for instance, 400 tons/day of VOC and 350 tons/day of NO_X (assuming that these emission reductions were consistent with the attainment demonstration).

We considered another option for this issue. This option, which is not being proposed, is discussed in a separate document available in the docket.[48]

10. Will EPA's ''Clean Data Policy'' Continue to Apply Under the 8-Hour Standard for RFP?

We issued a clean data waiver policy on May 10, 1995, which allows EPA to determine that an area has attained the standard and that certain requirements (*e.g.*, RFP) will not apply so long as the area remains in attainment.[49] We propose that this policy would remain effective under the 8-hour ozone NAAQS.

11. How Will RFP Be Addressed in Tribal Areas?

As mentioned elsewhere in this proposed rulemaking, the TAR provides the Tribes with the ability to develop TIPs to address the NAAQS. However, it also provides the Tribes with

[47] NO_X Substitution Guidance. December 15, 1993; avaialble at *http://www.epagov/ttn/oarpg/t1pgm.html.*

[48] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

[49] Memorandum of May 10, 1995, ''RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf.*

flexibility to develop these plans in a modular way, as long as the elements of their TIPs are ''severable.'' For example, each TIP submission must include a demonstration that the Tribe has authority to develop and run its program, the ability to enforce its rules, and the capacity and resources to implement the program it adopts. However, the modular approach provided for Tribes in the TAR allows the TIP to address a particular problem on the reservation. Therefore, it may include one or two source-specfic requirements but may not include provisions for RFP and other SIP requirements. We will review and approve these TIPs as a step in addressing an overall air quality plan to achieve health and environmental goals. In addition, a Tribe may later add other elements to the plan, or EPA may be obligated to step in to fill air quality gaps. In approving the TIPs, we will ensure that they will not interfere with the overall air quality plan for an area when Tribal lands are part of a multi-jurisdictional area.

Because many of the nonattainment areas will include jurisdictions, including both Tribes and States, it is important for Tribes and States to work together wherever possible to coordinate their planning efforts.

12. How Will RFP Targets Be Calculated?

We propose a methodology for the calculation of ROP target levels of emissions that is based on the method developed for the CAA Amendments of 1990, while taking into account our interpretation of CAA restrictions on creditable emissions and our proposal to use the 2002 inventory as the baseline inventory for the ROP requirement. The CAA Amendments of 1990 specify four types of measures that were not creditable toward the 15 percent RFP requirement. These were:

(1) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990;

(2) Regulations concerning Reid Vapor Pressure that would go into effect in 1992;

(3) State regulations submitted to correct deficiencies in existing VOC RACT regulations or previously required RACT rules;

(4) State regulations submitted to correct deficiencies in I/M programs.

These four types of measures were all expected to result in a decrease in emissions between 1990 and 1996. Of these four types of measures, RACT and I/M program corrections and the 1992 Reid vapor pressure (RVP) requirements were completely in place by 1996 and therefore are already accounted for in the 2002 baseline. As a result, they would produce no additional reductions between 2002 and 2008 or later milestone years.

However, the pre-1990 Federal Motor Vehicle Control Program (FMVCP) will continue to provide benefits during the first two decades of the 21st century as remaining vehicles meeting pre-1990 standards leave the vehicle fleet. Because these benefits are not creditable for ROP purposes, in order to calculate the target level of emissions for ROP milestone years (*i.e.,* 2008, 2011, etc.), States must first calculate the reductions that would occur over these years as a result of the pre-1990 FMVCP. We propose the following methods to properly account for the non-creditable reductions when calculating ROP targets for the 2008 and later ROP milestone years.

Method 1: For areas that must meet a 15 percent VOC reduction requirement by 2008:

(1) Estimate the actual anthropogenic base year VOC inventory in 2002 with all 2002 control programs in place.

(2) Using the same highway vehicle activity inputs used to calculate the actual 2002 inventory, run MOBILE6 for 2002 and for 2008 with all post-1990 CAA measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

(3) Calculate the difference between 2002 and 2008 VOC emission factors and multiply by 2002 VMT. The result is the VOC emissions reductions that will occur between 2002 and 2008 without the benefits of any post-1990 CAA measures. These are the non-creditable reductions that occur over this period.

(4) Subtract the non-creditable reductions calculated in step 3 from the actual anthropogenic 2002 inventory estimated in step 1.

(5) Reduce the VOC inventory calculated in step 4 by 15 percent. The result is the target level of VOC emissions in 2008 in order to meet the 2008 ROP requirement. The actual projected 2008 inventory with all control measures in place and including projected 2008 growth in activity must be at or lower than this target level of emissions.

Method 2: For areas that qualify under option 2 of section 3 above and must meet an 18 percent VOC emission reduction requirement by 2008 with NO_X substitution allowed, following EPA's NO_X Substitution Guidance:

(1) Estimate the actual anthropogenic base year inventory in 2002 with all 2002 control programs in place.

(2) Using the same highway vehicle activity inputs used to calculate the actual 2002 inventory, run MOBILE6 for 2002 and for 2008 with all post-1990 CAA measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

(3) Calculate the difference between 2002 and 2008 VOC emissions factors and multiply by 2002 VMT. The result is the emissions reductions that will occur between 2002 and 2008 without the benefits of any post-1990 CAA measures. These are the non-creditable reductions that occur over this period.

(4) Subtract the non-creditable reductions calculated in step 3 from the actual anthropogenic 2002 inventory estimated in step 1.

(5) Reduce the inventory calculated in step 4 by 18 percent. The result is the target level of emissions in 2008 in order to meet the 2008 ROP requirement. The actual projected 2008 inventory with all control measures in place and including projected 2008 growth in activity must be at or lower than this target level of emissions.

Method 3: For all areas that must meet an additional reduction VOC requirement of 9 percent every 3 years after 2008 with NO_X substitution allowed, following EPA's NO_X Substitution Guidance. Each subsequent target level of emissions should be calculated as emissions reductions from the previous target.

(1) Using the same highway vehicle activity inputs used to calculate the actual 2002 inventory, run MOBILE6 for 2008 (previously done in step 2 above) and 2011 with all post-1990 CAA measures turned off. This is accomplished using the NO CLEAN AIR ACT command as described in the MOBILE6 User's Guide. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the

local area as a result of fuel RVP regulations promulgated in June, 1990.

(2) Calculate the difference between 2008 and 2011 emission factors and multiply by 2002 VMT. The result is the emissions reductions that will occur between 2008 and 2011 without the benefits of any post-1990 CAA measures. These are the non-creditable reductions that occur over this period.

(3) Subtract the non-creditable reductions calculated in step 2 from the 2008 target level of emissions calculated previously.

(4) Reduce the inventory calculated in step 3 by 9 percent. The result is the target level of emissions in 2011 in order to meet the 2011 ROP requirement. The actual projected 2011 inventory with all control measures in place and including projected 2011 growth in activity must be at or lower than this target level of emissions.

J. Are Contingency Measures Required in the Event of Failure To Meet a Milestone or To Attain the 8-Hour Ozone NAAQS?

1. Background

Under the CAA, nonattainment areas must include in their SIPs contingency measures consistent with section 172(c)(9). However, section 182(a) expressly exempts areas classified as marginal from this obligation. States with ozone nonattainment areas classified as moderate and above must include contingency measures in their SIPs consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls to be implemented in the event the area fails to meet a RFP milestone or fails to attain by its attainment date. These contingency measures must be fully adopted rules or measures which are ready for implementation quickly upon failure to meet milestones or attainment. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. Additional background information concerning the CAA contingency measure provisions appears in the General Preamble of April 16, 1992 (57 FR 13510–13512 and 13520); and Section 9.2 of ''Guidance for Growth Factor, Projections, and Control Strategies for the 15 percent Rate-of-Progress Plans'' (EPA–452/R–93–002), March 1993.

The guidance indicates that States should adopt and submit contingency measures to provide a three percent emission reduction (beyond what is needed for attainment or the ROP requirement) for moderate and above ozone areas, which EPA concludes is generally acceptable to offset emission increases while States are correcting their SIPs.

Also, EPA guidance suggests that contingency measures that a State adopted for purposes of the 15 percent ROP requirement may be used as the contingency measures for any post-1996 3-year requirements for RFP, provided they have not been triggered and used as contingency measures for the 15 percent plan. See Section 5.6 of ''Guidance on the Post 1996 Rate-of-Progress Plan (ROP) and Attainment Demonstration'' (corrected version of February 18, 1994). Furthermore, Federal measures that result in additional emission reductions beyond those needed for attainment or ROP in an area could serve as contingency measures for a failure to attain or meet the ROP requirements. EPA has approved the use of Federal measures as part of contingency measures in several EPA actions approving 1-hour ozone SIPs (62 FR 15844, April 3, 1997), (62 FR 66279, December 18, 1997), and (66 FR 30811, June 8, 2001), (66 FR 586 and 66 FR 634, January 3, 2001).

2. Proposal

For the 8-hour ozone standard, we intend to continue to observe our existing policies regarding contingency measures for areas covered under subpart 2. Areas that are nonattainment for the 8-hour ozone standard that have unused adopted contingency measures for the 1-hour ozone NAAQS may use those measures as appropriate as contingency measures for the 8-hour ozone NAAQS. For areas covered under subpart 1, we will provide additional guidance on the contingency measure requirement, but it is likely that it will be patterned after the subpart 2 requirement.

K. What Requirements Should Apply for RACM and RACT for 8-Hour Ozone Nonattainment Areas?

1. Background

Subpart 1 of part D includes general requirements for all designated nonattainment areas, including a requirement that a nonattainment plan provide for the implementation of all RACM as expeditiously as practicable, including such reductions that may be obtained through RACT. Most areas designated nonattainment for the 1-hour ozone standard are also subject to the requirements of subpart 2 of part D, including its detailed control measure provisions. Under subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard. The RACT requirements also apply in attainment areas within the current ozone transport region (OTR) (or any additional OTR that EPA may establish under the CAA), regardless of the emissions reductions needed to attain. The RACT requirement applies to both ozone precursors—NO_X and VOC. Since 1990, we have issued guidance on the RACT requirements in subpart 2.[50] Prior to enactment of the CAA Amendments of 1990, EPA also issued detailed guidance on RACT for ozone nonattainment area SIPs.[51] This guidance continues to be relevant.

Elsewhere in this proposed rulemaking, we are proposing one option for classifying 8-hour ozone nonattainment areas in which some areas would be subject to the requirements of subpart 1. Unlike subpart 2, which contains detailed requirements regarding the adoption of RACT, subpart 1 contains only a general provision which requires that SIPs for nonattainment areas provide for RACM, including RACT. *See* CAA section 172(c)(1). Because RACT is a control technology requirement, it is somewhat independent of the need to demonstrate attainment or RFP. In the period prior to enactment of the 1990 CAA Amendments, only the general requirements for RACM and RACT existed, and EPA had issued CTGs to provide presumptive norms for RACT for VOC controls for States to follow in adopting RACT for ozone nonattainment areas. In 1990, Congress institutionalized this requirement for NO_X and VOC (as ozone precursors) in subpart 2, and emphasized the role of CTGs and EPA's pre-1990 guidance for ensuring that RACT rules themselves were adequately structured to ensure they would be effective and enforceable. For instance, ozone nonattainment areas classified as marginal or higher that had a previous obligation to submit corrections to their VOC RACT rules were required to complete and submit

[50] 40 CFR part 52, State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule. April 16, 1992. (57 FR 13498); 40 CFR part 52, State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990; Implementation of Title I; Proposed Rule. November 25, 1992. (57 FR 55620).

[51] ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987, **Federal Register**.'' Ozone/Carbon Monoxide Program Branch, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency. May 25, 1988; **Federal Register** of November 24, 1987, Appendix D (52 FR at 45105).

those corrections within 6 months after the date of classification. *See* CAA section 182(a)(2)(A). However, the 1990 CAA Amendments did not require marginal areas to adopt any RACT rules if they did not have a pre-1990 obligation to do so.[52]

Also, the amended CAA required EPA to issue CTGs for certain VOC sources by November 15, 1993. *See* CAA section 183(a) and (b). Similarly, the EPA was required to issue alternative control techniques (ACT) documents for additional categories of VOC and NO_X. *See* CAA section 183(c). The ACT documents are intended to help States in making RACT determinations.

2. Proposed Approach for RACT in General for Areas Covered Under Subpart 2

We are proposing that the RACT requirement for areas covered under subpart 2 apply as specified in subpart 2. Thus, areas classified as marginal that had a pre-1990 obligation for RACT would continue to have that obligation. Areas classified as moderate and above would be required to adopt RACT for the categories covered by the CTG's that EPA has issued and to adopt non-CTG RACT measures for major sources.[53]

3. Proposed Approach for RACT in General for Areas Covered Only Under Subpart 1

We are proposing two alternative options for addressing RACT for areas covered under subpart 1.

a. *Option 1: Treatment of RACT similar to subpart 2 areas.* Based on the provisions of the CAA described above and the apparent differences in treatment regarding RACT between marginal and other areas, we propose to interpret the CAA in a manner similar to that under subpart 2 by requiring areas covered under subpart 1 to face different RACT requirements based on the magnitude of the ozone problem. This proposal has the advantage of minimizing some of the apparent inequities that might exist under the classification option (discussed elsewhere in this proposed rulemaking) in which some areas are covered under subpart 1 and others under subpart 2.

(i) *Areas similar to marginal areas.* Those 8-hour nonattainment areas covered only under subpart 1 that have an ozone problem that is similar in degree to that of a marginal area would be subject to the same RACT requirement as areas classified as marginal under subpart 2. These areas would be defined as those whose 8-hour ozone design value at the time of designation/classification would have placed them in the marginal classification if they had been subject to subpart 2 (*i.e.,* areas that have an 8-hour design value of less than 0.092 ppm. (See elsewhere in this proposed rulemaking under the section concerning classification.) Similarly, if we adopt the incentive feature proposed in the classification section, and a subpart 1 area with a design value of 0.092 ppm or greater can demonstrate that it will attain within 3 years after designation, then it would be subject to the same RACT requirement as applies to marginal areas under subpart 2. As noted in the background of this section, the 1990 CAA Amendments did not require marginal areas (with the exception of those located in the OTR) to adopt any RACT rules if they did not have a pre-1990 obligation to do so. Marginal areas that had a pre-1990 obligation for RACT were required to make any corrections to those rules that we had previously identified.

(ii) *Areas similar to moderate and higher-classified areas.* Those 8-hour nonattainment areas covered under subpart 1 that have an ozone problem that is similar in degree to that of a moderate or higher-classified area would be subject to the same RACT requirements as those that apply in subpart 2 for moderate and above areas. These areas would be defined as those whose 8-hour ozone design value at the time of designation/classification would have placed them in the moderate or above classification if they had been subject to subpart 2. As proposed elsewhere in this proposed rulemaking, this would mean areas that have an 8-hour design value of 0.092 ppm or greater that are not able to demonstrate attainment within 3 years after designation.

b. *Option 2: Alternative treatment for RACT under subpart 1.* This option is similar to the approach we proposed in our November 17, 1998 draft implementation guidance.[54] At the time, we stated that we believed we had authority under subpart 1 to apply an interpretation for RACT for ozone nonattainment areas for the 8-hour NAAQS that was similar to the Agency's policy for pollutants other than ozone. Under that interpretation and this option, for the 8-hour ozone NAAQS, if the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available.

c. *Ozone transport regions.* In addition, all areas of the OTR are required to adopt NO_X and VOC RACT requirements, regardless of their attainment classification.[55] Of course, these areas were already required to submit RACT rules for purposes of the 1-hour standard.

4. Proposed Approach for Previous Source-Specific Major Source RACT Determinations

Section 182(b)(2)(C) requires SIPs in moderate and higher classified areas to provide for RACT for major stationary sources of VOC that are not covered by CTGs. Section 182(f)(1) provided that this requirement also apply to major sources of NO_X. Many areas subject to the major source RACT requirement under the 8-hour ozone standard would have previously addressed the RACT requirement with respect to the 1-hour ozone standard. This includes the non-CTG major source VOC RACT requirement and the NO_X major source RACT requirement. For example, major sources located in States of the OTC were subject to the NO_X RACT requirement in the mid-1990s. We believe that, in many cases, a new RACT determination under the 8-hour standard would call for installation of similar control technology as the initial RACT determination under the 1-hour standard because the fundamental control techniques are still applicable. In other cases, a new RACT analysis could determine that better technology has become available and some additional emissions reductions are achievable. The cost per ton of NO_X removed associated with installing a second round of RACT controls is likely to be high in many cases due to the relatively small amount of additional NO_X emission reductions expected. In these cases, the additional costs associated with the replacement of the existing RACT controls may be an unnecessary burden, given the small emissions benefit potential. In contrast, a RACT analysis for uncontrolled

[52] The exception to this rule is that States in the OTR are also required for all areas in the State to adopt RACT rules for all sources covered by a CTG and all other major sources of NO_x or VOC regardless of their nonattainment classification. *See* CAA section 184(b).

[53] Note that under the anti-backsliding provisions proposed above, any portion of an area classified marginal under the 8-hour standard that was classified moderate or higher under the 1-hour standard would also have a continuing RACT requirement from its classification as moderate or higher.

[54] Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and the Regional Haze Program. November 17, 1998. Found at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

[55] *See* CAA section 184(b).

sources would be much more likely to find that cost-effective controls are available.

Therefore, in portions of 8-hour ozone nonattainment areas where major sources or source categories were previously reviewed and controls subsequently applied to meet the RACT requirement under the 1-hour standard, we propose that States may choose to accept the initial RACT analysis as meeting the RACT requirements for the 8-hour program and need not submit a new RACT SIP. At the time the State submits its attainment demonstration, it should submit a certification that it previously met the RACT requirement as part of its SIP revision. We also propose that a RACT determination would be necessary for major sources in any portion of the 8-hour nonattainment area that was not subject to an initial RACT program under the 1-hour standard. Furthermore, in cases where the initial RACT analysis under the 1-hour standard for a specific source or source category concluded that no additional controls were necessary, we propose that a new RACT determination is required. The new RACT determination is needed to take into account that newer, cost-effective control measures may have become available for sources that were not previously regulated. Thus, the State needs to reassess whether controls should be required. In addition, any major VOC or NO_X source that exists at the time of final rulemaking on implementation of the 8-hour ozone standard but that did not exist during a previous RACT determination must be subject to a RACT determination as part of the SIP for the 8-hour ozone standard.

5. Proposed Approach for NO_X RACT Determinations in Areas Affected by the NO_X SIP Call

All States submitting SIP revisions to meet the NO_X SIP Call (October 27, 1998, 63 FR 57356) have elected to require large boilers and turbines to comply with an emissions cap-and-trade program consistent with EPA's model cap-and-trade rule. As a result, all these sources are already subject to stringent control requirements. As described below, these sources collectively achieve more emissions reductions than would be required by application of RACT requirements to each source. Therefore, where a nonattainment area is located in a State with an EPA-approved cap-and-trade program, EPA proposes that sources subject to the cap-and-trade program already meet the NO_X RACT requirements.

In previously issued guidance concerning NO_X RACT for boilers and turbines, EPA indicated that NO_X RACT for certain types of electricity generating units (EGUs) is equivalent to the title IV requirements and is the most effective level of combustion modification reasonably available (NO_X General Preamble at 57 FR 55625). In subsequent guidance, EPA further indicated that NO_X RACT should generally be expected to achieve approximately 30–50 percent reduction from uncontrolled levels.[56]

Large boilers and turbines subject to the NO_x SIP Call cap-and-trade program are expected to achieve much greater emissions reductions than these NO_X RACT levels. The NO_X SIP Call base case assumes EGUs meet the title IV and/or RACT requirements. In the NO_X SIP Call control case, EGUs are expected to achieve a 64 percent reduction beyond the base case requirements (65 FR 11225). Thus, these EGUs are expected to reduce emissions by far greater amounts than would be required by a RACT program. Furthermore, the EGU emissions reductions comprise nearly 85 percent of the overall emissions reductions resulting from the NO_X SIP Call. The non-EGUs subject to the States' cap-and-trade program are expected to achieve a 60 percent reduction from uncontrolled levels (63 FR 57402). These non-EGU reductions are clearly beyond the 30–50 percent expected from a RACT program.

Because the NO_X SIP Call is a market-based program, there may be a few units that choose to meet those requirements simply by emissions trading, even though the vast majority of units affected by the NO_X SIP Call will install controls. In any nonattainment areas where this is the case, EPA believes that the overall emission reductions from sources in the NO_X SIP Call cap-and-trade program will achieve more emissions reductions in the nonattainment area than would application of RACT to each of those units.

In summary, the level of emissions reductions required by the NO_X SIP Call is far greater than the level of reductions achieved by controls we have determined to be NO_X RACT. Therefore, EPA believes the sources that comply with the NO_X SIP Call cap-and-trade program meet NO_X RACT requirements. Accordingly, EPA proposes that the State need not perform a NO_X RACT analysis for sources subject to the State's emission cap-and-trade program where the cap-and-trade program has been approved by EPA as meeting the NO_X SIP Call requirements and need not submit a new NO_X RACT SIP for those sources. EPA invites comment on this approach.

As described in section 4, proposed approach for previous source-specific major source RACT determinations, States would need to make a RACT determination for major sources not subject to the cap-and-trade program. However, in cases where States have adopted controls consistent with the NO_X SIP Call for cement kilns (*i.e.,* 30 percent reduction), the State may choose to accept the NO_X SIP Call requirements as meeting the NO_X RACT requirements for the 8-hour standard and need not submit a new NO_X RACT SIP for those sources. As part of the NO_X SIP Call, EPA determined that highly cost-effective controls for cement kilns will achieve a 30 percent reduction and that many cement plants in the SIP Call region implemented such controls in State RACT programs (63 FR 57418). In its RACT SIP submission, the State should identify the cement plants that are subject to NO_X SIP Call controls and that, therefore, already meet RACT.

In addition, through the NO_X SIP Call or other programs (*e.g.,* NSR) States may have adopted control measures for specific NO_X sources that equal or exceed RACT requirements. For these sources, States may choose to submit, as part of its NO_X RACT SIP revision, documentation that the previously adopted control measure meets the RACT requirement, where applicable. Finally, in developing the NO_X SIP Call, States may have considered control measures for sources not in the cap-and-trade program—or may consider additional sources in responding to the second phase of the NO_X SIP Call. EPA's NO_X RACT guidance (NO_X General Preamble at 57 FR 55625) encourages States to develop RACT programs that are based on ''areawide average emission rates.'' Thus, States can submit a demonstration as part of their RACT submittal showing that the weighted average emission rate from sources in the nonattainment area subject to RACT—including sources reducing emissions to meet the NO_X SIP Call requirements—meet RACT requirements.

It should also be noted that this proposal in no way limits States' discretion to require beyond-RACT NO_X reductions from any source (including NO_X SIP Call sources) in a plan to demonstrate attainment of the health-based ozone standards. In certain areas, States may choose to require NO_X controls based on more advanced

[56] Memorandum of March 16, 1994, from D. Kent Berry re: ''Cost-Effective Nitrogen Oxides (NO_X Reasonably Available Control Technology (RACT).'' U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

control technologies to provide for attainment of the ozone standards.

As stated in section 3, above, we are proposing an alternative option for RACT under subpart 1. In this option, areas that are able to demonstrate attainment of the 8-hour standard as expeditiously as practicable with the control measures in their SIP would be considered as having met RACT.

6. Proposed Approach for NO_X as an Ozone Precursor

In addition to the issue regarding the nature of the RACT rules that apply under subpart 1, another issue concerns the pollutants (precursors) to which the RACT rules apply. Although NO_X has long been recognized as a precursor to ozone [57] and several national rules [58] have been promulgated to control NO_X for purposes of helping attain the ozone standard, subpart 1 does not specifically address either NO_X or VOC, but rather RACT in general. We propose to clarify this by recognizing both NO_X and VOCs as precursors to ozone and to require NO_X and VOC RACT under subpart 1. This is consistent with the application of RACT under subpart 2. Under section 182(f) (in subpart 2), a waiver from NO_X RACT is possible under certain circumstances (the waiver provision is discussed elsewhere in this proposed rulemaking) for areas subject to subpart 2. We are proposing to allow areas subject to subpart 1, to seek a waiver consistent with the tests set forth in section 182(f).

7. Proposed Approach for RACM

We have also issued guidance for implementing the RACM provisions of the CAA that interprets those provisions to require a demonstration that the State has adopted all reasonable measures to meet RFP and attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area. [59] The RACM requirement, which is set forth in section 172(c)(1) of the CAA, applies to all nonattainment areas that are required to submit an attainment demonstration, whether covered under only subpart 1 or also subpart 2.

8. Proposed Submission Date for RACT and RACM Requirements

We are proposing that the SIP provisions for RACT for a nonattainment area—regardless of whether the area is covered under subpart 1 or subpart 2—be submitted within 2 years after the area's nonattainment designation; this is consistent with the timing for submission of RACT rules in section 182(b)(2) for moderate areas.[60]

We are proposing that the SIP provisions for RACM for a nonattainment area—regardless of whether the area is covered under subpart 1 or subpart 2—be submitted within 3 years after the area's nonattainment designation; this is consistent with the timing for submission of an area's demonstration of attainment.

L. How Will the Section 182(f) NO_X Provisions Be Handled Under the 8-Hour Ozone Standard?

In subpart 2 of part D, section 182(f) requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOC. The applicable requirements are RACT and NSR for major stationary sources in certain ozone nonattainment areas and throughout States in the OTR.[61] In addition, section 182(f) specifies circumstances under which these NO_X requirements would be limited or would not apply (''NO_X waiver''). Further, areas granted a NO_X waiver under section 182(f) may be exempt from motor vehicle I/M and certain Federal requirements of general and transportation conformity.[62] For the same reasons described in the ''Nitrogen Oxides Supplement to the General Preamble'' with respect to the 1-hour ozone standard, we propose to also apply the NO_X requirements and waiver provisions in section 182(f) for 8-hour ozone nonattainment areas under subpart 2 and OTRs.[63]

Elsewhere in today's proposed rulemaking, we propose to establish NO_X as a precursor to ozone under subpart 1 and require RACT and NSR in subpart 1 nonattainment areas for major sources of NO_X as well as VOC. As noted in the preceding paragraph, we are also proposing that the NO_X RACT and NSR requirements apply in certain subpart 2 nonattainment areas and throughout OTRs. While NO_X emissions are necessary for the formation of ozone in the lower atmosphere, a local decrease in NO_X emissions can, in some cases, increase local ozone concentrations. This potential ''NO_X disbenefit'' resulted in Congress including NO_X waiver provisions in section 182(f) (in subpart 2 of part D) for areas classified under subpart 2. We believe the NO_X waiver provisions are a prudent safeguard to avoid unnecessary emissions reductions and that these safeguards should be extended to areas classified under subpart 1 that are subject to the NO_X RACT and NSR provisions. Therefore, we propose to establish NO_X waiver provisions identical to those in section 182(f) for areas subject to subpart 1.

In the event that the final rulemaking does not establish NO_X as a precursor to ozone under subpart 1 and the NO_X RACT and/or NSR requirements do not apply, a NO_X waiver provision would be unnecessary with respect to subpart 1 areas. We propose that the concepts contained in the existing 1-hour ozone guidance [64] regarding section 182(f) would apply for the 8-hour ozone program under subparts 1 and 2. We would update the existing guidance to take into account the new ozone and PM standards and modeling techniques now available. For areas that were previously granted a NO_X waiver under the 1-hour ozone standard, a re-approval would be needed to make it clear that the exemption applies, to allow for public

[57] For example, the 1991 National Academy of Sciences report entitled *Rethinking the Ozone Problem in Urban and Regional Air Pollution* recommends that ''To substantially reduce O_3 [ozone] concentrations in many urban, suburban, and rural areas of the United States, the control of NO_X emissions will probably be necessary in addition to, or instead of, the control of VOCs.''

[58] For example, NO_X SIP Call (published October 27, 1998), Tier 2/Gasoline Sulfur regulations (published on February 10, 2000); and Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-duty Highway Engines and Vehicles (published October 6, 2000).

[59] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' 57 FR 13498 at 13560 (April 16, 1992).

''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html.*

Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.''

[60] Section 182(a) provided that marginal areas with pre-1990 RACT obligations had to submit corrections to their RACT rules within 6 months after classification under the 1990 CAAA. New 8-hour ozone nonattainment areas that are classified as marginal would not have this requirement.

[61] See 57 FR 55622 (''Nitrogen Oxides Supplement to the General Preamble,'' published November 25, 1992).

[62] As stated in EPA's I/M (57 FR 52950) and conformity rules (60 FR 57179 for transportation rules and 58 FR 63214 for general rules), certain NO_X requirements do not apply where EPA granted an areawide exemption under section 182(f).

[63] See 57 FR 55620, ''Nitrogen Oxides Supplement to the General Preamble,'' published November 25, 1992.

[64] The EPA's primary guidance regarding section 182(f) is contained in the ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f),'' issued by John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993.

comment, to be consistent with the waiver guidance under the 8-hour standard (once issued), and to account for any new information that may point to a different conclusion.

M. What Aspects of Transportation Conformity and the 8-Hour Ozone Standard Are Addressed in This Proposal?

1. What Is Transportation Conformity?

Transportation conformity is required under section 176(c) of the CAA (42 U.S.C.§ 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Transportation conformity applies in nonattainment areas and maintenance areas. EPA's transportation conformity rule, 40 CFR part 93, establishes the criteria and procedures for determining whether transportation activities conform to the State air quality plan. It also establishes criteria and procedures for determining whether transportation activities conform in areas where no SIP containing mobile source emissions budgets yet exists.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188) and has amended the rule several times. On August 15, 1997, a comprehensive set of amendments was published that clarified and streamlined language from the 1993 transportation conformity rule (62 FR 43780). These rulemakings, as well as other relevant conformity materials such as guidance documents, policy memoranda, and conformity research can be found at EPA's transportation conformity Web site, at: *http://www.epa.gov/otaq/transp.htm* (once at the site, click on ''Transportation Conformity.'')

2. Why Is EPA Discussing Transportation Conformity in This Proposed Rulemaking?

We are discussing transportation conformity in this proposed rulemaking in order to provide affected parties with information on when transportation conformity will be implemented under the 8-hour ozone standard and how we plan to make the transition from the 1-hour ozone standard to the 8-hour ozone standard. Affected parties may include State and local transportation and air quality agencies, metropolitan planning organizations (MPOs) and the U.S. Department of Transportation (DOT). To determine whether this discussion affects your organization, you should carefully examine the applicability requirements in 40 CFR 93.102 of the transportation conformity rule.

3. Are Any Changes Being Made to Transportation Conformity in This Proposed Rulemaking?

No, we are not proposing changes to the transportation conformity rule in this proposed rulemaking. In the future, we plan to conduct a rulemaking to establish the specific conformity tests that will apply under the 8-hour standard. We intend to complete that rulemaking prior to area designations for the 8-hour standard and will provide the public with the opportunity to comment on the proposed changes. We plan to propose this rulemaking in the summer of 2003.

4. When Does Transportation Conformity Apply to 8-hour Ozone Nonattainment Areas?

Transportation conformity applies to 8-hour ozone nonattainment areas 1 year after the effective date of an area's designation. This 1-year grace period is found in the CAA at 42 U.S.C. 7506(c)(6). Specifically, this section of the CAA provides areas, that for the first time are designated nonattainment for a given air quality standard, with a 1-year grace period before the conformity regulation applies with respect to that standard. Since the 8-hour ozone standard is a different standard from the 1-hour ozone standard, every area that is designated nonattainment for the 8-hour ozone standard will have a 1-year grace period before conformity applies for the 8-hour standard, regardless of whether or not it was designated nonattainment or maintenance for the 1-hour ozone standard.

For more information, please see the proposed and final rulemaking entitled, ''Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas,'' published October 5, 2001 (66 FR 50954); and August 6, 2002 (67 FR 50808), respectively for additional discussion of the 1-year grace period for newly designated areas. (The proposed and final rule can be found on EPA's transportation conformity Web site mentioned above.)

5. How Does the 1-Year Grace Period Apply in Metropolitan Areas?

Metropolitan areas are those areas that have a MPO designated as being responsible for transportation planning per 23 U.S.C. 134. In these areas, the 1-year grace period means that, 1 year after the effective date of an area's designation as nonattainment for the 8-hour standard, the area must have a conforming transportation plan and Transportation Improvement Program in place to fund or approve transportation projects. If, at the conclusion of the 1-year grace period, a metropolitan area is not able to make a conformity determination for its plan and Transportation Improvement Program, the area will be in what is known as a ''conformity lapse.'' (For the discussion of which projects can proceed during a conformity lapse, please see DOT's January 2, 2002 guidance, published February 7, 2002, at 67 FR 5882; and EPA's May 14, 1999 guidance.[65] Both of these documents can be found on EPA's transportation conformity Web site: *http://www.epa.gov/otaq/transp/traqconf.htm.*

6. How Does the 1-Year Grace Period Apply in ''Donut'' Areas?

For the purposes of conformity, a donut area is the geographic area outside a metropolitan planning area boundary, but inside the boundary of a designated nonattainment/maintenance area. The conformity requirements for donut areas are generally the same as those for metropolitan areas, and the MPO would include any projects occurring in the donut area in its analysis of the metropolitan transportation plan and TIP. Therefore, the one-year grace period applies to donut areas in much the same way that it applies to metropolitan areas. That is, within one year of the effective date of an area's designation, a donut area's projects must be included in an MPO's conformity determination for the metropolitan plan and TIP for those projects to be funded or approved. If, at the conclusion of the one-year grace period, the donut area's projects have not been included in an MPO's conformity determination, the entire nonattainment area's conformity would lapse.

7. How Does the 1-Year Grace Period Apply in Isolated Rural Areas?

For the purposes of conformity, a nonattainment or maintenance area (or portion thereof) is considered to be an isolated rural area if it does not have a metropolitan transportation plan or Transportation Improvement Program required under 23 U.S.C. 134, and its projects are not considered in the emissions analysis of any MPO's

[65] The EPA's Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision (EPA 420–F–99–025, May 1999).

transportation plan or Transportation Improvement Program. Isolated rural areas are distinguished from ''donut'' areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

Because isolated rural areas do not have federally required metropolitan transportation plans and Transportation Improvement Programs, a conformity determination need only be done in an isolated rural area when that area has a transportation project or projects that need approval. Therefore, isolated rural areas also have a 1-year grace period before conformity applies under the 8-hour ozone standard, but at the end of that grace period, the area is not required to have made a conformity determination. An isolated rural area would be required to make a conformity determination only at the point when a new transportation project needs approval. This point may occur significantly after the 1-year grace period has ended. (Conformity requirements for isolated rural areas can be found at 40 CFR 93.109(g)).

8. Does Conformity Apply for the 1-Hour Ozone Standard Once the 1-Hour Ozone Standard Is Revoked?

The CAA only requires conformity in areas that are designated nonattainment or maintenance for a standard. Therefore, conformity will not apply for purposes of the 1-hour ozone standard after the 1-hour standard and an area's 1-hour designation are revoked. In other words, existing 1-hour ozone nonattainment and maintenance areas, including those that will not be designated nonattainment for the 8-hour ozone standard, will no longer be required to demonstrate conformity to the 1-hour standard when EPA revokes the standard, 1 year after the effective date of EPA's 8-hour ozone designations. This interpretation that conformity would not apply in 1-hour ozone maintenance areas once the 1-hour standard is revoked is a change from the approach we planned to take in 1997. Since that time, we have reconsidered whether or not conformity should continue to apply in maintenance areas. We have concluded that the better interpretation is that conformity would not apply in 1-hour maintenance areas once the 1-hour ozone standard is revoked because maintenance areas are relieved of the obligation under section 175A of the CAA to have a maintenance plan. Since a maintenance plan is not required, conformity no longer applies in these areas. A detailed discussion of our plans for revoking the 1-hour standard and the associated 1-hour designations may be found elsewhere in today's proposed rulemaking.

9. What Are EPA's Plans for Amending the Conformity Rule To Address the 8-Hour Ozone Standard?

The conformity rule will need to be amended to address the implementation of both the 8-hour ozone and $PM_{2.5}$ air quality standards. We plan to address both standards in one revision to the rule. We anticipate proposing this revision in 2003 and finalizing the rulemaking prior to EPA's finalization of designations of nonattainment areas in 2004. This schedule would allow areas to be well aware of the conformity requirements that will apply to them prior to the start of the 1-year grace period. The proposal will provide an opportunity for stakeholders to offer comments and ideas for providing flexibilities that would be appropriate for some or all nonattainment areas.

10. What Impact Will the Implementation of the 8-Hour Ozone Standard Have on a State's Transportation Conformity SIP?

Since we are not now proposing to make specific revisions to our Transportation Conformity Regulations in this proposal, States should not need to revise their Transportation Conformity SIPs, unless they need to do so to ensure the regulations apply in the appropriate areas.

11. What Other Parts of This Proposal Could Affect Transportation Conformity Determinations?

We believe that transportation conformity stakeholders would be interested in the proposed Clean Air Development Communities program found in section O, question 9 of this proposal. Section O discusses how we propose to implement the NSR, EPA's program that regulates emissions from stationary sources such as power plants, under the 8-hour ozone standard. In question 9 of section O, we propose two options to recognize the air quality benefits that may result from siting new sources and planning development in a particular manner. Under these two options, the air quality benefit of location decisions would be applied to the stationary source sector. Because the benefits of measures cannot be counted twice, if air quality benefits of location decisions are applied to the stationary source sector, they could not also be credited to the transportation sector in a conformity determination. These options and their implications are discussed in further detail in section O, question 9. We encourage transportation conformity stakeholders to review that section carefully and submit any comments to us.

N. What Requirements for General Conformity Should Apply to the 8-Hour Ozone Standard?

1. What Is the Purpose of the General Conformity Regulations?

Section 176(c) of the CAA requires that before a Federal entity takes an action, it must make a determination that the proposed action will not interfere with the SIP or the State's ability to attain and maintain the NAAQS. In November 1993, EPA promulgated two sets of regulations to implement section 176(c). One set, known as the Transportation Conformity Regulations (described above) deals with approval and funding of highway and mass transit projects. The other set, known as the general conformity regulations, deals with all other Federal activities. Besides ensuring that Federal actions will not interfere with the SIP, the general conformity program also fosters communications with State/local air quality agencies, allows for public participation in the review of air quality impacts from Federal actions, and allows for air quality review of individual projects. In 1995, Congress limited the application of section 176(c) to nonattainment and maintenance areas only.

2. How Is the General Conformity Program Currently Structured?

Due to the very broad definition of ''Federal action'' in the statute and the number of Federal agencies subject to the conformity requirement, the number of individual conformity decisions could have been on the order of a thousand or more per day. To avoid creating an unreasonable administrative burden, EPA established *de minimis* emissions levels and exempted certain actions. In addition, the regulations allow Federal agencies to develop their own list of actions which are presumed to conform. For non-exempt actions that increase emissions above the *de minimis* levels, the Federal agency must demonstrate that the action will conform with the SIP or will not cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emissions reductions or other milestone. We are currently reviewing the general

conformity program and, in a separate action, may revise the regulations as appropriate, with respect to the 8-hour standard.

3. Who Runs the General Conformity Program?

Each Federal agency is responsible for determining if the action it takes is subject to the conformity regulations and, if so, whether the action conforms to the SIP. Each Federal agency's approach to the conformity evaluation differs depending upon the actions being taken. Agencies that are permitting or funding actions subject to the conformity rules generally require the applicant to develop the technical support for the conformity determination, although some agencies undertake the complete evaluation themselves.

4. How Does an Agency Demonstrate Conformity?

Depending upon the pollutant and the specific situation, Federal agencies have several options for demonstrating conformity. For actions in ozone nonattainment and maintenance areas, the Federal agency can demonstrate that the project/action is specifically identified and accounted for in the SIP, obtain documentation from the State that the emissions are included in the SIP, have the State commit to include the emissions in the SIP, or mitigate the emissions or offset the emissions from emissions reductions within the same nonattainment or maintenance area.

5. General Conformity Regulation Revisions for the 8-Hour Ozone Standard

a. *What de minimis emission levels will be set for ozone precursors?* For the ozone precursors VOC and NO_X, we are proposing to retain the existing *de minimis* emission levels. Those levels were based on the definition of a major stationary source for the NSR programs as established by sections 182, 183, and 302 of the CAA. The current *de minimis* levels are identified in Table 4 below.

TABLE 4.—DE MINIMIS EMISSION LEVELS FOR VOC AND NO_X

Type of ozone area	VOC tons/year	NO_X tons/year
Extreme Nonattainment	10	10
Severe Nonattainment	25	25
Serious Nonattainment	50	50
Moderate and Marginal Nonattainment in the OTR	50	100
Other Nonattainment	100	100
Maintenance in OTR	50	100
Other Maintenance	100	100

Areas covered by subpart 1 are included in the ''Other Nonattainment'' category listed in Table 4 and would have *de minimis* emission levels of 100 tons per year for both VOC and NO_X emissions.

b. *What impact will the implementation of the 8-hour ozone standard have on a State's general conformity SIP?* Since we are not now proposing to make specific revisions to its general conformity regulations in this proposal, States should not need to revise their general conformity SIPs, unless they need to do so to ensure the regulations apply in the appropriate areas.

c. *Are there any other impacts on the SIPs related to general conformity based on implementation of the 8-hour standard?* Currently, we are reviewing the general conformity regulations and are considering whether it would be appropriate to revise them in the near future. We are not proposing any revisions at this time. However, as areas develop SIPs for the 8-hour ozone standard, we recommend that State and local air quality agencies work with major facilities which are subject to the general conformity regulations (*e.g.*, commercial airports and large military bases) to establish an emission budget for those facilities in order to facilitate future conformity determinations. Such a budget could be used by Federal agencies in determining conformity or identifying mitigation measures.

6. How Does the 1-Year Grace Period Apply to General Conformity Determinations?

Section 42 U.S.C. 7506(c)(6) applies to both transportation and general conformity. Therefore, the general conformity requirements would not apply to actions/projects in newly designated nonattainment areas until 1 year after the effective date of the designation. As discussed in section M.4., the 8-hour ozone standard is a new standard and the grace period applies to all the areas designated nonattainment for that standard. Actions/projects in areas previously designated nonattainment or maintenance for the 1-hour ozone standard must demonstrate conformity for the 1-hour standard until that standard is revoked in whole or in part. Once the 1-hour ozone standard is revoked in whole or in part, Federal agencies will be required to conduct conformity determinations for the 8-hour standard if the project/action is in an area designated nonattainment for that standard. The general conformity regulations specify requirements for actions/projects in areas without an approved SIP. Those requirements would apply to 8-hour ozone nonattainment areas until the SIP is approved by EPA.

O. How Should the NSR Program be Implemented Under the 8-Hour Ozone NAAQS?

1. Background

The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In nonattainment areas, and throughout the OTR, the program is implemented under the requirements of part D of Title I of the CAA, and is referred to as nonattainment NSR. In attainment or unclassifiable areas outside the OTR, the requirements under part C of title I of the CAA apply, and the program is called the Prevention of Significant Deterioration (PSD) program. Collectively, we also commonly refer to these programs as the major NSR program. These regulations are contained in 40 CFR 51.165, 51.166, 52.21, 52.24 and part 51, appendix S.

In attainment/unclassifiable areas outside of the OTR, a new major source, or a major modification to an existing source, must install best available control technology (BACT) and conduct an air quality modeling analysis and an analysis of potential impacts on Class I areas (see section 162 of the CAA). If the source is located in a nonattainment area, or anywhere in the OTR, including OTR attainment areas, it must install technology that meets the lowest achievable emission rate (LAER), secure emission reductions to offset any increases in emissions, and perform other analyses.

As of the date areas are designated attainment or nonattainment under the 8-hour standard, major NSR will apply under the standard. In areas outside the OTR that will be designated as attainment for the 8-hour ozone standard, the part C PSD program will apply. As there are currently PSD programs in place in all areas of the country, implementation of the new standard should be a straightforward

matter. (Note that one change we will be codifying is the addition of NO_X as an ozone precursor. This is discussed in more detail later in this section).

In areas newly designated as nonattainment for the 8-hour ozone standard, however, a number of implementation issues will arise, which we discuss below. Typically, upon designation, nonattainment areas would be required to implement nonattainment NSR for major sources and major modifications.[66] However, in order to reduce the burden for nonattainment areas meeting certain conditions, we are proposing a revised set of major NSR requirements under the authority of 40 CFR Part 51, appendix S, section VI. We are referring to this as the transitional program, and it is discussed in more detail later in this section.

2. Nonattainment NSR Under the 8-Hour Ozone Standard

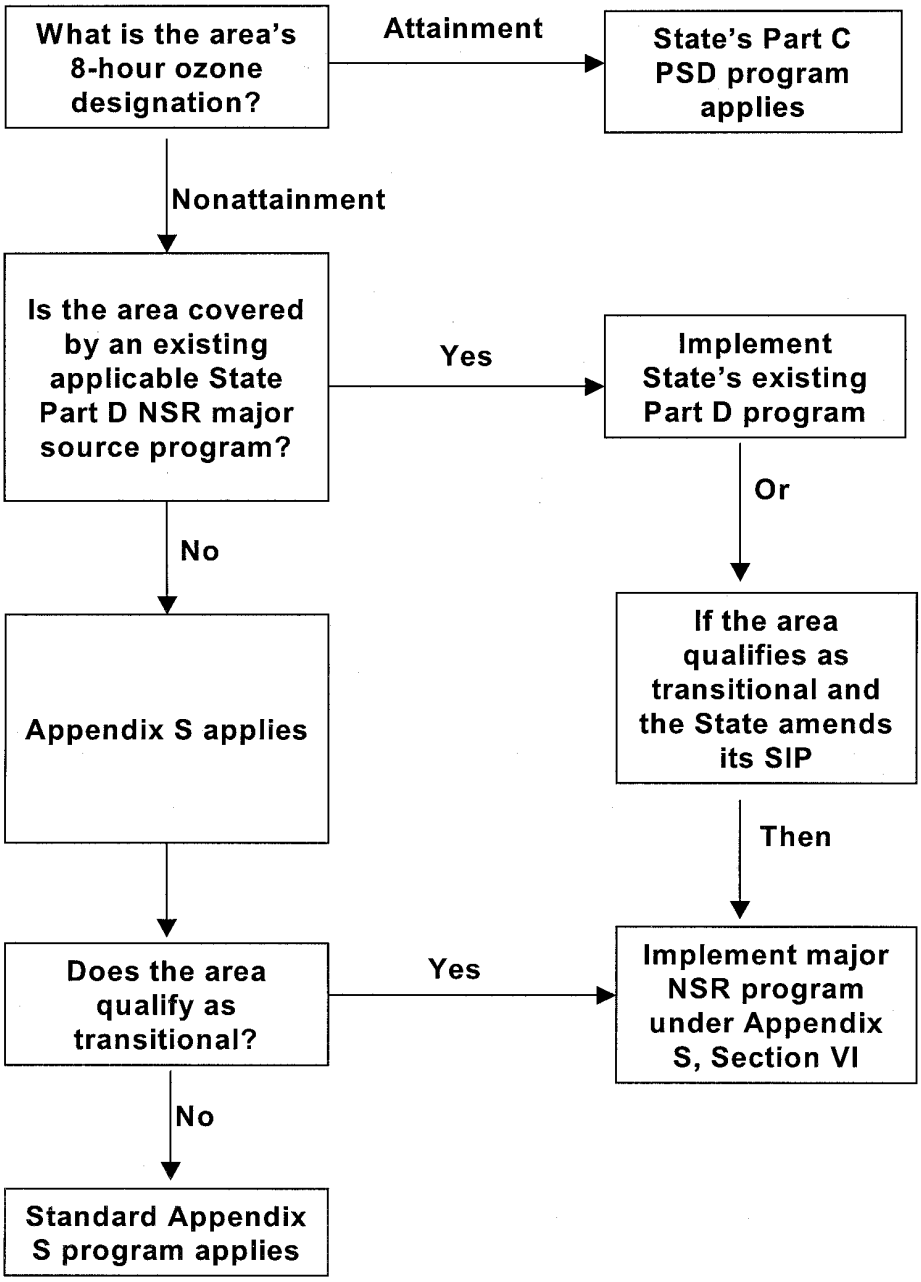
Some States may already have in place a part D major source program applicable to newly designated 8-hour ozone nonattainment areas. For nonattainment areas in States whose SIPs contain a generic requirement to issue part D major source NSR permits in areas designated as nonattainment, nonattainment NSR permit requirements will become automatically effective upon designation (See Figure 1).[67]

[66] Should EPA issue revisions to these regulations, the revised NSR program would of course apply to new sources and major modifications.

[67] States with already applicable part D NSR programs may choose to amend their SIPs to allow them to take advantage of the transitional option described in this section, provided they meet the transitional program eligibility criteria.

Figure 1

NSR Program Implementation Under the 8-hour Ozone Standard



For a nonattainment area in a State with a SIP that specifically lists the areas in which part D NSR applies, or in areas which currently have no nonattainment plan, there will be an interim period between the designation date and the date that the State amends its SIP either to list any new nonattainment area(s) or to include a part D plan. During this interim period, part D NSR requirements are governed not by section 51.165, but by appendix S to part 51.

a. *What does appendix S require for nonattainment areas during the interim period?* In general, appendix S requires new or modified major sources to meet LAER and obtain sufficient offsetting emissions reductions to assure that the new major source will not interfere with the area's progress toward attainment. (Readers should refer to 40 CFR part 51, appendix S for a complete understanding of these and other

appendix S permitting requirements.) However, per section VI of appendix S, we have always recognized the need for flexibility under certain circumstances, which we address in detail below.

Also, note that EPA does not have a Federal permit program in place for nonattainment NSR. This creates particular difficulties for the Tribes, because their programs are not as mature as the State programs. Therefore, in most locations, EPA, not the Tribes, will need to address the implementation of appendix S in these areas, until a Tribe develops a nonattainment NSR program on its own.

b. *What is the legal basis for requiring States to issue nonattainment NSR permits during the interim period?* Section 110(a)(2)(c) of the CAA establishes a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that NAAQS are achieved. This general duty, often referred to as ''minor NSR,'' exists during all periods, including before a State has an approved part D NSR permit program.

Although section 110(a)(2)(c) does not define specific requirements States must follow for issuing major source permits during the interim period between nonattainment designation and EPA approval of a part D nonattainment NSR SIP (''interim period''), EPA's regulations codified at 52.24(k) require States to follow EPA's Emission Offset Interpretative rule codified at 40 CFR part 51, appendix S (hereinafter referred to as appendix S) during this time.[68]

c. *Codification of NO_X as an ozone precursor.* Currently, only VOCs are expressly regulated as ozone precursors under the PSD regulations. Although appendix S specifically states that a source is major for ozone if it is major for VOCs, we do not believe this language is exclusive. The more general portion of the ''major stationary source'' definition states, ''* * * any stationary source that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act,'' is considered a major source. There is similar general language within the definition of ''major modification.'' The nonattainment provisions of the Act, as amended in 1990, recognize NO_X as an ozone precursor; section 182(f) of the CAA established nonattainment requirements for NO_X. In addition, the definition of air pollutant under section 302(g) of the CAA includes, ''* * * any precursors to the formation of any air pollutant * * *'' Thus, where NO_X is considered a precursor to the formation of ozone, the State would use appendix S to issue a preconstruction permit to a new major source of NO_X emissions during the interim period.[69]

Notwithstanding the above, in order to be completely clear, we are proposing to amend both our NSR and PSD regulations to expressly include NO_X as an ozone precursor in major PSD and major nonattainment NSR programs. Where relevant for both PSD areas and transitional NSR areas, States would be required to modify their existing programs to include NO_X as an ozone precursor.

Elsewhere in today's action, we are proposing to include NO_X as an ozone precursor for RACT requirements under subpart 1. Under section 182(f) (in subpart 2), a waiver from NO_X RACT and nonattainment NSR is possible under certain circumstances. We are proposing that the section 182(f) waiver provisions would also apply to areas designated nonattainment under either subpart 1 or subpart 2. However, the waiver provisions do not apply in areas where PSD is applicable.

3. Under What Circumstances Is a Transitional Program Needed During the Interim Period?

We request comment on providing States flexibility regarding major source nonattainment NSR program requirements in areas that meet specific conditions. We believe that a more flexible NSR option is appropriate in areas that are expected to reach 8-hour ozone attainment early—within 3 years after designation—through, for example, national or regional programs such as the NO_X SIP Call and the Tier 2 motor vehicle emissions standards. In these areas, we believe that States should have the flexibility to apply a nonattainment NSR program that provides some relief from certain requirements.

Several factors warrant a flexible approach for implementing NSR in areas which qualify for the transitional program. We expect many areas to attain the new 8-hour standard within 3 years solely through regional NO_X reductions under the NO_X SIP Call rule and other currently applicable Federal programs. We intend this option to be available to any 8-hour ozone nonattainment areas located outside the NO_X SIP Call area, so long as those nonattainment areas can meet the 8-hour ozone NAAQS within 3 years after designation. Some of these areas may be in nonattainment due largely to transport from upwind sources; but no allowance is made under major NSR for sources in areas overwhelmed by transport. As we have construed it, this option would also encourage the early adoption of attainment plans, which we believe will lead to emissions reductions and resultant health benefits earlier than would otherwise occur. We request comment on the transitional program described in this proposed rulemaking, and in particular welcome information from States regarding how many new major sources or major modifications they anticipate would construct in transitional areas during the period between EPA's approval of a transitional part D nonattainment NSR plan and the State reaching attainment of the 8-hour NAAQS.

4. Elements of the Appendix S Transitional Program

a. *Which nonattainment areas would be eligible for the transitional program?* The appendix S transitional program would only be available to 8-hour ozone nonattainment areas that are subject to NSR under subpart 1, not subpart 2 (see discussion of classifications elsewhere in this proposal). In addition, in order to be eligible for the transitional option, by the date EPA publishes the nonattainment designations for the 8-hour standard (currently expected in 2004) a subpart 1 nonattainment area must: (1) Be attaining the 1-hour ozone standard; (2) be subject to subpart 1, not subpart 2, of part D;[70] (3) have submitted an attainment plan that demonstrates attainment within 3 years after designation; the attainment plan would have to include control measures under the NO_X SIP Call rule where

[68] The actual language at 40 CFR 52.24(k) allows States to issue permits under appendix S for a maximum period of 18 months after designation. After this time, if the nonattainment area does not have an approved Part D NSR permit program, a construction ban would apply. However, in 1990, Congress altered the provisions of the construction ban such that it would not apply when a State lacked an approved part D NSR permit program in the future. We believe that Congress' removal of the construction ban from the CAA supersedes the regulatory language at 52.24(k) and EPA has reinterpreted this language to allow States to issue permits under appendix S from designation until the SIP is approved even if this exceeds 18 months. See 1991 guidance memo, ''New Source Review (NSR) Program Transitional Guidance'', John S. Seitz, March 11, 1991. We will be revising the language at section 52.24(k) to properly reflect this interpretation.

[69] Note that new sources or modifications which are major as a result of NO_X emissions, and are thus subject to nonattainment NSR for NO_X, would also be considered major sources of nitrogen dioxide (NO_2), which is also a criteria pollutant. Since all areas are currently in attainment under the NO_2 NAAQS, these new NO_X sources will also need to go through PSD review of NO_2.

[70] Certain nonattainment NSR requirements in subpart 2 of part D are specifically spelled out in the CAA, and thus cannot be altered under a transitional program.

applicable; and (4) have submitted an attainment plan containing any additional local control measures needed for attainment of the 8-hour standard. These plans must commit the State to implement, by December 31, 2004, all measures necessary to bring the nonattainment area into attainment by a 2007 attainment date.[71] In addition, when a State submits its attainment plan, it should note that it intends to implement a program under appendix S, section VI that meets the requirements for transitional areas discussed below.

Note that, under this option, the attainment plan submission timing (*i.e.*, submission by the date of EPA designation of nonattainment areas) for transitional areas is about 3 years earlier than is otherwise required for areas not meeting the 8-hour standard. Note also that areas would be eligible for this transitional NSR provision even though we are not establishing a ''transitional'' nonattainment classification for areas covered under subpart 1. We request comment on these criteria.

Also, note that while relief from offsets is provided for the NSR transitional program (see discussion below), those States and Tribes subject instead to the main body of appendix S will still need to provide offset provisions.

b. *What would be the basic requirements of a transitional nonattainment NSR program under appendix S, section VI?*

i. *Major source applicability threshold.* Under the general part D NSR requirements, the applicability threshold for ''major stationary source'' is defined as 100 tons per year of a nonattainment pollutant; in some instances under subpart 2 the major source threshold can be as low as 10 tons per year. In contrast, the major source threshold under the PSD program is either 100 or 250 tons per year, depending upon the type of stationary source undergoing review. We propose that, consistent with the subpart 1 part D NSR requirements, an appendix S, subpart VI transitional nonattainment programs will use a major source threshold of 100 tons per year for each ozone precursor.

ii. *Emission Control.* Another key provision of the part D nonattainment NSR program is that, in order to be permitted, major new and modified sources must minimize their emission rate by applying control technology to achieve LAER, which is generally the most stringent emission limit contained in a SIP or achieved in practice.

In contrast to LAER, which does not consider costs and other factors, a BACT analysis requires consideration of energy, environmental, and economic impacts in determining the maximum degree of reduction achievable for the proposed new source or modification. In a BACT analysis, as described in the New Source Review Workshop Manual,[72] the most stringent emission limit, including the limit representing LAER and its associated control technology, must be considered. If the most stringent limit is rejected as BACT for a particular case, that decision must be supported by an analysis that shows that the most stringent limit should not be chosen in light of the costs or other relevant factors. For example, if the most effective control technology would impose unacceptably high costs because of site-specific factors, that technology could be rejected as BACT for the proposed source. In this way, BACT may be less stringent than LAER.

We request comment on whether a BACT requirement, consistent with the BACT approach described in the NSR workshop manual, may be required in transitional appendix S nonattainment NSR programs in lieu of requiring LAER. We believe granting this relief is appropriate, given the minimal difference we would expect between the emissions reductions achieved from BACT, rather than LAER, for the small number of sources that may trigger nonattainment NSR in transitional areas, for the few years the area is nonattainment.

iii. *Relief from source-specific offsets requirements.* We are proposing that major sources and major modifications would not be required to obtain case- and source-specific offsets under the transitional program. However, despite locating in a nonattainment area which qualifies for the NSR transitional program, a new major source may not cause or contribute to the existing violation in the nonattainment area. If the State determines that the source does not contribute to the existing violation, then mitigation would not be required.

There are several circumstances under which it is reasonable to assume that a new major source locating in a nonattainment area will not interfere with timely attainment of the standard. First, if the nonattainment area which qualifies for the NSR transitional option is participating in the NO_X SIP Call (63 FR 57356; October 27, 1998), we expect that a source locating in the area will not cause or contribute to the existing violation, so long as the new emissions are consistent with growth projections. This is because it is assumed that where new emissions are consistent with growth projections, those new emissions will not interfere with timely attainment of the standard. Under the NO_X SIP Call, we modeled emissions for 2007. We included future growth projections for both VOC and NO_X emissions, and allocated each State a NO_X budget designed to control interstate NO_X transport. Because these budgets include an emission growth factor for VOC and NO_X, we believe that new major sources may locate in those nonattainment areas which qualify for the NSR transitional option without interfering with the area's ability to reach attainment, provided that any new emissions are within the projected emissions growth factor. We expect States to develop appropriate emission inventory procedures to assure that any new emissions are consistent with projected growth in emissions.

Those nonattainment areas which qualify for the NSR transitional program that are not projected to attain under the NO_X SIP Call or are not covered by the NO_X SIP Call may also allow for an increase in new major source emissions if their attainment demonstration includes an emissions growth factor for major new and modified sources and demonstrates that, provided emission increases from new major sources remain below this level, the area will reach attainment. Again, we expect States to develop appropriate emission inventory procedures to demonstrate that the new emissions are consistent with projected growth in emissions.

iv. *Other requirements.* In addition to the control technology requirements discussed above, and consistent with current NSR requirements under appendix S, section IV, condition 2, sources locating in transitional areas will be required to certify statewide compliance of all existing major sources under the same ownership or control. We believe this requirement will not impose a substantial burden on permit applicants or permitting authorities.

v. *Backstop Provisions.* Should a nonattainment area under the appendix S, section VI transitional program fail to meet its SIP obligations to attain the NAAQS before the end of the interim period, then it will no longer be eligible for the transitional program. We request comment on the need for a backstop provision that requires a State to notify

[71] The actual attainment date—as proposed elsewhere in this proposal—would be 3 years after the nonattainment designation.

[72] U.S. EPA Office of Air Quality Planning and Standards, New Source Review Workshop Manual, Prevention of Significant Deterioration and Nonattainment Area Permitting, Draft, October 1990. Available at: *http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf.*

us, at the time of such failure, that it is reverting to the traditional nonattainment requirements under appendix S. We also request comment on any other findings which should end eligibility for the transitional program.

5. Will a State Be Required To Assure That the Increased Emissions From a new Major Source Do Not Cause or Contribute to a Violation in a Nearby Nonattainment Area Before It Issues a Preconstruction Permit Under Appendix S?

At the current time, EPA allows the State to presume that a source locating outside a designated ozone nonattainment area will have no significant impact on the designated nonattainment area. See section III of appendix S. However, given the recent advances in the scientific understanding of ozone formation, we may revise these guidelines in the near future. In the meantime, under the PSD rules, States may choose to address the impacts of sources in attainment areas on nearby nonattainment areas in a more proactive manner; *i.e.*, through PSD offsets and/or tighter emission controls when the source is shown to contribute to a violation of the NAAQS.

6. What Happens at the End of the Interim Period?

a. *Transitional NSR areas.* As noted above, this transitional option is only intended to apply to certain nonattainment areas that expect to attain the 8-hour ozone NAAQS within 3 years after designation. Therefore, we expect these areas to be in attainment on or before an attainment date in 2007. Accordingly, States must submit, by the attainment date in 2007, an attainment demonstration with a maintenance plan. A State may continue implementing transitional NSR under appendix S, section VI for 6 months following submission of its attainment plan, or until its attainment plan is approved, whichever is earlier.

b. *Traditional NSR areas.* If a State has never been or is no longer operating under a section VI transitional program, it must submit a part D nonattainment NSR plan within 3 years after designation (in 2007). The State may continue implementing traditional part D nonattainment requirements under appendix S until we approve its part D plan.

7. What Is the Legal Basis for Providing This Transitional Program?

As stated earlier, appendix S applies during the period after an area is designated nonattainment but before a part D nonattainment NSR plan is due under subparts 1 and 2 of part D. Application of appendix S during this interim period ensures compliance with the section 110(a)(2)(C) ''minor'' NSR program. However, Congress was ambiguous regarding what specific requirements States must follow for issuing major source permits during the interim period described above. Thus, we have discretion to interpret those regulations in a reasonable manner. *Chevron, U.S.A.* v. *NRDC*, 467 U.S. 837 (1984).

The transitional appendix S approach is reasonable for several reasons. First, it would be available only for those areas that are already attaining the 1-hour standard and that will attain the 8-hour standard within 3 years after designation (before a part D nonattainment NSR SIP revision is due) through national and regional planning. These areas appropriately deserve a different approach for implementing the section 110(a)(2)(C) requirements than areas that are in nonattainment for the 1-hour standard and thus currently implementing NSR, or those areas that are not projected to reach attainment of the 8-hour in the short term.

We believe that the transitional option, as we have constructed it, would result in a level of emissions reductions that is substantially similar to the level that would be achieved from traditional NSR for the small number of sources it will affect in the short period during which these areas are designated nonattainment. Thus, these transitional areas would still be implementing a program that regulates the modification and construction of any stationary source ''as necessary'' to assure that the NAAQS are achieved as expeditiously as practicable.

Currently, the language of section VI allows all States to exempt a new major source from complying with the requirement to install LAER and obtain offsets if the source will meet all other applicable SIP requirements and not interfere with the area's ability to meet its attainment date. However, we plan to revise section VI to remove this general exemption and apply the transitional approach. This revision is appropriate because we do not believe that areas not meeting the transitional approach would be able to ensure that they were implementing an NSR program ''as necessary'' to ensure the attainment of the NAAQS without complying with appendix S in general (*e.g.*, sections I–V). Note that section VI of appendix S originally applied only to secondary NAAQS, and we revised section VI to include primary standards following the 1977 Amendments. The exemption provided by section VI applied to areas whose attainment dates were shortly after the CAA was re-authorized in 1977 because these areas had already submitted their attainment plans to us, and we believed that these areas would reach attainment without having to impose LAER and offsets on new major sources.

While nonattainment areas that qualify for the 8-hour ozone standard NSR transitional option are in a similar situation, areas not qualifying for the transitional approach are not. In order to qualify for the NSR transitional option, States will have to submit an attainment plan by the date of designation for the 8-hour NAAQS in 2004. These plans must commit the State to implement by December 31, 2005, all measures necessary to bring the nonattainment area into attainment and to meet a 2007 attainment date.[73] Similar to the nonattainment areas to which section VI originally applied, we believe that nonattainment areas which qualify for the NSR transitional option will be able to meet a 2007 attainment date without imposing LAER and offsets on new major sources.

On its surface, section VI's existing language could be applied in any nonattainment area during the interim period. For an area that fails to meet the transitional option requirements, however, we believe that the area would not be able to show that it will continue to meet the areas attainment date if it does not apply LAER or obtain offsets. Thus, we are proposing to revise the language of section VI to apply only in areas qualifying for the transitional NSR program.

8. How Should the NSR Requirements Be Implemented for New 8-Hour Ozone Areas that Encompass the Old 1-Hour Ozone Nonattainment Areas After EPA Revokes the 1-Hour Ozone Standard?

Newly-designated 8-hour ozone areas which include areas which have never attained the 1-hour standard will have two different sets of requirements in place until a point in time proposed elsewhere in this proposed rulemaking under the anti-backsliding provisions. (There are two options proposed in the anti-backsliding section of this proposal for that point in time—until either the level of the 1-hour ozone standard is achieved or the 8-hour ozone standard is attained.) The 1-hour NSR requirements and higher offset ratios (if applicable) will remain in place in the area that was designated nonattainment

[73] The actual attainment date—as proposed elsewhere in this proposed rulemaking—would be 3 years after the effective date of nonattainment designation, which we anticipate will occur in the spring of 2004.

for the 1-hour standard until that point in time. The remaining portion of the newly-designated 8-hour ozone area must comply only with the 8-hour ozone NSR requirements and offset ratios (if applicable).

9. NSR Option To Encourage Development Patterns That Reduce Overall Emissions—Clean Air Development Communities

EPA is considering two options to recognize the air quality benefits which can accrue when areas site new sources and plan development in a manner that results in overall reduced emissions. EPA would define a community that changes its development patterns in such a way that air emissions within the non-attainment area are demonstrably reduced as a ''Clean Air Development Community'' (CADC). We propose that areas that qualify as CADCs would obtain certain flexibilities in implementing CAA programs. We request comments on the options listed here and encourage commenters to suggest other ways under the CAA that we could encourage development that will result in lower emissions.

In the first option, a CADC would have a more flexible NSR program by: (1) Being subject to subpart 1 NSR as opposed to subpart 2 NSR; (2) lowering NSR major source thresholds for these areas to make them similar to the thresholds for PSD areas; and (3) allowing areas that meet certain development criteria (development zones) to receive NSR offsets from State offset pools. In the second option, a CADC would be able to receive a pool of NSR offset credits equal to the reduced emissions from new development patterns. Credits from the pool could be provided to any new or modified source in a ''development zone'' as offsets.

The first goal of a CADC option is that it would give communities a tool to achieve air quality benefits that can accrue from strategic location of new sources. The location of new sources (often major job centers) can affect regional development patterns and air emissions. As a result, new sources have a dual impact on air quality. The first impact is from their own direct emissions and the second impact is from the emissions associated with other sources whose development is influenced by the new source and any change in travel patterns (positive or negative) that may result. This option attempts to recognize the net impact that a new source has on a region, not just from their own stationary emissions, but also from their associated stationary, area and mobile source emissions influenced by the location of the new source. It provides a mechanism to recognize the relative emissions reductions associated with locating major job centers in close proximity with transit, commercial/retail destinations, and workforce housing.

Furthermore, the EPA recognizes that brownfields [74] are often prime candidates to realize these locational benefits. Brownfields, as sites of previous economic activity, frequently enjoy excellent proximity to a variety of destinations and a range of transportation infrastructure. Second, given their potentially contaminated state, manufacturing or other industrial uses are often the appropriate type of revitalization. The productive re-use of these sites is a priority for the Agency. This option will provide flexibility within CAA programs to achieve the dual goals of brownfields revitalization and reduced air emissions.

The second goal of a CADC program would be that it would allow communities to use the air benefits of their development practices as an incentive for locating new sources and their associated economic growth.

Anthropogenic emissions within a region come from three kinds of sources: Mobile sources, areas sources, and stationary sources. Thus, the ability of a region to accommodate new stationary sources is dependent not only on stationary source emissions but also on mobile and area source emissions. Localities which choose to engage in development that reduces emissions from mobile and area sources, with either of these options, could have the opportunity to turn those reductions into incentives for siting new economic activity.

It should be noted that an area that decides to become a CADC is, in effect, transferring to the stationary source sector emission reductions which normally would remain in the mobile source sector where they could, for example, be used for conformity determinations. Areas would have to think through the implications for them of doing this.

While we have not decided to go forward with either of these options at this time, we are continuing to examine them and, therefore, request comment on them. In particular, we request comment and suggestions on possible legal rationales for supporting these options which would enable them to be implemented through rulemaking. We are also very interested in other potential incentives that we could provide in addition to or instead of those included in this proposal. (We encourage commenters to focus on those incentives that are within EPA control.) In addition, we request comment on implementation barriers, as well as the analytical complexities in the estimation of emission benefits from changes to development patterns that areas would need to calculate in order to become a CADC. Public comments will help us determine how and whether to include either option in the final rulemaking.

a. *What is EPA considering? Option 1:* EPA is considering a package of three kinds of flexibility for areas subject to subpart 2 whose land use development meets certain criteria. First, we would allow CADC's to be covered under the NSR program under subpart 1 rather than under subpart 2 if: (a) They adopt specific land use measures into their SIPs that reduced air emissions; and, (b) they demonstrate that air quality would not decrease as a result of using subpart 1 instead of subpart 2. This demonstration would have to quantify the emissions reductions from adopted land use measures in their SIPs and show that the decreases from the land use measures are sufficient to offset any potential increase in emissions from using subpart 1 instead of subpart 2. Second, we would lower the NSR major source thresholds for CADC areas to make them similar to those under the PSD provisions. Third, we would allow development zones, areas that meet certain development criteria, to receive NSR offsets from ''pools'' or ''banks'' of offsets established by the State. (A pool would be created by the State's taking action or requiring others to take actions that meet the criteria for NSR offsets. The State would then collect these offsets and could distribute them to new development that would occur in specific areas.) We believe that these actions would help steer development to development zones where fewer regional emissions would occur than if the development had occurred elsewhere. In addition, the change in land use patterns may help areas reduce their mobile source emissions. EPA requests comments on whether an area

[74] Brownfields are generally considered to be abandoned or underutilized properties (especially industrial and commercial facilities) where redevelopment or expansion may be complicated by possible environmental contamination (real or perceived). However, a brownfield site, as defined by The Small Business Liability Relief and Brownfields Revitalization Act of January 11, 2002, is any ''real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.'' Further information is available at: *http://www.epa.gov/compliance/resources/faqs/cleanup/brownfields/index.html.*

should receive all three incentives or only one or two of them.

Option 2: EPA is also considering a less ambitious program of incentives that focuses on the development zones. In this option, the reduced emissions from improved development patterns are used to create offset pools for use by sources in development zones. We believe that this would also help steer development toward development zones providing the same benefits discussed above. The main advantage to a CADC compared to option 1 is that the offset pool could start with considerable offset credits and, therefore, the credits would not have to be created through additional actions. It would also have the potential of more carefully targeting new development just to the development zone instead of anywhere in the CADC.

b. *What would a CADC be?* A CADC would be a ''community'' that changes its development patterns in such a way that air emissions within the non-attainment area are demonstrably reduced. A CADC does not have to be, and in most cases probably would not be, an entire metropolitan nonattainment area covered by a SIP. A portion of a nonattainment area could be designated a CADC in those cases where the land use changes did not result in a sufficient emissions reductions to allow the entire nonattainment area to qualify. It should be noted, however, that if a CADC smaller than the entire nonattainment area was designated, any analysis of the effect of any changes in development would have to reflect and consider effects on the nonattainment area as a whole.

c. *What would a development zone be?* EPA proposes that areas that meet certain criteria would be considered ''development zones,'' and new sources in these development zones could receive offsets from State offset pools. The following is a list of possible criteria that EPA could use to define those zones. EPA's goal is to help identify zones which promote environmentally sound development, the preservation of regionally-or locally-designated open space, and sites which have adequate, existing infrastructure. Areas would, for example, have to be:

- Located within an 8-hour ozone nonattainment area.
- Located within an ''urbanized area'' as defined by the U.S. Census Bureau.[75]
- Zoned for industrial use.
- Located within 0.25 miles of rail freight facilities.
- Located within 0.5 mile of fixed rail or express bus transit service.
- Designated or qualify for designation as a Federal or State redevelopment zone.
- Enrolled in a State brownfield remediation plan.
- Designated industrial corridor.
- Adopting land use density indicators such as population, employment, congestion index.

EPA specifically requests comment on these criteria including whether these criteria are appropriate, and if not, how should they be changed? We also request comment regarding whether a site must meet all or just some of the criteria to qualify.

d. *Why is EPA proposing these ideas?* EPA would like to encourage land use practices that reduce emissions, and one possible way could be through NSR program flexibility. EPA recognizes that the way land use occurs in an area can affect emissions in all sectors, including stationary, area and mobile sources. For on-road mobile sources, areas can already include the emissions impacts of their land use choices within their SIP, as well as in their transportation conformity determinations. EPA would like to encourage areas to adopt land use practices that result in fewer emissions from all sectors by allowing areas to apply the benefits from certain land use measures to the major stationary source sector and creating special NSR flexibilities for areas that do so.

e. *If areas receive NSR flexibility for adopting land use measures, can the air quality benefits of land use measures also be applied to other sectors?* As part of any flexibility, EPA wants to ensure that areas do not count the effects of a land use activity twice. For example, if areas decide that they want to apply the emissions benefits that result from certain land use decisions toward NSR, then they cannot also include the air quality benefits of land use choices in their motor vehicle emissions budgets in the SIP, or in the area's transportation conformity determinations. EPA recognizes that this means that areas will have to decide for themselves how to apply any emissions benefits of land use activities, and that consultation among all affected parties must occur. For many communities, this could be a difficult decision that would require the input of many stakeholders representing both the mobile and stationary source sectors as well as the general public.

One possible way for areas to avoid double counting would be for EPA to give credit only for new measures that are adopted in response to this proposal. This approach would ensure that the proposal acts as an incentive to encourage new actions that will reduce emissions. Such an approach could, however, be seen as unfairly penalizing areas that have already taken positive actions. EPA requests comment on how best to balance the issues of ensuring fair treatment for all areas, preventing double counting, and making this proposal an effective incentive.

For example, areas would continue to include existing land use measures in their SIP motor vehicle emissions budgets and in their conformity determinations, and apply the reductions from newly adopted land use measures to demonstrate they qualify for the type of flexibilities proposed here. Quantifying the on-road mobile source air quality impacts of land use measures occurs in transportation modeling (discussed below). Therefore, in a SIP submission that includes land use measures adopted to obtain NSR flexibility, areas would have to show that their motor vehicle emissions budgets do not also include the effects of the newly adopted land use measures. EPA also recognizes that there may be other, potentially easier ways to avoid double counting and encourages commenters to submit them.

f. *How would areas quantify the benefits of land use choices?* Areas would quantify the benefits of land use through their air quality modeling process in the SIP process. EPA's guidance, ''Improving Air Quality Through Land Use Activities'' (Improving Air Quality Through Land Use Activities Report). U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality. (EPA420–R–01–001, January 2001). It can be found at: *http://www.epa.gov/otaq/transp/trancont/r01001.pdf)* provides information about how land use measures are modeled and possibly quantified. EPA requests comment on other potential methods of quantifying the reductions.

Areas should be aware that quantifying the benefits of land use may not be an easy task. EPA sees two potential difficulties in quantifying the benefits of land use for application to NSR on which we seek input. First, as stated above, it may be very complicated for areas to avoid counting the same air quality benefits twice. One way areas might reduce the risk of such double counting is to produce two sets of modeling. One would be based on the

[75] Urbanized area—an area consisting of a central place(s) and adjacent urban fringe that together have a minimum residential population of at least 50,000 and generally an overall population density of at least, 1,000 people per square mile of land area. *http://www.census.gov/geo/www.tiger/glossary.html*

current situation, the other based on the proposed land use changes made by the community. The difference between these ''before and after modeling'' scenarios would show the emission impacts of the land use changes. We recognize that this modeling is very complex and resource intensive. Complexities arise because in many areas across the country, on-road mobile source emissions are estimated using transportation and emissions models. The locations where people live and work in an area, are important inputs to the transportation planning and modeling processes. As such, the long range transportation plan which covers at least 20 years into the future was developed to reflect the mobility needs for a specific land use scenario. It has been long recognized that there is a complicated, dynamic and interrelated relationship among air quality, transportation and land use planning. Evaluation may need to be iterative. For example, if land use changes are proposed to gain air quality benefits, the transportation system may need to be re-evaluated to insure, that with the new land use scenario, the transportation system can continue to provide an acceptable level of transportation service to all members of the community. Therefore, it may be difficult for areas to precisely quantify the emissions related to land use choices from this modeling, given the dynamic nature between land use and transportation. In conducting this sort of analysis, States should be working closely with MPOs and other transportation and planning agencies.

The second set of difficulties involves setting the timeframe before emission benefits can be realized. EPA seeks comment on the potential difference in the time period over which benefits may be realized from land use strategies compared to the NSR program. Land use strategies tend to be long term. Once a particular land use strategy is adopted, it may take several years before the change results in air quality benefits. For example, suppose an area decides to change its zoning regulations to encourage mixed-use development. This strategy may ultimately result in lower relative emissions because of people making fewer vehicle trips because housing, employment, and shopping are located together compared to development patterns that might occur without the changes to the zoning regulations, and the increase in density may generate transportation options such as transit service, bicycling, and walking. However, it may be several years before the zoning regulations actually change where people and businesses decide to locate. Of course, it should be noted that flexibilities proposed do not necessarily mean that new development will occur right away. EPA requests comment on how to take this issue of timing into account in our proposal to give program flexibility for adopting land use measures.

g. *How can changes to land development affect air quality?* As metropolitan areas continue to expand in both size and population, how and where development occurs has significant implications for many environmental impacts including air quality. For example, establishing land use strategies to increase population and housing densities, and support the provision of mixed use development can make transit, and bicycle and pedestrian facilities more viable options to driving. These strategies may decrease the amount of motor vehicle emissions that would occur compared to development patterns if the strategies were not established.

h. *What is the connection between land use and NSR?* A major new source has the potential to be a major economic development generator for a region that may influence development and travel patterns. For example, if a large new facility were to locate outside of the nonattainment area (in many cases this means outside of the area with existing development, infrastructure and density) it may affect regional travel patterns. Such a facility that hires hundreds of people and is located where there are few opportunities to use alternative modes of transportation (*e.g.*, mass transit or walking to work) may result in greater amounts of VMT and vehicle trips (''VT'') per employee than a similar facility accessible by mass transit. For example, a long-term effect of locating a large facility in an undeveloped area, particularly one that employs a large number of people, could be that it ultimately attracts additional development. For instance, if enough employees are at the site, the nearby area may attract other service industries (*e.g.*, fast food, drycleaners, and gas stations). These developments may be low density, auto-dependent, and single-use, which may generate additional emissions (both area and mobile sources). The NSR program does not consider or offset these emissions.

On the other hand, if a hypothetical source chooses to locate in an area that is already developed, it may generate less VMT and therefore fewer emissions than one located in an undeveloped area. The source may be able to take advantage of the existing infrastructure and service, without the construction of new infrastructure elements (roads, sewer lines, etc.) that result in their own air emissions and other environmental impacts. Such location in existing developed areas may not open up new areas to development, nor encourage sprawl. With this option, EPA is trying to recognize the indirect impacts of development. If communities use CADC techniques, they should, compared to communities that do not use such practices, offset some of the indirect emissions from new sources. The NSR program only considers the direct impacts from a development. This option tries to look more broadly at all the impacts of development. We would reduce the requirements of NSR and would provide increased program flexibility in exchange for the reduced emissions from CADC practices.

A strategy that recognizes the relationships between stationary, area and mobile sources, as well as how these impacts affect total environmental quality, is one that will most effectively deal with today's environmental problems. That is why multiple offices in EPA—the Air Office, the Water Office, the Policy Office and the Brownfields Office—all have programs encouraging development patterns that reduce environmental impacts. These programs use a variety of tools: regulations, information, and partnerships to encourage such development. It would be consistent with these other Agency efforts to develop a way to use flexibilities in CAA programs to encourage CADC practices. It would also be supportive of the many States and localities that are interested in accounting for the air quality benefits of their development choices.

i. *Are there other environmental impacts that result from land use choices?* Yes, low density development patterns tend to disturb more land and create more impervious cover over a region (*e.g.*, paved roads), harming a region's water quality and disrupting habitat. Because of the close interaction between development and the achievement of national environmental goals, EPA has long been engaged in addressing their environmental impacts. The Office of Water seeks to address the impacts of development through its watershed programs, non-point source programs, source water protection efforts, the National Estuary Program, and Total Maximum Daily Load programs. When EPA reviews projects under the National Environmental Policy Act, it examines the secondary and cumulative impacts of development generated by Federal actions. The Brownfields Office, recognizing the

necessity of engaging the private sector, has sought specifically to encourage development on brownfields.

j. *What are some of the land use strategies measures included in ''Improving Air Quality Through Land Use Activities*''? The guidance includes a number of different activities that may generate on-road mobile source emissions reductions. A sampling of them includes:

- Grant incentives to build concentrated activity centers: encouraging pedestrian and transit travel by creating high density mixed use nodes that can be easily linked by a transit network.
- Change zoning regulations to allow or encourage mixed-use development; this encourages pedestrian travel by putting compatible land uses next to each other.
- Build, or require developers to install, pedestrian and bicycle facilities; and increase the number of sidewalks, paths, crosswalks, bike lanes, etc., to make walking and bike use safe.
- Transfer unused development capacity in outlying areas to increase density above existing limits in central areas and near transit nodes; this moves development away from outlying areas and toward already developed areas.
- Provide incentives such as reduced parking requirements to new in-fill development; this takes advantage of existing infrastructure and discourages driving.

EPA were to go forward with this concept the Guidance would be formally incorporated by reference.

k. *Does the CAA include the concept of increased flexibility in the NSR program in cases where development is targeted in appropriate areas?* Yes, Section 173(a)(1)(B) replaces the traditional requirement that a new or modified stationary source in a nonattainment area obtain offsets with a growth allowance concept in specially designated zones to which ''economic development should be targeted.'' EPA recognizes, however, that this proposal differs in many respects from section 173.

l. *Does this option mandate any changes to local land use decisions?* No. The CAA, in Section 131, clearly supports the position that land use decisions are local. This option would simply recognize that areas that choose to develop in certain patterns are doing more to improve air quality and that such efforts should be rewarded.

m. *How would this option be enforced?* Since the CADC measures would be in the SIP, they could not be changed without EPA approval of a SIP revision. If measures are changed they must be replaced with other measures of equal or greater effectiveness, and otherwise meet the requirements of section 110(l) concerning anti-backsliding. Failure to do so would mean that either of these options would no longer apply to the area. EPA understands that it does not have the authority to control local land use decisions. The choice always rests with the community, however, it doesn't get the advantages of being a CADC unless it puts the measures in its SIP. Should it decide to change a land use measure in the SIP, the issue for EPA would be whether or not other new measures yield sufficient reductions to allow the area to remain a CADC. The land use measure itself would be approved. EPA requests comments on how best to enforce these options.

n. *What are the relative advantages of the two options?* The first option provides greater incentive for communities and is, therefore, more likely to encourage changes to land development policies. The second option is simpler since it does not make changes to NSR. As a result, unlike option 1, it does not require communities to estimate the increased emissions that could result from changing NSR applicability—which admittedly would be difficult.

o. *What are the disadvantages of this proposal?* In addition to the modeling issues discussed above in section f, there are several other issues associated with providing flexibilities, such as reducing NSR requirements, for areas that adopt CADC land use measures. It may be difficult to ensure that the CADC land use measures are implemented by areas participating in the option. It may also be difficult to design penalty measures if those land use measures are not implemented by areas. In addition, if the CADC should fail to achieve its envisioned land use pattern, how would the MPO model the area for purposes of conformity. By encouraging growth in established areas, this option may raise environmental justice concerns and unanticipated costs for low-income residents. Some States may have difficulties managing and tracking offset pools. EPA requests comment on all of these issues and how we can best resolve them.

10. Tribal Concerns

In addition, we expect that some Tribal areas will be designated as nonattainment because of pollution that is transported from the surrounding State(s) and will have little control over the ability of areas under their jurisdiction to attain the air quality standards. In the event that such an area fails to attain by the attainment date, additional flexibility for the Tribes will be needed to address the fairness issues created by transported nonattainment problems. Tribes have asked that we consider providing offset set-asides in order to address these issues. We request comment on whether emission offset set-asides, possibly generated by innovative measures to promote additional emissions reductions, are an appropriate method to help level the playing field for the Tribes in order to support economic development in Tribal areas. In any case, we believe that some provisions will need to be made for Tribal areas, because they will have limited ability, if any, to generate offsets on their own. We may also need to work with States to help provide the Tribes access to offsets from non-Tribal areas. Also, it is important to recognize that the NO_X SIP Call does not provide for an emissions budget for Tribes. Therefore, we are asking for comments on how to provide a set-aside to provide fair access to development in these areas.

P. How Will EPA Ensure That the 8-Hour Ozone Standard Will Be Implemented in a Way Which Allows an Optimal Mix of Controls for Ozone, $PM_{2.5}$ and Regional Haze?

1. Could an Area's 8-Hour Ozone Strategy Affect Its $PM_{2.5}$ and/or Regional Haze Strategy?

Many of the areas that are violating either the 8-hour ozone or $PM_{2.5}$ NAAQS, may be violating both of these NAAQS. Thus, in many cases, States will have ozone and $PM_{2.5}$ nonattainment areas with overlapping boundaries. Requirements for regional haze apply to all areas. Each State is responsible for developing SIP revisions to meet all the requirements relevant to each nonattainment area for each pollutant as well as developing a regional haze plan. In some cases, ozone control measures may also be useful for a $PM_{2.5}$ control strategy or a regional haze plan. Similarly, controls for $PM_{2.5}$ may lead to reductions in ozone or regional haze. For example, considered in isolation, a metropolitan area's ozone strategy might be based on additional VOC emissions reductions; if the area needs NO_X reductions for $PM_{2.5}$ attainment, however, an optimal approach might include a more complex ozone strategy using both NO_X and VOC reductions. We believe integration of ozone and $PM_{2.5}$ attainment planning will reduce overall costs of meeting multiple air quality goals.

Many of the factors affecting concentrations of ozone also affect

concentrations of $PM_{2.5}$. Emissions of NO_X and/or VOC will lead to formation of organic particles and the precursors of particulate nitrate, as well as ozone. The presence of ozone is an important factor affecting $PM_{2.5}$ formation; as ozone builds up, so do OH radicals which are instrumental in oxidizing gas phase SO_2 to sulfuric acid. The sulfuric acid may be converted to sulfate particles, increasing the $PM_{2.5}$ concentration. Further, the local ozone concentrations may be decreased by the reaction of ozone with nitric oxide; thus, in some large urban areas, a decrease in local NO_X emissions can result in higher local ozone concentrations, leading to higher OH radical concentrations and increases in secondary $PM_{2.5}$. Because the precursors for ozone and $PM_{2.5}$ may be transported hundreds of kilometers, regional scale impacts may also need to be considered.

2. What Guidance Has EPA Provided Regarding Ozone, $PM_{2.5}$ and Regional Haze Interaction?

As described in an earlier section of today's proposed rulemaking, States must develop ozone attainment demonstrations for many nonattainment areas. General criteria for attainment demonstrations are contained in 40 CFR part 51, appendix W (*i.e.*, ''*EPA's Guideline on Air Quality Models*''). EPA's May 1999 draft ''Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS'' provides a set of general requirements that an air quality model should meet to qualify for use in an attainment demonstration for the 8-hour ozone NAAQS. The draft guidance encourages States to integrate ozone control strategies with strategies designed later to attain the NAAQS for $PM_{2.5}$ and to meet reasonable progress goals for regional haze. In addition, the draft guidance presents some modeling/analysis principles to help States develop data bases and capabilities for considering joint effects of control strategies for ozone, $PM_{2.5}$ and regional haze. Because emissions and meteorological conditions vary seasonally, the guidance recommends assessing the effects of an ozone control strategy on annual $PM_{2.5}$ concentrations by estimating effects on mean $PM_{2.5}$ for each season and using the resulting information to estimate annual impacts. Emission estimates for VOC, NO_X, primary $PM_{2.5}$, sulfur dioxide and ammonia will be needed. In addition, the modeling should separately estimate the effects of the ozone strategy on the major components of $PM_{2.5}$: mass associated with sulfates, nitrates, organic carbon, elemental carbon, and all other species. We believe that this approach is adequate to ensure that the 8-hour ozone standard will be implemented by States in a way that allows an optimal mix of controls for ozone, $PM_{2.5}$, and regional haze.

Similarly, EPA's attainment demonstration guidance for $PM_{2.5}$ and regional haze states that models intended to address secondary PM problems should also be capable of simulating ozone formation and transport (January 2, 2001, ''Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze''). The formation and transport of secondary PM are closely related to processes that are important in the formation and transport of ozone. Thus, it makes sense for programs designed to control ozone to be cognizant of programs to reduce $PM_{2.5}$ and improve visibility and vice versa. The $PM_{2.5}$ guidance suggests conducting a ''mid-course review'' of an approved $PM_{2.5}$ plan to review changes in air quality resulting from implementation of plans to reduce $PM_{2.5}$, regional haze, and ozone. (EPA guidance on mid-course review of attainment demonstrations is described earlier in today's proposed rulemaking.)

We realize that in some cases development of control plans will be complicated by the need to assess the impact of the precursors of ozone, $PM_{2.5}$, and regional haze. The question arises whether such areas may be provided more time to perform the more complicated analyses such that an effective multi-pollutant strategy may be developed. However, the statute provides no express relief for these situations. Thus, the State is still responsible for developing and submitting demonstrations which show that each standard will be attained by the applicable date or dates provided.

3. What Is EPA Proposing?

Today, we propose to continue the policy of encouraging each State with an ozone nonattainment area which overlaps or is nearby a $PM_{2.5}$ nonattainment area to take all reasonable steps to coordinate the required revisions for these nonattainment areas and meet reasonable progress goals for regional haze. Specifically, we encourage States conducting modeling analyses for ozone to separately estimate effects of a strategy on the following: mass associated with sulfates, nitrates, organic carbon, elemental carbon, and all other species.

Q. What Emission Inventory Requirements Should Apply Under the 8-Hour Ozone NAAQS?

The Consolidated Emissions Reporting Rule (CERR) (67 FR 39602, June 10, 2002) has established basic emission inventory requirements. Specific SIP-related inventory issues will be detailed in a guidance document. An important difference between inventories submitted in response to the CERR and SIP inventories is the issue of approvability. While it is likely that an inventory submitted under the CERR would be identical to the inventory submitted as part of a SIP, the SIP inventory will need to go through public hearing and formal approval by EPA as a SIP element. This public process can be combined with the public process the State undertakes for other SIP elements. The following discussion presents more details on the emission inventory.

Emission inventories are critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including ozone. Pursuant to its authority under section 110 of title I of the CAA, EPA has long required States to submit emission inventories containing information regarding the emissions of criteria pollutants and their precursors. EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 CAA Amendments revised many of the provisions of the CAA related to attainment of the NAAQS and the protection of visibility in mandatory Class I Federal areas (certain national parks and wilderness areas). These revisions established new periodic emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. In the case of ozone, section 182(a)(3)(A) required that States submit an emission inventory every 3 years for nonattainment areas beginning in 1995 for calendar year 1993. The inventory must include emissions of VOC, NO_X, and carbon monoxide (CO) for point, area, mobile (on-road and non-road), and biogenic sources.

In 1998, EPA promulgated the NO_X SIP Call (§ 51.121) which calls on the affected States and the District of Columbia to submit SIP revisions providing for NO_X reductions in order to reduce the amount of ozone and ozone precursors transported across State borders. As part of that rule, EPA established emissions reporting

requirements for States subject to the SIP Call.[76]

In 2002, EPA promulgated the CERR. (67 FR 39602, June 10, 2002). The CERR consolidates the various emissions reporting requirements that already exist into one place in the CFR, establishes new reporting requirements for $PM_{2.5}$ and its precursors and establishes new requirements for the statewide reporting of area source and mobile source emissions.

The CERR establishes two types of required emission inventories:

- Annual inventories, and
- 3-year cycle inventories.

We anticipate that States will use data obtained through their current annual source reporting requirements (annual inventories) to report emissions from larger point sources annually. States will need to get data from smaller point sources every 3rd year. States may also take advantage of data from emission statements that are available to States but not reported to EPA. New nonattainment areas for the 8-hour standard that are classified under subpart 2 will need to establish an emission statement program as specified under section 182(a)(3)(B). We published guidance on emission statements in July 1992 titled, ''Guidance on the Implementation of an Emission Statement Program.'' As appropriate, States may use the emission statement data to meet their reporting requirements for point sources. We are interested in States' comments on their experience with the emission statement program and how the implementation of the emission statement program can be improved. States are also required to inventory area and mobile source emissions on a statewide basis for the 3-year cycle inventory. Mobile source emissions should be estimated by using the latest emissions models and planning assumptions available. The latest approved version of the MOBILE model (MOBILE6 at the time of this proposed rulemaking, see 67 FR 4254, January 29, 2002) should be used to estimate emissions from on-road transportation sources, in combination with the latest available estimates of VMT. EPA has issued a guidance memo titled ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' dated January 18, 2002, that provides additional information on the use of the MOBILE6 model. The NONROAD model is currently available in draft form and can be used for initial estimates of off-road mobile source emissions. We expect that the final version of the NONROAD model will be released in late 2004, which will not be in time for States to use it for their 2002 emission inventories, which are due June 1, 2004. However, by the time EPA's rulemaking on implementation of the 8-hour ozone standard is final and States need to begin preparing SIPs, a new draft version of NONROAD will have been released in connection with a planned proposal in early 2003 regarding regulation of certain non-road engine categories. When the NONROAD model is final, States may choose to update their 2002 emission inventories using the final NONROAD model. By merging the information on point sources, area sources and mobile sources into a comprehensive emission inventory, State and local agencies may do the following:

- Set a baseline for SIP development,
- Measure their progress in reducing emissions,
- Have a tool they can use to support future trading programs,
- Answer public requests for information.

Most importantly, States need these inventories to help nonattainment areas develop and meet SIP requirements to reach the NAAQS.

In April 1999, we published ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–99–006. We will be updating this guidance and are soliciting comment on several key points to be addressed in the revised document. These points are:

- Section 182(a)(1) requires that marginal and above ozone nonattainment areas submit an emission inventory 2 years after designation as nonattainment in 1990. For nonattainment areas classified under subpart 2 for the 8-hour ozone standard, we propose to interpret this to mean that an emission inventory would be required 2 years after designation (*i.e.*, in 2006 if EPA designates areas in 2004). The CERR requires comprehensive triennial emission inventories, beginning with the 2002 inventory year, regardless of an area's attainment status. Because these emission inventories will be available, we propose that the emission inventories required by the CERR are sufficient to meet the provisions of section 182(a)(1).
- In the past, there have been instances where portions of Tribal areas have been included in designated nonattainment areas, but when the baseline emission inventory was prepared, emissions from the Tribal lands were not included. This has had the effect of preventing the Tribes from generating emission reductions from existing sources to develop emission offsets, as well as impairing the ability of the State to model as accurately as possible. We are encouraging the States and Tribes to work together to ensure that the information used in developing the baseline emission inventory is inclusive of all emissions from the nonattainment area.
- The emission inventory is used as a tracking metric by some programs such as emission trading, NSR offsets trading and RFP. This requires that a year is designated as a ''baseline'' year and used as the reference for the particular program.

An external review draft of the emission inventory guidance titled ''Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' is available at: *http://www.epa.gov/ttn/chief/eiinformation.html.* Comments on this document are due at the same time as comments on this proposed rulemaking. However, the review of the emission inventory guidance is not part of this proposed rulemaking. Comments submitted on the emission inventory guidance should be identified as such and will not be docketed nor will a comment/response summary of these comments be a part of the final 8-hour ozone implementation rule. Instructions on how to submit comments are included with the draft guidance document.

R. What Guidance Should Be Provided That Is Specific to Tribes?

This section summarizes guidance for Tribes offered in various parts of this proposal. The TAR (40 CFR part 49), which implements section 301(d) of the CAA, gives Tribes the option of developing TIPs. Unlike States, Tribes are not required to develop implementation plans. Specifically, the TAR, adopted in 1998, provides for the Tribes to be treated in the same manner as a State in implementing sections of the CAA. EPA determined in the TAR that it was inappropriate to treat Tribes in a manner similar to a State with regard to specific plan submittal and implementation deadlines for NAAQS-related requirements, including, but not limited to, such deadlines in CAA sections 110(a)(1), 172(a)(2), 182, 187, and 191. See 40 CFR 49.4(a). If a Tribe elects to do a TIP, we will work with the

[76] Although the United States Court of Appeals has remanded certain limited issues regarding the NO_X SIP Call to the Agency, those issues do not include the reporting requirements. See *Michigan* v. *EPA*, 213 F. 3d 663 D.C. Cir. 2000) and *Appalachian Power Co.* v. *EPA*, 251 F. 3d 1026 (D.C. Cir. 2001).

Tribe to develop an appropriate schedule which meets the needs of each Tribe, and which does not interfere with the attainment of the NAAQS in other jurisdictions. The Tribe developing a TIP can work with the EPA Regional Office on the appropriateness of applying RFP and other SIP requirements that may or may not be appropriate for the Tribe's situation.

The TAR indicates that EPA is ultimately responsible for implementing CAA programs in Indian country, as necessary and appropriate, if Tribes choose not to implement those provisions. For example, an unhealthy air quality situation in Indian country may require EPA to develop a FIP to reduce emissions from sources on the reservation. In such a situation, EPA, in consultation with the Tribe and in consideration of their needs, would work to ensure that the NAAQS are met as expeditiously as practicable. Likewise, if we determine that sources in Indian country could interfere with a larger nonattainment area meeting the NAAQS by its attainment date, we would develop a FIP for those sources in consultation with the Tribe, as necessary and appropriate.

The TAR also provides flexibility for the Tribe in the preparation of a TIP to address the NAAQS. If a Tribe elects to develop a TIP, the TAR offers flexibility to Tribes to identify and implement—on a Tribe-by-Tribe, case-by-case basis—only those CAA programs or program elements needed to address their specific air quality problems. In its proposed Tribal rule, we described this flexible implementation approach as the ''modular approach.'' Each Tribe may evaluate the particular activities, including potential sources of air pollution within the exterior boundaries of its reservation (or within non-reservation areas for which it has demonstrated jurisdiction), which cause or contribute to its air pollution problem. A Tribe may adopt measures for controlling only those sources or ozone precursor emissions, as long as the elements of the TIP are ''reasonably severable'' from the package of elements that can be included in a whole TIP. A TIP must include regulations designed to solve specific air quality problems for which the Tribe is seeking EPA approval, as well as a demonstration that the Tribal air agency has the authority from the Tribal government to develop and run their program, the capability to enforce their rules, as well as the resources to implement the program they adopt. In addition, the Tribe must receive an ''eligibility determination'' from EPA to be treated in the same manner as a State and to receive authorization from EPA to run a CAA program.

We would review and approve, where appropriate, these partial TIPs as one step of an overall air quality plan to attain the NAAQS. A Tribe may step in later to add other elements to the plan, or EPA may step in to fill air quality gaps as necessary and appropriate. In approving a TIP, we would evaluate whether the plan interferes with the overall air quality plan for an area when Tribal lands are part of a multi-jurisdictional area.

Because many of the nonattainment areas will include many jurisdictions, and in some cases both Tribal and State jurisdictions, it is important for the Tribes and the States to work together to coordinate their planning efforts. States need to incorporate Tribal emissions in their base emission inventories if Indian country is part of an attainment or nonattainment area. Tribes and States need to coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole.

S. What Are the Requirements for OTRs Under the 8-Hour Ozone Standard?

Section 176A of subpart 1 provides the authority to establish interstate transport regions where transport of air pollutants from one or more States contributes significantly to a violation of a NAAQS in one or more other States. When a transport region is established, section 176A requires that a transport commission, comprised of representatives from the States in the transport region, also be established. The role of the transport commission is to assess the degree of interstate transport of the pollutant and precursors throughout the transport region and to evaluate strategies for mitigating the interstate pollution.

Section 184 of subpart 2 establishes additional provisions for OTRs. Section 184(a) specifically established an OTR comprising 12 Northeast and Mid-Atlantic States and the District of Columbia in order to address the longstanding problem of interstate ozone pollution in that region. The general provisions of section 176A apply to any OTR established under section 184. To date, the existing OTR is the only transport region for any pollutant that has been established and is subject to the section 176A requirements.

Section 184(b) of subpart 2 sets forth specific VOC and NO_X control requirements to be applied throughout the entire OTR, in both attainment and nonattainment areas, to reduce interstate pollution. These additional regional control requirements are part D NSR (for VOC and NO_X), RACT (for VOC and NO_X), enhanced vehicle I/M, and Stage II vapor recovery (for vehicle refueling) or a comparable measure. Some of these requirements duplicate requirements for ozone nonattainment areas that are classified under subpart 2.

We believe the clearest legal interpretation of section 184 is that the current OTR and section 184 control requirements apply for purposes of the 8-hour standard. We believe that this interpretation would not result in any new control requirements for any area in the OTR because these control requirements are not associated with an area's designation or classification and already apply regionwide under the 1-hour ozone standard. Rather, these statutory obligations would remain in place for areas in the existing OTR. If a new OTR is established for purposes of the 8-hour standard pursuant to section 176A, that area would also be subject to the provisions and additional control requirements of section 184.

Because all areas in the existing OTR, including attainment areas, are subject to part D NSR for NO_X and VOC and a number of other control measures, areas in the OTR would not be able to take full advantage of either the transitional option proposed for NSR or the Agency's existing approach for early reductions, both of which are discussed elsewhere in this proposed rulemaking.

T. Are There Any Additional Requirements Related to Enforcement and Compliance?

Section 172(c)(6) requires nonattainment SIPs to ''include enforceable emission limitations, and such other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment * * *'' The current guidance, ''Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans (EPA–452/R–93–005, June 1993)'' is relevant to rules adopted for SIPs under the 8-hour ozone NAAQS and should be consulted for purposes of developing appropriate nonattainment plan provisions under section 172(c)(6). This document provides States with guidance on how to prepare enforceable stationary and mobile source regulations for their ROP plans. Developing clear, concise, enforceable rules and establishing strong compliance programs helps to ensure that the emissions reductions projected for specific control strategies are actually achieved. The document

identifies the minimum criteria and the information sources that we will use to evaluate the enforceability of regulations, and to determine compliance with Federal guidelines and regulations. States should follow the guidelines provided in this document as part of their quality assurance process involved in the development of control measures for their ROP plans and their attainment demonstrations.

U. What Requirements Should Apply to Emergency Episodes?

Currently, subpart H of 40 CFR part 51 specifies requirements for SIPs to address emergency air pollution episodes and for preventing air pollutant levels from reaching levels determined to cause significant harm to the health of persons. We anticipate proposing a separate rulemaking in the future to update portions of that rule. This separate rulemaking may be done in conjunction with revisions to the emergency episode rules that will address the $PM_{2.5}$ NAAQS.

V. What Ambient Monitoring Requirements Will Apply Under the 8-Hour Ozone NAAQS?

Ozone monitoring data play an important role in designations, control strategy development, and related implementation activities. The ambient monitoring requirements are listed in 40 CFR part 58.

We plan to modify these existing ozone monitoring requirements as part of the National Air Monitoring Strategy. These changes are being undertaken in a separate rulemaking effort. We plan to propose a national strategy introducing NCore (national core monitoring sites) as a replacement for traditional national air monitoring stations/State and local air monitoring stations (NAMS/SLAMS) monitoring currently codified at 40 CFR part 58.

Part of the NCore network [77] would include the existing ozone monitoring sites that currently support the NAAQS-related activities. The number and location of the original sites would likely be very similar to the current network. The regulatory modifications are expected to include ozone monitoring requirements based upon the population of an area and its historical/forecasted ozone air quality values.

In addition, we anticipate that we will include a requirement for measuring multiple air pollutants at select locations. The NCore sites are expected to include high-sensitivity nitrogen oxide (NO) and total reactive oxides of nitrogen (NO_y) measurements at locations across the nation to support the tracking of national emission strategy efforts such as the NO_X SIP Call and, if created, a statute codifying the Clear Skies Bill, which addresses NO_X reductions across the nation.

Each State, local, and Tribal air monitoring agency is being asked to assess the adequacy of its air pollution monitoring networks, including those sites that measure ozone. We will work with these agencies to develop network plans to ensure approval of all network designs. On a local basis, there will be some relocation, addition and removal of ozone sites as a result of regional network assessments.

The CAA requires that ozone precursor monitoring be conducted in any ozone nonattainment area classified as serious, severe, or extreme. We adopted regulations reflecting the statutory requirements in 40 CFR part 58 in 1994 as the Photochemical Assessment Monitoring Stations (PAMS) program. Areas that would be designated under the 8-hour ozone NAAQS are not directly addressed in 40 CFR part 58 for ozone precursor monitoring.

The PAMS monitoring will be retained in areas currently designated as 1-hour ozone serious, severe, and extreme nonattainment areas. The monitoring strategy regulation revisions will consider the possibility of reducing some of the sampling schedules. We also intend to promote the use of individually designed PAMS networks to address the very specific ozone and ozone precursor data needs in PAMS areas.

The revised regulation will also cover all areas that are classified as serious or above for the 8-hour NAAQS. Once an area is bumped up to serious or above, it would be subject to the enhanced monitoring rule and would be required to develop appropriate PAMS plans. Where practical, PAMS stations should be incorporated into multi-pollutant NCORE level 2 sites [78] that include NO_y, meteorological and CO (a good indicator of mobile emission measurements.) Alternative plans are recommended for 8-hour bump-up areas. This will be reflected in the 40 CFR part 58 changes as well.

W. When Will EPA Require 8-Hour Attainment Demonstration SIP Submissions?

1. Background

The time for submission of attainment demonstration SIPs is linked to whether the requirements are specified under subpart 1 or subpart 2. In general, all areas designated nonattainment are subject to the planning requirements of subpart 1. However, if the area is subject to a more specific requirement under subpart 2, the subpart 2 planning obligation controls. As proposed elsewhere in the discussion concerning classification options, some, if not all, 8-hour ozone standard nonattainment areas will be subject to the subpart 2 planning obligations.

Section 172(b) (in subpart 1) provides that at the time EPA promulgates the designation of an area as nonattainment with respect to a NAAQS under section 107(d), the Administrator shall establish a schedule for submission of a plan that meets the CAA's requirements for nonattainment areas. This schedule may not extend beyond 3 years after the date of nonattainment designation.

Under subpart 2 of the CAA, attainment demonstration SIP submission deadlines for areas designated nonattainment for the 1-hour ozone standard are linked to the date of enactment of the CAA Amendments, *i.e.*, from November 15, 1990. This date is also the date by which most of these areas were designated and classified by operation of law. *See* CAA section 107(d)(1)(C) and 181(a). Moreover, in subpart 1, Congress linked the time for SIP submission to the time of designations. *See* CAA section 172(b). Because such dates have long since passed, we believe that it is reasonable to tie the SIP submittal dates to the date of nonattainment designations and classifications for the 8-hour standard. [79] While the submission date for all SIP requirements in subpart 2 will be tied to the date of nonattainment designations, this section of the proposed rule discusses the requirement to submit an attainment demonstration. For purposes of the discussion here, we are assuming that designations will occur in 2004.

Subpart 2 requires attainment demonstration submissions at different times depending on an area's classification. Section 182(a) does not require an attainment demonstration for marginal areas. Section 182(b)(A)(1)

[77] A description of the NCore can be found at the following Web site: *http://www.epa.gov/ttnamtil/files/ambient/monitorstrat/sec4.pdf.*

[78] A description of the NCore level 2 stations can be found at the following Web site: *http://www.epa.gov/ttnamtil/files/ambient/monitorstrat/sec4.pfd.*

[79] Since we anticipae that areas will be designated and classified on the same date, we will use the term ''designation'' to represent the date of designation and classification.

requires moderate areas to submit an attainment demonstration no later than 3 years after the date of enactment. Section 183(c)(2) requires serious (and higher classified) areas to submit an attainment demonstration no later than 4 years after date of enactment. As provided above, we propose to interpret these times to run from the date of an area's nonattainment designation. Despite the fact that the CAA's provisions for the timing of submission of attainment demonstration SIPs for subpart 1 areas differs from that of subpart 2 areas, we do not believe it is appropriate or desirable to require States to submit attainment demonstrations for areas designated nonattainment under the 8-hour standard at greatly different times. We recognize that photochemical grid modeling—required by the CAA for interstate moderate nonattainment areas, as well as serious and higher-classified areas—will be performed on large enough scales to address transport and will in most cases encompass a number of nonattainment areas. These numerous nonattainment areas may differ by classification (some areas may be intrastate moderate areas, some inter-state moderate areas, and others serious and above nonattainment areas). Some areas that may require attainment demonstrations may be subject to subpart 1 while others may be subject to subpart 2. Furthermore, the control strategies that may be modeled for all the areas in the modeling domain will likely be modeled simultaneously, especially if all the areas are located in a single State. Also, we believe that techniques for photochemical grid modeling, while they were more time-consuming when the 1990 CAA Amendments were enacted, are now more standardized and less time-consuming. In light of this, we do not believe it is reasonable to defer submission of attainment demonstrations beyond 3 years after designation.

The TAR, which implements section 301(d) of the CAA, gives Tribes the option of developing TIPs. Specifically, the TAR provides for the Tribes to be treated in the same manner as a State in implementing most of the CAA. However, in the TAR, EPA determined that it was inappropriate to treat Tribes in a manner similar to a State with regard to schedules. Therefore, Tribes are not required to submit a TIP, nor, if they choose to submit a TIP, are they required to submit a TIP in the same timeframe as the States. Where a Tribe chooses to develop a TIP, we will work with them to develop an appropriate schedule that meets the needs of the Tribe but does not interfere with timely attainment of the NAAQS on Tribal land or in other jurisdictions.

2. Option Being Proposed

In light of the above discussion and rationale, we are proposing to require all nonattainment areas that are required to perform photochemical grid modeling—regardless of coverage under subpart 1 or 2 or regardless of classification under subpart 2—to submit an attainment demonstration within 3 years after designation.

We believe this proposal would result in a closer synchronization of the 8-hour ozone and $PM_{2.5}$ attainment demonstration SIP submittal dates. We discussed the integration of ozone and $PM_{2.5}$ schedules at the three public meetings and numerous conference calls that were held with stakeholder groups. A majority of commenters were supportive of integrating the SIP attainment plan submission schedules for ozone and $PM_{2.5}$ because integration would optimize control strategies, save time and planning resources, streamline deadlines, and maximize cost effectiveness, among other benefits.

The $PM_{2.5}$ standard is anticipated to be implemented under subpart 1 of the CAA, which requires a SIP submission by a date set by EPA, which can be no later than 3 years from designation. Since we are proposing that all 8-hour ozone nonattainment areas that are required to perform photochemical grid modeling submit their attainment demonstration SIPs within 3 years after nonattainment designation, this would result in a high degree of synchronization and thus allow comprehensive analyses that would evaluate controls to attain both air quality standards. As noted above, we are assuming for this proposed rulemaking that ozone designations will be promulgated in the 2004 timeframe; currently under TEA–21, designations for $PM_{2.5}$ would occur beginning in 2004, and must be completed by the end of 2005. Thus, the later-designated $PM_{2.5}$ areas would not be required to submit their attainment demonstration SIPs until after the ozone SIPs are due. Additional discussion of the benefits of integrating the planning for both standards appears elsewhere in this proposed rulemaking.

VII. Proposal of Integrated Frameworks Using Various Options

As noted above, we are presenting two possible integrated frameworks that comprise an option from each of the above implementation elements to illustrate how they may work in conjunction with each other. In addition to soliciting comment on the options presented for the individual elements, we are also soliciting comment on how the options can be grouped into an integrated implementation framework. The following frameworks should be considered illustrative of possible ways of combining the element options. For final rulemaking, however, we may develop a consolidated framework that uses a different combination of the options proposed above, based on comments received and other information that comes to light during the public comment period.

We are proposing for comment two integrated frameworks:

- Framework 1—an approach considered similar to traditional implementation,
- Framework 2—an approach considered more flexible than traditional implementation.

Table 5 illustrates how element options may be combined to form these two frameworks. Elements for which we are proposing only one option would be common to either framework. For elements for which we are proposing several options, only one option has been selected for purposes of illustrating the frameworks depicted below.

In addition, there are several proposed elements where options are presented that only apply to areas that would be covered by subpart 1; these elements include RACT for subpart 1 areas and the NO_X waiver requirement as it would apply to subpart 1 areas. These elements are not shown in Table 5 below, since they are only applicable to subpart 1 areas.

TABLE 5.—8-HOUR OZONE NAAQS IMPLEMENTATION ELEMENTS/OPTIONS GROUPED INTO FRAMEWORKS FOR PROPOSAL

[This table only summarizes the options and approaches; the full description of the approach or option in the proposed rulemaking should be consulted]

Implementation element	Framework 1	Framework 2
A. Will subpart 1 or subpart 2 govern classifications?	Classify all areas under subpart 2 using 8-hour design values. (Option 1)	Areas with a 1-hour design value ≥ 0.121 ppm would be classified under subpart 2 using 8-hour design values. Areas with a 1-hour design value < 0.121 ppm would be covered under subpart 1. (Option 2)
B. Will areas under subpart 1 be classified?	N/A	No classification. (Option 1)
C. When may the State treat measures that applied for purposes of the 1-hour standard as contingency measures, consistent with section 110(l).	When the area attains the 8-hour ozone standard and is designated attainment.	When the area achieves the level of the 1-hour standard.
D.1. How will the 15 percent VOC ROP requirement apply?	All areas classified as moderate or above for the 8-hour NAAQS must achieve a 15 percent reduction in VOC emissions for the first 6 years after the base year (2002). (Option 1)	A moderate area that already achieved a 15 percent VOC reduction for the 1-hour ozone standard would be considered to have met the 15 percent requirement already and may instead implement RFP consistent with section 172(c). An area classified as serious or above that already achieved a 15 percent VOC reduction would be considered to have met the 15 percent requirement so it could choose to achieve an average of three percent per year of VOC or NO_X reductions for the 6-year period. (Option 2)
D.2. What is the baseline year for the emission inventory used for RFP/ROP?	All areas would use a 2002 baseline year for preparation of the emissions inventory.	
D.3. What restrictions on creditable measures for RFP/ROP under the 8-hour standard (subpart 2 areas only) will apply?	All emissions reductions that occur after the baseline emissions inventory year from post-1990 Federal measures and any other measures would be creditable for ROP/RFP, except those specifically prohibited in section 182(b)(1)(D).	
D.4. What will RFP be for areas classified under subpart 1?.	N/A	a. *Areas with attainment dates 3 years or less after designation.* As with marginal areas, those areas would not be subject to a separate RFP requirement. b. *Areas with attainment dates between 3 to 6 years after designation.* No separate RFP demonstration required except RFP would be met if a State demonstrates emissions reductions needed for attainment would be achieved by the attainment date. (Option 1) c. *Areas with attainment dates beyond 6 years after designation.* The RFP plan submission would be due with the attainment demonstration within 3 years after designation and would need to provide for certain increments of reductions from the baseline emission year out to the attainment year, proportionate to the time between the base year and the attainment year. (Option 1)
D.5. How would the 8-hour ROP requirement fit with the 1-hour ROP requirement?	The area would develop new baseline and new ROP emission reduction targets for the 8-hour standard for the entire area and could drop the 1-hour standard target for any periods that overlap with an 8-hour RFP period.	
E. What's the RACT requirement for areas covered under subpart 1?.	N/A	If the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available. (Option 2)
F. What will be the NSR requirement?	Status quo approach for all areas—areas subject to NSR obligations for their 8-hour classifications under subpart 2. (Option 1)	Three options which could be implemented in conjunction with each other: Status quo approach for all areas (subpart 1 areas get subpart 1 NSR, subpart 2 areas get subpart 2 NSR) (Option 1); AND A more flexible NSR program (*i.e.*, allowing a pool of offsets, more flexible technology control requirement) for areas that submit early SIPs (''transitional'' NSR program) (Option 2);

TABLE 5.—8-HOUR OZONE NAAQS IMPLEMENTATION ELEMENTS/OPTIONS GROUPED INTO FRAMEWORKS FOR PROPOSAL—Continued

[This table only summarizes the options and approaches; the full description of the approach or option in the proposed rulemaking should be consulted]

Implementation element	Framework 1	Framework 2
		AND A CADC program, which would allow a more flexible NSR program for areas that adopt CADC provisions. (Option 3)

VIII. Other Considerations

A. Will EPA Be Contemplating Incentives for Areas That Want To Take Early Action for Reducing Ozone Under the 8-Hour Standard?

This section discusses the extent to which we are providing incentives for areas that wish to voluntarily expedite the path to cleaner air by initiating early planning and control actions for reducing ground-level ozone prior to EPA's designations for the 8-hour ozone NAAQS. State, local and Tribal air pollution control agencies have continued to express a need for added flexibility in implementing the 8-hour ozone NAAQS, including incentives for taking action sooner than EPA requires for reducing ground-level ozone. We are encouraging localities to make decisions that will achieve clean air sooner than otherwise is mandated by the CAA. Early planning and early implementation of control measures that improve air quality will likely accelerate protection of public health. We issued our policy on early planning on November 14, 2002. We are not proposing action on this approach in this rulemaking and, therefore, we are not requesting comment on this issue.

1. What Are the Ozone Flex Guidelines for the 1-Hour Ozone NAAQS?

In June 2001 we announced the ''Ozone Flex Guidelines'' program (Ozone Flex), which supports and rewards innovative, voluntary, local strategies to reduce ground-level ozone. Ozone Flex is a framework for local communities to develop voluntary solutions for areas concerned about potential future nonattainment of the 1-hour ozone standard. Ozone Flex is intended to achieve emissions reductions and avoid future nonattainment problems in those areas designated attainment for the 1-hour standard. While this program is only available to areas to address the 1-hour ozone standard, it also recognizes that areas may secure emissions reductions and public health benefits toward attaining the 8-hour ozone standard prior to EPA's designation of areas. These voluntary measures may be creditable to future planning efforts for the 8-hour standard, to the extent allowed by the CAA and EPA guidance or rules. Any emissions reductions targeted for a period after the base year would provide ''credit'' for a State, local, or Tribal area in any future plan. Emission reduction credits toward meeting RFP are discussed elsewhere in this proposed rulemaking.

2. What Is the ''Early Action Compact'' for Implementing the 8-Hour Ozone NAAQS?

Following EPA's issuance of the ''Ozone Flex Guidelines'' for continued attainment of the 1-hour standard, the Texas Commission on Environmental Quality (TCEQ) encouraged EPA to consider additional incentives for early planning towards achieving the 8-hour ozone NAAQS. On March 20, 2002, the TCEQ submitted to EPA the Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard (Protocol). The Protocol was designed to achieve emissions reductions and clean air sooner than would otherwise be required under the CAA for implementing the 8-hour ozone NAAQS. The TCEQ proposed that the Protocol would be formalized by ''Early Action Compact'' agreements (Compacts) primarily developed by local, State and Federal (EPA) officials. The principles of the Compacts are the following:

- Early planning, implementation, and emissions reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;
- Local control of the measures employed, with broad-based public input;
- State support to ensure technical integrity of the early action plan;
- Formal incorporation of the early action plan into the SIP;
- Designation of all areas as attainment or nonattainment in April 2004, but, for Compact areas, deferral of the effective date of the nonattainment designation and/or designation requirements so long as all Compact terms and milestones continue to be met; and
- Safeguards to return areas to traditional SIP attainment requirements should Compact terms be unfulfilled (*e.g.*, if the area fails to attain in 2007), with appropriate credit given for reduction measures already implemented.

Under this approach, an early, voluntary 8-hour air quality plan would be developed through an Early Action Compact agreement for each area that approaches or monitors exceedances of the 8-hour standard and that is designated attainment for the 1-hour ozone standard. This approach would also apply to maintenance areas for the 1-hour ozone standard to the extent such areas continue to maintain that standard. One-hour ozone maintenance areas are areas that were previously designated nonattainment for the 1-hour ozone standard, but were redesignated to attainment pursuant to section 107(d)(3)(E) and subject to the requirements of section 175A of the CAA.

Under a Compact, the local area would commit to develop a SIP based on recent emission inventories and air quality modeling demonstrating attainment of the 8-hour standard by 2007. In addition, the area would identify additional local controls beyond Federal and State requirements, which would be implemented by 2005. According to the Protocol, we would recognize the local area's commitment to early, voluntary action by designating the area nonattainment in April 2004 (at the time of national designations for all areas of the country), but deferring the effective date of the nonattainment designation for participating Compact areas that are monitoring a violation of the 8-hour ozone standard, so long as all terms and milestones of the Compact continue to be met, including submission of the early action SIP revision no later than December 31, 2004.[80] We circulated the Protocol to

[80] If a Compact area had air quality meeting the 8-hour standard for the period on which

Continued

numerous organizations for review and comment. A copy of the revised Protocol is available in the docket for this proposed rulemaking.

3. What is EPA's Response to the Texas ''Early Action Compact?''

In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002, based on comments from EPA. Upon the completion of Compacts by December 31, 2002 in areas that meet the requirements of the Protocol (including 1-hour maintenance areas), we intend to honor the commitments established in these agreements. Any control measures identified by a Compact area must be submitted to EPA for approval as a SIP revision.

In a proposed settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline gives States and Tribes ample time to update their recommendations by April 15, 2003 for nonattainment area boundaries. EPA lodged the proposed consent decree on November 13, 2002 with the U.S. District Court for the District of Columbia. Also on November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing early action compacts. (Memorandum dated November 14, 2002, from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators.)

We have entered into early action compacts with a number of areas of the country. As a result, we will designate all areas of the country either attainment or nonattainment in April 2004 (including Compact areas). At that time, we plan to propose to defer the effective date of the nonattainment designation for participating Compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all Compact milestones. However, as the Compacts were signed prior to the 2004 designations process, the Agency cannot prejudge the outcome of designations. Consequently, States are advised that if EPA determines that any portion of a compact area should become part of an 8-hour ozone nonattainment area, that portion would no longer be eligible for participation in the Early Action Compact, and the effective date of the nonattainment designation for that portion of the Compact would not be deferred. Also, as noted above, this proposed rulemaking does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process, nor does it take comment on the Early Action Compact program.

4. Did EPA Consider Other Options for Incentives for Areas That Take Early Actions for Reducing Ozone?

We did consider another option, which is discussed in a separate document available in the docket.[81]

5. What Is the Difference Between the Early Action Compact Program and the Transitional NSR Program?

Appendix D of this proposed rulemaking contains a table comparing the two programs. It should be noted that areas that may be initially eligible for the Early Action Compact but that become ineligible later may still be eligible for the transitional NSR program.

B. Clarification of How the Transition from 1-Hour to 8-Hour Standard Will Work for Early Action Compact Areas, for Conformity, and for NSR and PSD

Appendix E presents a table that describes our interpretation of the applicability of conformity and traditional NSR and PSD under the various potential transition scenarios. This table is included for informational purposes only and does not constitute part of the proposed rule. It is intended only to inform comment on the proposal itself. As discussed elsewhere in this preamble, we are proposing options for how areas will transition from the 1-hour standard to the 8-hour standard. Under one of the options, we would revoke the 1-hour standard 1 year after the effective date of the 8-hour designations. For Early Action Compact areas, the nonattainment designation for the 8-hour ozone standard is promulgated, but the effective date of that designation is deferred as long as the area continues to meet compact milestones. These milestones are described in the Holmstead memorandum referenced earlier. Shortly after December 2007 (*i.e.*, by April 2008), we intend to make a determination of whether the area attained the 8-hour ozone standard. For all Compact areas, under the transition option described earlier in this paragraph, we would revoke the 1-hour standard for these areas 1 year after the effective date of the designation of attainment or nonattainment for the 8-hour standard. Therefore, on the 1-year effective date of the determination we make in April 2008, which will include the designation of Compact areas, the 1-hour standard would be revoked (in approximately May or June of 2009).

C. How Will EPA's Proposal Affect Funding Under the Congestion Mitigation and Air Quality Improvement (CMAQ) Program?

Depending on the specific characteristics of a nonattainment area, revocation of the 1-hour ozone standard will have varying effects on some Federal transportation program funds apportioned to the States through a formula established by the TEA–21. The TEA–21 establishes eligibility for the CMAQ program transportation funds for nonattainment and maintenance areas, designated under section 107(d) of the CAA (42 U.S.C. 7407(d)), provided the area is, or was, classified in accordance with CAA sections 181, 186, and 188. Eligibility, in part, establishes an area's ability to use CMAQ funding. Areas designated nonattainment after December 31, 1997 are also eligible, but without regard to classification.

The amount of CMAQ funds available to States for use in nonattainment and maintenance areas is set at levels authorized by TEA–21. The funds are apportioned to States through the statutory formula contained in section 104(b) of title 23. The formula is based on a State's weighted population, which takes into account the classifications of ozone and CO nonattainment and maintenance areas, and the population in such areas. The formula does not account for PM nonattainment areas.

As we revoke the 1-hour ozone standard under implementation of the new 8-hour ozone NAAQS, changes regarding the designation and classification of these nonattainment and maintenance areas, will change the amount of CMAQ funds apportioned to each State under the current apportionment formula, and thus available to these areas. Some States with 1-hour ozone nonattainment and maintenance areas will lose CMAQ funding while others may gain without a statutory change. The changes in funding will depend on how much a State's weighted population changes because of the revocation.

designations are based, we would designate the area as attainment without a deferred effective date.

[81] Additional Options Considered for ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, March 2003.

Furthermore, after revocation any 1-hour ozone nonattainment or maintenance area that is not also designated nonattainment under the 8-hour or the existing CO or PM–10 standards will lose the ability to spend CMAQ funding. Since 1-hour ozone designations will no longer be in force, the authorized ability to use CMAQ funds under 23 U.S.C. 149(b) will be limited to existing CO and PM–10 nonattainment and maintenance areas and areas designated after December 31, 1997, such as those designated under the 8-hour standard.

Finally, nonattainment areas designated under the 8-hour ozone standard would all be eligible for CMAQ funding, but the formula for determining the amount of funds apportioned to the States would only take into account the areas that are classified pursuant to CAA sections 181, 186, and 188. Areas designated but not classified under the 8-hour standard would not be included in the apportionment formula, and States with such areas will not receive any CMAQ funding because of those areas. As noted elsewhere in this proposal, EPA is requesting comment on various concepts for classifying nonattainment areas under the 8-hour standard.

We are aware that apportionment of CMAQ funds is calculated yearly and varies according to changing population, and severity of air pollution. The TEA–21 is due for reauthorization in October, 2003, and adjustments to the CMAQ eligibility criteria and apportionment formula may be possible. We understand the importance of CMAQ funding to States and nonattainment areas and are prepared to work with DOT and Congress to minimize the unintended impact of the 8-hour ozone NAAQS, on those funds.

D. Are There Any Environmental Impact Differences Between the Two Major Classification Options Being Proposed?

Both of the major classification options being proposed would result in attainment by an expeditious attainment date. However, the EPA analysis of costs of the options notes that they do not necessarily have the same environmental impact. The subpart 2-only option is more expensive for some of the 10 areas analyzed in the cost analysis—largely because subpart 2 ROP requires more emissions reductions, and it requires these reductions by 2008, 2 years earlier than the attainment date of 2010 that is assumed for the analysis areas. This would result in an earlier air quality benefit. We have not performed air quality modeling to determine the increment of air quality benefit from the subpart 2-only option compared to the option under which some areas are covered under subpart 1.

IX. Statutory and Executive Order Reviews

Upon promulgation of the NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on the designation. This proposed rule fleshes out the statutory requirements that non-attainment areas are obligated to meet. In some instances, the statute is ambiguous regarding the statutory obligations that apply—thus we are proposing various options that we believe are consistent with the ambiguous language of the statute. One option attempts to provide a flexible and least-cost approach for States to apply to the sources that States may choose to regulate. The other option follows a more traditional statutory interpretation.[82]

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 Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies 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 proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's 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 proposed rule will not impose any requirements on small entities. Rather, this rule interprets the obligations established in the CAA for States to submit implementation plans in order to attain the 8-hour ozone NAAQS.

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, 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,

[82] U.S. EPA, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-hour, 0.08ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The estimated administrative burden hour and costs associated with implementing the 8-hour, 0.08 ppm NAAQS were developed upon promulgation of the standard and presented in Chapter 10 of U.S. EPA 1997, Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 16, 1997. The estimated costs presented there for States in 1990 dollars totaled $0.9 million. The corresponding estimate in 1997 dollars is $1.1 million. Should the more traditional classification option be adopted as the implementation framework, these costs may increase modestly, but would not reach $100 million. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

The CAA imposes the obligation for States to submit SIPs to implement the 8-hour ozone NAAQS; in this rule, EPA is merely fleshing out those requirements. However, even if this rule did establish a requirement for States to submit SIPs, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In the proposal, EPA has determined that this proposed rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this 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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described in section D, above (on UMRA), EPA previously determined the costs to States to implement the 8-hour ozone NAAQS to be approximately $1 million. While this proposed rule considers options not addressed at the time the NAAQS were promulgated, the costs for implementation under these options would rise only marginally. This rule fleshes out the statutory obligations of States in implementing the 8-hour ozone NAAQS. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA actively engaged the States in the development of this proposed rule. EPA held regular calls with representatives of State and local air pollution control agencies. EPA also held three public hearings at which it described the approaches it was considering and provided an opportunity for States and various other governmental officials to comment on the options being considered.

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have ''Tribal implications'' as specified in Executive Order 13175.

This proposed rule concerns the implementation of the 8-hour ozone standard in areas designated nonattainment for that standard. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The proposed regulations flesh out the statutory obligations of States and Tribes that develop plans to implement the 8-hour ozone NAAQS. The TAR gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this proposed rule does not affect the relationship or

distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

Assuming a Tribe is implementing such a plan at this time, while the proposed rule would have Tribal implications upon that Tribe, it would not impose substantial direct costs upon it, nor would it preempt Tribal law. As provided above, EPA has determined that the total costs for implementing the 8-hour ozone by State, local, and Tribal governments is approximately $1 million in all areas designated nonattainment for the standard. The percentage of Tribal land that will be designated nonattainment for the 8-hour ozone standard is very small. For Tribes that choose to regulate sources in Indian country, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

Although Executive Order 13175 does not apply to this proposed rule, EPA consulted with Tribal officials in developing this proposed rule. EPA has encouraged Tribal input at an early stage. EPA supports a national ''Tribal Designations and Implementation Work Group'' which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard. These discussions have given EPA valuable information about Tribal concerns regarding implementation of the 8-hour ozone NAAQS. The work group sends issue summaries and suggestions for addressing them to the newly formed National Tribal Air Association, who in turn will send them to Tribal leaders. EPA has encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the proposed rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona.

Furthermore, EPA will send individualized letters to all federally recognized Tribes about this proposal and will give Tribal leaders the opportunity for consultation. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health 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 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.

The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions 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.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

EPA believes that this proposed rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The proposed rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: May 14, 2003.

Christine Todd Whitman,

Administrator.

X. Appendices

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

Comparison of Subpart 1 & 2 Requirements

This is only an outline of the general requirements of subparts 1 and 2 and should not be relied on for regulatory purposes.

Element	Subpart 1	Subpart 2	
		Classification	Requirement
Attainment Dates: For all areas, attainment should occur as expeditiously as practicable, but no later than specified timeframe.	Up to 5 years after nonattainment designation; may extend up to 10 years based on specified considerations.	Marginal	3 years from CAA Amendments enactment.
		Moderate	6 years from CAA Amendments enactment.
		Serious	9 years from CAA Amendments enactment.
		Severe-15	15 years from CAA Amendments enactment.
		Severe-17	17 years from CAA Amendments enactment.
		Extreme	20 years from CAA Amendments enactment.
RFP	''Annual incremental emissions reductions''.	Marginal	None.
		Moderate	15% VOC reduction from baseline within 6 years of enactment.
		Serious	Moderate req't plus 9% VOC/NO_X reductions for years 7–9 after CAA Amendments enactment.
		Severe-15	Serious req't plus 9% VOC/NO_X for years 9–15 after CAA Amendments enactment.
		Severe-17	Serious req't plus 9% VOC/NO_X for years 9–17 after CAA Amendments enactment.
		Extreme	Severe req't plus 9% VOC/NO_X for years 9–20 after CAAA enactment.
Milestone Compliance Determination.	Not required as such; contingency measures supposed to be implemented upon failure to meet RFP.	Marginal/moderate	No further requirement.
		Serious & above	Requires milestone compliance demonstration to be made following milestone; failing area must elect one of the following: 1. bump-up. 2. implement contingency measures. 3. economic incentive.
Attainment demonstration submission.	EPA sets date which can be no later than 3 years after designation.	Marginal	None.
		Moderate	Due 3 years after CAA Amendments enactment.
		Serious	Due 4 years from CAA Amendments enactment.
		Severe	Due 4 years from CAA Amendments enactment.
		Extreme	Due 4 years from CAA Amendments enactment.
NSR and RACT major source applicability.	100 TPY	Marginal	100 TPY
		Moderate	100 TPY
		Serious	50 TPY
		Severe	25 TPY
		Extreme	10 TPY
NSR offsets	>1 to 1	Marginal	1.1 to 1
		Moderate	1.15 to 1
		Serious	1.2 to 1
		Severe	1.3 to 1
		Extreme	1.5 to 1

Element	Subpart 1	Subpart 2	
		Classification	Requirement
NSR permits	Permits required	All	Construction permits for new or modified major stationary sources pre-1990 permit program corrections.
Bump-up to higher classification	NA	All except severe & extreme	Required to bump-up to higher classification if area doesn't meet attainment date.
NO_X control for RACT	No specificity	Moderate & above; all areas in OTC.	Requirements under this subpart for major stationary VOC sources (NSR & RACT) also apply to all major NO_X sources, unless EPA approves NO_X waiver.
NO_X control for NSR	No specificity	Marginal & above.	
Emission inventory	Required in nonattainment area; no express requirement for updates or emission statements.	All	Comprehensive emissions inventory within 2 years of enactment; update every 3 years (until area attains). Provision for submission to State of annual emissions statements from VOC and NO_X stationary sources.
RACM/RACT	General requirement for RACM including RACT.	Marginal & above	Pre-1990 RACT fix-up.
		Moderate & above	RACT for all CTG sources and all other major sources.
I/M	Nothing specified	Marginal	Pre-1990 corrections to previously required I&M programs immediately upon CAA Amendments enactment.
		Moderate	Basic I&M.
		Serious & above	Enhanced I&M within 2 years of CAA Amendments enactment.
Conformity (transportation and general).	Required	All	No additional specificity.
Stage II vapor recovery (VOC)	Not specified	Moderate & above	Stage II for gas stations within 2 years.
Consequences of failure to attain	EPA to specify additional requirements; up to 10 more years to attain.	Marginal, moderate and serious	Bump-up for failure to attain.
		Severe and extreme	Fee system; continued ROP; possible stricter NSR major source cut-offs.
Maintenance	Requirement for maintenance plans for areas redesignated from nonattainment to attainment.	All	No additional specificity.
Contingency measures	Required for failure to make RFP or attainment.	All	Required for failure to meet ROP milestones or attain.
Enhanced (ambient) monitoring (PAMS).	Not specified	Marginal and moderate	Not specified.
		Serious & above	Ambient ozone precursor monitoring (VOC and NO_X).
VMT demonstration and transportation control measures (TCMs) if needed.	Not specified	Marginal and moderate	Not specified.
		Serious & above	Demonstration of whether current aggregate vehicle mileage, emissions, congestion levels are consistent with attainment demo.
Clean fuels program	Not specified	Marginal and moderate	Not specified.
		Serious & above	Certain percentage of fleet vehicles for 1998 and higher to be clean vehicles and use alternative fuels (if needed).

Element	Subpart 1	Subpart 2	
		Classification	Requirement
Reformulated Gasoline required under section 211(k)(10)(D), which requires the use of reformulated gasoline in 9 covered areas, and areas that are bumped-up to Severe under section 181(d)).	Not specified	Marginal, moderate & serious	Not specified.
		Severe & above	Prohibition of sale of gas that has not been reformulated to be less polluting.
TCMs to offset growth in VMT emissions.	Not specified	Marginal, moderate & serious	Not specified.
		Severe & above	Enforceable transportation control strategies and TCMs to offset any emissions growth due to VMT growth.
Clean Fuels for Boilers	Not specified	Marginal, moderate, serious & severe.	Not specified.
		Extreme areas	Use of clean fuels or advanced technology for certain boilers that emit more than 25 TPY of NO_X.
TCMs during heavy traffic hours	Not specified	Marginal, moderate, serious & severe.	Not specified.
		Extreme areas	Option to have TCMs during periods of heavy traffic that reduce use of high polluting or heavy-duty vehicles.
New Technologies	Not specified	Marginal, moderate, serious & severe.	Not specified.
		Extreme areas	New or future technologies for emissions reductions.

APPENDIX B.—''APPLICABLE REQUIREMENTS'' UNDER SUBPART 2

Element	Classification	Requirement
RFP	Moderate	15% VOC reduction from baseline within 6 years of enactment.
	Serious	Moderate req't plus 9% VOC/NO_X reductions for years 7–9 after CAA Amendments enactment.
	Severe-15	Serious req't plus 9% VOC/NO_X for years 9–15 after CAA Amendments enactment.
	Severe-17	Serious req't plus 9% VOC/NO_X for years 9–17 after CAA Amendments enactment.
	Extreme	Severe req't plus 9% VOC/NO_X for years 9–20 after CAA Amendments enactment.
Milestone Compliance Determination	Serious & above	Requires milestone compliance demonstration to be made following milestone; failing area must elect one of the following: 1. bump-up. 2. implement contingency measures. 3. economic incentive.
NSR and RACT major source applicability	Marginal	100 TPY
	Moderate	100 TPY
	Serious	50 TPY
	Severe	25 TPY
	Extreme	10 TPY
NSR offsets	Marginal	1.1 to 1
	Moderate	1.15 to 1
	Serious	1.2 to 1
	Severe	1.3 to 1
	Extreme	1.5 to 1
NSR permits	All	Construction permits for new or modified major stationary sources pre-1990 permit program corrections.
NO_X control for RACT	Moderate & above; all areas in OTC	Requirements under this subpart for major stationary VOC sources (NSR & RACT) also apply to all major NO_X sources, unless EPA approves NO_X waiver.

APPENDIX B.—"APPLICABLE REQUIREMENTS" UNDER SUBPART 2—Continued

Element	Classification	Requirement
NO_X control for NSR	Marginal & above	
RACM/RACT	Marginal & above	Pre-1990 RACT fix-up.
	Moderate & above	RACT for all CTG sources and all other major sources.
I/M	Marginal	Pre-1990 corrections to previously required I&M programs immediately upon CAA Amendments enactment.
	Moderate	Basic I&M.
	Serious & above	Enhanced I&M within 2 years of CAA Amendments enactment.
Stage II vapor recovery (VOC)	Moderate & above	Stage II for gas stations within 2 years.
Maintenance	All	No additional specificity.
Enhanced (ambient) monitoring (PAMS)	Serious & above	Ambient ozone precursor monitoring (VOC and NO_X).
VMT demonstration and transportation control measures (TCMs) if needed.	Serious & above	Demonstration of whether current aggregate vehicle mileage, emissions, congestion levels are consistent with attainment demo.
Clean fuels program	Serious & above	Certain percentage of fleet vehicles for 1998 and higher to be clean vehicles and use alternative fuels (if needed).
Reformulated Gasoline*	Severe & above	Prohibition of sale of gas that has not been reformulated to be less polluting.
TCMs to offset growth in VMT emissions	Marginal, moderate & serious	Not specified.
	Severe & above	Enforceable transportation control strategies and TCMs to offset any emissions growth due to VMT growth
Clean Fuels for Boilers	Extreme areas	Use of clean fuels or advanced technology for certain boilers that emit more than 25 TPY of NO_X.
TCMs during heavy traffic hours	Extreme areas	Option to have TCMs during periods of heavy traffic that reduce use of high polluting or heavy-duty vehicles.
New Technologies	Extreme areas	New or future technologies for emission reductions.

*Required under section 211(k)(10)(D), which requires the use of reformulated gasoline in 9 covered areas, and areas that are bumped-up to Severe under section 181(d).

APPENDIX C.—COMPARISON OF TRANSITIONAL NSR AND EARLY ACTION COMPACT PROGRAMS

Program elements	Transitional new source review (NSR)	8-hour Early action compact
Eligibility*	—Meet 1-hr standard	—Must have monitoring data meeting 1-hr standard.
	—Must be 8-hr nonattainment	—Must be designated attainment for 1-hr standard.
	—Must be covered under Subpart 1**	
Initiation Date	Submit attainment demonstration by designations date (4/15/04).	Signed compact by 12/31/02.
Other Dates	—All measures must be implemented by 12/31/05	—Submit progress reports every 6 months beginning 6/03.
	—Projected attainment of 8-hr standard by April 2007	—Describe planned measures by 6/16/03.
		—Submit local plan to State by 3/31/04.
		—Submit SIP to State by 12/31/04.
		—Implement all measures by 12/31/05.
		—Submit progress report to certify continued implementation & air quality improvements.
		—Area must attain 8-hr standard by 12/31/07.
Benefits	—BACT instead of LAER (cite NSR workshop manual)	—Deferred effective date of nonattainment designation.
	—No required emission offsets	—Implies no NSR or conformity.
		—Implementation of measures earlier than required by CAA (early reductions in emissions).
Consequences	If 2007 attainment date is missed, State must submit by April 2007 a Part D NSR plan, which meets requirements under sec. 51.165 (i.e., traditional nonattainment NSR).	—Nonattainment designation becomes effective soon after failure to meet milestone.
		—Nonattainment requirements must be met (NSR, conformity, RACT, etc) if missed milestone.

*Areas not eligible for Early Action Compact may still be eligible for transitional NSR.
**Areas in the Ozone Transport Region are not eligible for transitional NSR because they are not covered under Subpart 1 for purposes of NSR applicability.

APPENDIX D.—GLOSSARY OF TERMS AND ACRONYMS

ACT	Alternative control techniques

APPENDIX D.—GLOSSARY OF TERMS AND ACRONYMS—Continued

BACT	Best available control technology
bump-up	Reclassify to higher classification
CAA	Clean Air Act
CAAA	1990 Clean Air Act Amendments
CADC	Clean Air Development Community
CASAC	Clean Air Scientific Advisory Committee
CERR	Consolidated Emissions Reporting Rule
CFR	Code of Federal Regulations
CO	Carbon monoxide
Compacts	Early Action Compact Agreements
CSA	Clear Skies Act
CTGs	Control techniques guidelines
DOT	Department of Transportation
EPA	Environmental Protection Agency
FACA	Federal Advisory Committee Act
FIPs	Federal implementation plans
FMVCP	Federal Motor Vehicle Control Program
GAM	Generalized additive models
HAPs	Hazardous air pollutants
HEI	Health Effects Institute
LAER	Lowest achievable emission rate
MACT	Maximum achievable control technology
MCR	Mid-course review
MPO	Metropolitan Planning Organization
NAAQS	National Ambient Air Quality Standards
NAMS	National Air Monitoring Stations
NCore	National Core Monitoring Sites
NMMAPS	National Morbidity, Mortality, and Air Pollution Study
NO_X	Nitrogen oxides
NO_y	Reactive oxides of nitrogen
NO_2	Nitrogen dioxide
NSCR	Non-selective catalytic reduction
NSR	New source review
NTTAA	National Technology Transfer Advancement Act of 1995
OH	Hydroxyl
OMB	Office of Management and Budget
OTAG	Ozone Transport Assessment Group
OTC	Ozone Transport Commission
OTR	Ozone Transport Region
Ozone Flex	Ozone Flex Guidelines Program
PAMS	Photochemical Assessment Monitoring Stations
PM	Particulate matter
$PM_{2.5}$	Fine particle
ppm	Parts per million
Protocol	Protocol for Early Action Compacts designed to achieve and maintain the 8-hour ozone standard
PSD	Prevention of significant deterioration
RACM	Reasonably available control measures
RACT	Reasonably available control technology
RFP	Reasonable further progress
ROP	Rate of progress
RPOs	Regional Planning Organizations
SBA	Small Business Administration
SIPs	State implementation plans
SLAMS	State and Local Air Monitoring Stations
TAR	Tribal Authority Rule
TCEQ	Texas Commission on Environmental Quality
TCMs	Transportation control measures
TEA–21	Transportation Equity Act for the Twenty-first Century
TIP	Tribal implementation plan
TSP	Total suspended particulates
UMRA	Unfunded Mandates Reform Act of 1995
VCS	Voluntary consensus standards
VMT	Vehicle miles traveled
VOC	Volatile organic compound
VT	Vehicle trips

APPENDIX E.—APPLICATION OF CONFORMITY, NEW SOURCE REVIEW AND PREVENTION OF SIGNIFICANT DETERIORATION UNDER VARIOUS TRANSITION CASES

If an area's 1-hr situation is:	And its 8-hr situation is:	How would conformity apply?	How would traditional [1] NSR/PSD apply?
Designated Attainment (never been nonattainment).	Designated Attainment	*Under 1 hr std:* Conformity does not apply	*Under 1 hr std:* PSD continues to apply until the 1-hr standard is revoked.
		Under 8 hr std: Conformity does not apply	*Under 8 hr std:* PSD applies (Note: PSD applies as long as area is attainment for the 8-hr std.)
	Designated Nonattainment.	*Under 1 hr std:* Conformity does not apply	*Under 1 hr std:* PSD applies until the 1-hr standard is revoked (but nonattainment NSR requirements for 8-hr std. would tend to override).
		Under 8 hr std: Conformity applies 1 year after the effective date of designation (2005).	*Under 8-hr std:* (1) NSR under 40 CFR appendix S applies before SIP (containing § 51.165(a) NSR program) is approved by EPA. (2) Nonattainment NSR under § 51.165 applies after SIP approval
	Early Action Compact (EAC).	*Under 1 hr std:* Conformity does not apply .... *Under 8 hr std:* Assuming all milestones are met, conformity would not apply through 2007. If the area is violating in 2007, its nonattainment designation would become effective 4/15/2008, and conformity would apply 1 year later (4/15/2009). If area not violating in 2007, the area would be designated attainment, and no conformity would apply.	*Under 1 hr std:* PSD continues to apply to EAC areas until the 1-hr standard is revoked. *Under 8 hr std:* Assuming all milestones are met, PSD would apply through 2007.[2] If the area is violating in 2007, it would become subject to nonattainment NSR. If area is not violating in 2007, the area would be designated attainment, and PSD continues to apply
Designated Nonattainment.	Designated Attainment	*Under 1 hr std:* Conformity applies until 1 year after the effective date of the area's designation under the 8-hr standard (2005).	*Under 1 hr std:* Nonattainment NSR applies until it is no longer an ''applicable requirement'' (see proposal on anti-backsliding).
		Under 8 hr std: Conformity does not apply	*Under 8 hr std:* PSD applies.[3]
	Designated Nonattainment.	*Under 1 hr std:* Conformity applies until 1 year after the effective date of the area's designation under the 8-hr standard (2005). *Under 8 hr std:* Conformity would apply 1 year after the effective date of the area's designation (2005).	*Under 1 hr std:* Nonattainment NSR continues to apply until it is no longer an ''applicable requirement'' (see proposal on anti-backsliding). *Under 8 hr std:* (1) Nonattainment NSR under appendix S applies until the nonattainment NSR SIP (containing § 51.165(a) NSR program) is approved by EPA; (2) Nonattainment NSR applies under § 51.165 after SIP approval.
	(EAC: Not eligible)		
Designated attainment with Maintenance Plan.	Designated Attainment	*Under 1 hr std:* Conformity applies until 1 year after the effective date of the area's designation under the 8-hr standard (2005). *Under 8 hr std:* Conformity does not apply	*Under 1 hr std:* PSD applies until 1-hr std. is revoked. *Under 8 hr std:* PSD applies.

APPENDIX E.—APPLICATION OF CONFORMITY, NEW SOURCE REVIEW AND PREVENTION OF SIGNIFICANT DETERIORATION UNDER VARIOUS TRANSITION CASES—Continued

If an area's 1-hr situation is:	And its 8-hr situation is:	How would conformity apply?	How would traditional [1] NSR/PSD apply?
	Designated Nonattainment.	*Under 1 hr std:* Conformity applies until 1 year after the effective date of the area's designation under the 8-hr standard (2005). *Under 8 hr std:* Conformity would apply 1 year after the effective date of the area's designation under the 8-hr standard (2005).	*Under 1 hr std:* PSD applies until the 1-hr standard is revoked. *Under 8 hr std:* (1) NSR under 40 CFR appendix S applies before SIP (containing § 51.165(a) NSR program) is approved by EPA; (2) Nonattainment NSR under § 51.165 applies after SIP approval.
	Early Action Compact	*Under 1 hr std:* 1-hour conformity applies until 1 year after the effective date of the area's designation under the 8-hr standard (4/15/2009, or earlier if the area misses an EAC milestone). *Under 8 hr std:* Assuming all milestones are met, conformity would not apply through 2007. If the area is violating in 2007, its nonattainment designation would become effective 4/15/2008 and conformity would apply 1 year later (4/15/2009). If area not violating in 2007, the area would be designated attainment, and no conformity would apply.	*Under 1 hr std:* PSD continues to apply until the 1-hr standard is revoked. *Under 8 hr std:* Assuming all milestones are met, PSD would apply through 2007.[2] If the area is violating in 2007, it would become subject to nonattainment NSR. If area is not violating in 2007, the area would be designated attainment, and PSD continues to apply.

[1] Traditional NSR is nonattainment NSR under 40 CFR part 51, either § 51.165 or appendix S.
[2] PSD applies even if the attainment designation under the 8-hr standard is not yet effective.
[3] Generally, nonattainment NSR requirements would supersede most PSD requirements. However, note that in specific instances PSD may mandate additional analyses, such as preconstruction monitoring or analysis of impacts on Class I areas.

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Federal Register

Monday,
June 2, 2003

Part III

Department of Agriculture

Rural Housing Service

7 CFR Part 3560

Streamlining and Consolidation of the Sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575–AC13

Streamlining and Consolidation of the Sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), proposes to streamline and reengineer its regulations and to utilize private sector process and techniques in the administration of the origination, management, servicing, and preservation of its Multi-Family Housing (MFH) programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant program, and the section 521 Rental Assistance (RA) program.

This action is to reduce regulations, assure quality housing for residents, improve customer service, and improve the Agency's ability to achieve effectiveness and flexibility in managing the MFH portfolio. This streamlining will result in a reduction to the Code of Federal Regulations (CFR) coverage of the MFH programs by 90 percent. To explain how this was accomplished, the rewrite of the 1930-C regulation is offered as an example. This regulation alone covers 366 pages of CFR. The extensive language currently describes in detail, the form and format for conducting internal MFH supervisory activities by Agency personnel. This regulation has been replaced in the proposed rule with a four-page chapter. This was accomplished by using the authority of the regulation to develop a new handbook, which will provide direction on conducting monitoring actions. The handbook will incorporate many ideas that were obtained from the streamlining process into the streamlining of Agency supervisory efforts and will clarify and standardize the monitoring requirements, thereby reducing burden on borrowers and management agents.

DATES: Written or e-mail comments on this proposed rule must be received on or before August 1, 2003.

ADDRESSES: Written comments may be submitted, in duplicate, to the Branch Chief, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. Comments may be submitted via the Internet by addressing them to ''*comments@rus.usda.gov*'' and must contain the word ''Streamlining'' in the subject. All comments will be available for public inspection at 3rd floor, 300 E Street, SW., Washington, DC 20546 during normal working hours.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781; Telephone: (202) 720–1660.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order (E.O.) 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that the proposed action does not constitute a major Federal action significantly affecting the quality of the environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 13132, Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose a substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all state and local laws that are in conflict with this rule will be preempted: (2) no retroactive effect will be given this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, federal agencies 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such statement is needed for a rule, section 205 of the UMRA generally requires a federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this proposed regulation.

Title: Direct Multi-Family Housing Loans and Grants.

Type of Request: New Information Collection.

Abstract: Through public and private partnerships, RHS enables limited profit and nonprofit sponsors to develop rental housing for low-, very low- and moderate-income rural residents across rural America. In addition, loans and grants are made to house farmworkers,

one of the most under-housed segments of our society. The $11.8 million portfolio of 444,000 units and nearly 17,400 projects often provides the only decent, safe, and sanitary affordable rental housing available in rural areas.

The information collected is used by the Agency to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.61 hours per response.

Respondents: Limited for profit and nonprofit developers, public bodies and rural tenant households.

Estimated Number of Respondents: 500,000.

Estimated Number of Responses per Respondent: 4.3.

Estimated Number of Responses: 2,166,709.

Estimated Total Annual Burden on Respondents: 1,318,434 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. A comment is best assured of having its full effect if it is received within 30 days of publication of this rule.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under number 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; and 10.427—Rural Rental Assistance Payments.

Intergovernmental Consultation

These loans are subject to the provisions of E.O. 12372 which require intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940–J (available in any RD office and on the Internet at *http://rdinit.usda.gov/regs/).*

Background Information

An Overview

Most communities in rural America have a scarcity of decent rental housing affordable to very low-income families. In addition, migrant farm workers and farm laborers, whose incomes are extremely limited, face some of the worst housing conditions in the nation. Despite improvements in housing quality, especially in the number of rural units with complete plumbing facilities, there are about 2.7 million families who live in substandard housing. According to 1990 census data, rural renters were more than twice as likely to live in substandard housing as people who owned their own homes. With lower median incomes and higher poverty rates than homeowners, many renters are simply unable to find decent housing that is affordable. RHS's rental housing programs are some of the few resources that enable the very low-income renters in rural America to access decent, safe, sanitary and affordable housing. In many of America's rural communities, there are simply no other safe and sanitary alternatives for very low-income people.

Through public and private partnerships, RHS enables limited profit and nonprofit developers to build rental housing for low-income and very low-income tenants across rural America. The $11.8 billion portfolio of 444,000 units and nearly 17,400 projects often provides the only decent, affordable rental housing available in rural areas. The program provides affordable rental housing to very low income and low-income rural families, to handicapped and to elderly residents. The average tenant has an adjusted income of $8,105.

This direct loan program employs a public-private partnership by providing subsidized loans at an interest rate of 1 percent to developers to construct or renovate affordable rental complexes in rural areas. This 1 percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit proceeds. This program is typically used in conjunction with RHS section 521 Rental Assistance, which provides project-based rental assistance payments to property owners to subsidize tenants' rents to an affordable level. With rental assistance, tenants pay 30 percent of income towards their rent (including utilities). Some 515 projects also utilize HUD's Section 8 project-based assistance, which enables additional very low-income families to be served.

Goals of the Regulatory Streamlining Process

This proposed rule is a result of RHS's pledge to make its programs more customer-friendly, streamline the processes, reduce costs to the taxpayer, and increase the Agency's level of customer service. This goal was accomplished through the input and commitment that resulted from numerous stakeholder meetings with recognized leaders in the multi-family industry. These leaders included borrowers, management agents identified by industry groups and tenant representatives. Representatives of state housing finance agencies, accounting firms and the USDA Office of Inspector General also participated. Through these meetings, we were able to draw a vast amount of expertise and knowledge to meet the following objectives of MFH streamlining and consolidation: Assure affordable safe, decent and sanitary housing for very low and low-income residents of rural America.

- Consolidate and simplify 13 regulations into one regulation for rural rental housing, farm labor housing and rental assistance.
- Develop an efficient loan application process that supports the creation of partnerships and leveraging with local, state and other federal entities.
- Clarify our existing policies and procedures to reflect the best practices within the Agency and within the multi-family field.
- Improve efficiency and service to our customers, correcting past problems and addressing concerns raised by our stakeholders so that particularly complex processes, such as preservation, work better.
- Make much of the farm labor housing review and approval processes the same as those for rural rental housing.
- Create a series of handbooks available to the field staff and to our

applicants, borrowers and partners that will give clear guidance on policies, such as project budget approvals, determining project feasibility, and servicing actions.

Streamlining and Consolidation

The Proposed Regulation

RHS has undertaken a major redevelopment and consolidation of Rural Development regulations affecting the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) programs. The result of the streamlining and consolidation is a proposed rule that revises and consolidates Agency regulations affecting the section 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs. This rule consolidates the policies outlined in 13 separate regulations and a number of administrative notices into one regulation and moves the procedural guidance to program handbooks. A list of the regulations being consolidated follows:

- 7 CFR part 1806, subpart A—Real Property Insurance.
- 7 CFR part 1930, subpart C—Management and Supervision of Multi-Family Housing Borrowers and Grant Recipients.
- 7 CFR part 1944, subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.
- 7 CFR part 1944, subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures and Authorizations.
- 7 CFR part 1951, subpart D—Final Payment on Loans.
- 7 CFR part 1951, subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing.
- 7 CFR part 1951, subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multi Family-Housing.
- 7 CFR part 1955, subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property.
- 7 CFR part 1955, subpart B—Management of Property.
- 7 CFR part 1955, subpart C—Disposal of Inventory Property.
- 7 CFR part 1956, subpart B—Debt Settlement Farm Loan Programs and Multi-Family Housing.
- 7 CFR part 1965, subpart B—Security Servicing for Multiple Housing Loans.
- 7 CFR part 1965, subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans.

These changes have two clear benefits. First, the consolidated streamlined regulation makes information easier to access. Answers to policy questions are found in one document that has been shortened from over 1,500 pages to approximately 180 pages. Similarly, answers to process and implementation questions are found in three handbooks. These handbooks provide ''how-to'' guidance on loan origination, asset management, and loan servicing. Agency staff, property owners, property managers, and residents can look for most of their answers to day-to-day questions in the handbooks where they will find plain English explanations and examples. If the regulatory basis for a procedure is in question, that information can be easily found in the streamlined regulation. The increased ease of finding information should help improve public understanding of the rules and eliminate inconsistencies in interpretation.

Second, the division of policy and procedure gives the agency more flexibility to update and revise program procedures. For example, as automation changes the way program reporting occurs, relevant procedures can be updated in the handbooks without going through a complex process of changing the regulation. This will make the agency more responsive to changes in the business environment, an important initiative as the Federal Government strives to have more of its business conducted on-line and through electronic submissions.

The paperwork burden reduction resulting from the proposed rule would be approximately 25 percent. This estimate is derived from the Paperwork Burden Report that RHS prepared.

The Proposed Handbooks

As stated above, the Agency is developing three separate handbooks that will present the reader with the administrative guidance on matters. One handbook will be devoted entirely to General Requirements and Loan Origination Requirements. It will instruct the reader on procedures and provide information on matters such as what forms must be filed, where to submit loan requests and the agency's internal processing procedures. The same principles will be followed in the publication of the Asset Management Handbook and the Project Servicing Handbook respectively. The handbooks will not be published in the **Federal Register** but will be available to the public at no cost.

RHS is currently developing the proposed Handbooks while aggressively analyzing all existing burden imposed upon the public to obtain and retain MFH program assistance. The Handbooks will be available on RHS's Web site at *http://www.rurdev.usda.gov/rhs/index.html.* Access to the Handbooks will also be available through the local RHS servicing office.

Current Regulations and Notices

Current regulations may be found on RHS's Web site at *http://rdinit.usda.gov/regs/index.html* or in the Code of Federal Regulations.

Exhibits

Many of the exhibits that are part of the current regulations may be found in the three companion handbooks to 7 CFR part 3560: Loan Origination, Asset Management, and Project Servicing. The Loan Origination Handbook will provide RHS multifamily housing staff with the guidance needed to originate loans and grants efficiently and effectively. The Asset Management Handbook will provide RHS multifamily housing staff with guidance about the Agency's procedures for overseeing borrowers' performance in meeting their responsibilities under the program. The Project Servicing Handbook will provide Loan Servicers with guidance about the Agency's procedures for servicing actions involving borrowers receiving loans or grants for multifamily housing projects. As an example, Exhibit A–13 of 7 CFR part 1944, subpart E will be found in Attachment 6–B to Chapter 6 of the Loan Origination Handbook and Exhibit B–1 of 7 CFR part 1930, subpart C will be found in Exhibit 3–1 of Chapter 3 of the Asset Management handbook.

Changes to the Rule With Significant Impact

Reserve Requirements for Project Improvements

This proposed rule will require an annual minimum of 1 percent of total development cost to be put in a reserve account, with a maximum reserve requirement up to the level needed to assure resources being available to maintain the housing at Agency standards.

Current regulations include standards for physical condition, maintenance, and reserve levels to address the physical condition of the property. However, projects are experiencing physical maintenance problems due to their average age. One of the sources of this problem is that project reserves are inadequate to cover ongoing capital needs. Current regulations require that borrowers contribute initially 1 percent annually of total development costs toward a reserve for project

improvements until a total of 10 percent is reached. While borrowers are permitted to request adjustments to their reserve contributions, there is no systematic provision for reevaluating reserves over the life of the project. A recent study found that while an average MFH project has accumulated $5,000 in reserves per unit at the end of 10 years and maintained at that level thereafter, the full cost of rehabilitation is likely to be close to $16,000 per unit. When rehabilitation is needed and the reserve is inadequate to meet the need, the project owner usually applies for a subsequent loan, which, if received, requires that rents be increased. In recent years, RHS has been experiencing a growing number of requests for subsequent loans and rent increases to cover costs of rehabilitation, while funding for such loans has been limited.

Increasing the reserve requirements would be appropriate to address the physical needs and the life expectancy of most MFH projects. It will help reduce the need for subsequent loans or servicing actions, and improve the long-term physical condition of projects and help protect the MFH portfolio from defaults. In existing projects where RHS is taking servicing actions, the proposed rule would help ensure that each project's physical needs are addressed in current servicing actions and, thus, reduce the need for attention at a later date. Such servicing actions include write-downs of existing loans. Thus, it is possible that the proposed rule would result in additional write-downs as a means of addressing the need for the project improvements. To date, RHS has written-down only a limited number of MFH loans. Further, the additional reserve requirement will be reflected in project costs, which means that rents will increase, and the amount of rental assistance payments needed to maintain existing contracts for such assistance will increase.

Investment Earnings on Reserve Account Funds

RHS has found that most project owners are putting their reserve funds in accounts that earn no or minimal income. The average reserve account has been earning only 2 percent interest annually. Project owners indicate that, under current regulations and tax rules, they have few options for investing these funds and face a strong disincentive for investing them in a manner that maximizes their return. The disincentive is due to Internal Revenue Service (IRS) rules that treat income earned on reserve accounts as investment income for the owner and, thus, taxable, rather than project income.

The proposed rule makes two changes to address these limitations. First, it allows a greater number of investment options. These options include relatively conservative investment vehicles that are used by other public agencies and are not expected to pose a significant increased risk to the funds. This change would give owners more flexibility for investing their reserve funds and is expected to result in greater returns on these funds and thus more income to be put toward better project operations and capital improvements. The increase in interest income would lower the amount needed from tenant rents and rental assistance to meet project needs.

Second, the rule addresses the issue of ''phantom income,'' the interest income earned on reserve accounts. This income is committed to the project but not accessible to the owner. To ease the burden of paying taxes on this ''phantom income,'' the rule allows owners, with RHS' approval, to withdraw up to 25 percent of the annual interest income earned on the reserves to cover the tax expense. The 25 percent allowance was determined to be a reasonable estimate of the tax rate for the average investor. It was decided to use a single rate for all owners to simplify the administration of this feature. RHS also consulted with OIG and the American Institute of Certified Public Accountants (AICPA) in arriving at the 25 percent figure.

Prepayment Policies and Procedures

The agency, borrowers, and tenant advocates agreed that the prepayment request process is a difficult and confusing process. Agency staff in the National Office recognized that they were spending a great deal of time providing technical assistance to Field Offices in responding to prepayment requests. Borrowers commented that the process was unduly burdensome to borrowers who were within their rights to request prepayment. Tenant advocates pointed out that tenants are virtually excluded from the process because the process complexity makes it difficult for tenants to take action. Discussion of these concerns at the stakeholders meetings indicated that RHS needed to clarify many of the policies toward prepayment and where possible, make policy changes that would help simplify the process. Consequently, the proposed rule includes changes to agency policy regarding tenant notification and projects on the waiting list for incentives.

Tenant Notifications

Stakeholders suggested changes to the content and timing of tenant notifications to provide tenants with the information they need to participate in the prepayment process. The proposed rule replaces the requirement for one early tenant notification with a series of notifications aimed at keeping the tenants informed of the Agency's and the borrower's decisions throughout the process.

Waiting List

One of the most common complaints heard about the prepayment process is its open-ended nature. Borrowers who are approved for incentives and agree to stay in the program in exchange for incentives may have to wait years before the funds for the incentives become available. The current waiting list includes requests for incentives dating back to 1996. The proposed rule establishes a maximum time on the waiting list of 15 months and allows borrowers three choices at the end of that time: (1) Stay on the waiting list and continue waiting for the incentives, (2) withdraw from the list and continue operating the property for program purposes, or (3) offer to sell the property to a nonprofit organization. This last option may allow some properties, eventually to prepay if they complete the process involved in offering the project for sale and fail to receive a bona fide offer. However, this option responds to the reality that the agency may not always have the resources to keep borrowers in the program indefinitely and that costly legal battles are likely if they do not allow the borrowers other options. Currently, the prepayment waiting list contains approximately 15 properties that have exceeded the 15-month time period. However, this number would be expected to grow appreciably over the next few years without a significant increase in funding for incentives to accommodate the anticipated increase in number of projects meeting the 20-year statutory restrictions on use.

Further, it is believed that many borrowers have not applied for prepayment incentives and joined the waiting list because of the extended time period they must currently remain on the list. If the 15-month maximum time period is implemented, a greater number of these borrowers may seek prepayment with the expectation that they will be allowed to exercise one of the three options at the end of the 15-month time period. If borrowers do prepay and convert their apartment complexes to market rate units, RHS

will take measures to protect the tenants at these properties by providing them a letter of priority entitlement (LOPE) that gives them priority in agency-financed housing elsewhere. However, if alternative vacant RHS financed rental housing is not available in the market, the impacted tenants face displacement or rent overburden if they remain in place.

Incentives

The proposed rule clarifies the Agency's policy on incentives and adds several requirements to help ensure that the limited amount of funding available for incentives, as discussed in the overview section of this analysis, is used efficiently to benefit the program. For example, the proposed rule outlines the process a borrower must follow when requesting permission to prepay and be eligible to receive incentives.

In addition, the proposed rule clarifies that third-party equity loans are an option for borrowers who are seeking equity loans through the prepayment process. The use of third-party equity funding stretches RHS incentive funds by providing resources from alternative funding sources. However, it should be noted that debt costs from other sources might be higher than financing received under the Section 515 program. For example, Section 515 funding is lent at an effective 1 percent interest rate and amortized for 50 years, whereas, third-party funds may be lent at rates ranging from interest free to market rate depending upon the source of the funds, with amortization periods ranging from fully deferred to 30 years. All proposed third-party incentive loans must be underwritten and reviewed to the same standard as RHS Section 515 lending to ensure that no project is made financially unfeasible as a result of a third party loan.

Initial Operating Capital

Under current regulations, borrowers are required to pay the equivalent of 2 percent of the cost of developing a project into an account for initial operating costs. They earn no interest on this account, which also receives funds from other sources including rental income. If, within 2 years, the project is operating successfully and there is sufficient capital in the operating account to maintain the financial soundness of the account, the borrower may take out up to the full amount of his /her contribution. While on deposit in the operating account, the borrower receives no return on investment for the funds. After 2 years, any portion of the contribution that is still in the account must remain there for meeting ongoing operating capital needs.

During the stakeholder meetings, borrowers expressed concern that the current regulation does not allow them sufficient time to recover their contribution, even when a project is functioning well and no longer needs the additional capital. RHS determined that the 2-year limit was originally due to difficulties in tracking the funds within the projects overall budget, and that its new ADP system, MFIS III, has the capacity to provide better tracking and disclosure of these funds. Therefore, RHS has included a provision in the proposed rule that would extend the time limit for the recovery of initial operating capital from 2 to 7 years. In selecting 7 years for the new limit, RHS received input from field staff and industry groups indicating that the prospects for recovery after 7 years were minimal, either because financial soundness could not be established or the owner was willing to leave his/her contribution in the account.

This change would allow more borrowers to fully recover the payments they made to initial operating capital accounts. It is uncertain how many borrowers would benefit from the change and how many dollars these borrowers would be allowed to recover from these accounts. Because of the limitation on recovery from only financially sound accounts, it is unlikely that there would be immediate, negative impacts on the performance of the MFH programs. However, it should be noted that by allowing borrowers to recover funds from initial operating capital accounts, these funds would not be available for ongoing capital needs. The potential withdrawal of initial operating capital is not considered to have significant impacts on rents and, thus, costs to the Government and tenants. While it would tend to make it more difficult to avoid rent increases, it is far outweighed by other changes in the proposed rule, specifically, the raising of reserve requirements and additional earnings on reserve accounts.

Other Changes to the Rule

Conventional Rents for Comparable Units

RHS has developed the concept ''Conventional Rents for Comparable Units'' (CRCU). This is one of the most comprehensive policy issues that 7 CFR part 3560 will introduce. The concept is applicable to loan origination, budgets, loan servicing, replacement reserve set-asides, preservation, and other program areas. In essence, rents will be capped at conventional rents for comparable units in the area where the housing is located. Comparable units would be those equivalent to RHS financed units in terms of quality and amenities. If no such units are located in the same community, units from a similar community could be used for comparison. Comparable units also means that the units the Agency finances would meet a standard of economical development, *i.e.*, modest in size, facilities and design, yet compatible with the community.

RHS will continue to require that rents be based on the project's operating costs. However, under the proposed rule, RHS would not approve project proposals, servicing actions, or prepayment incentives that involve rents above the CRCU, except in exceptional circumstances, where such rents are determined to be in the best interest of the Government and the tenants of the project.

By placing an upper limit on rents, RHS expects to protect the Government from investing in projects that may be wasteful or fraudulent, and to ensure that projects are competitive so that vacancy and other market-driven problems can be avoided. In this way, the CRCU should improve the long-term viability of MFH projects, limit the costs of RA, and reduce the risk of defaults.

However, the proposed rule maintains flexibility for serving areas where MFH projects provide the only decent, safe and sanitary rental housing in a local housing market, or where a significant amount of the substandard housing rents for less than the cost of operating an MFH project. In such cases, RHS may base the CRCU on rents outside the local community. It may also grant an exemption for exceptional circumstances.

CRCU will create a definitive underwriting standard. It will apply to leveraging other low-interest loan funds or paying for additional owner contributions (up to 3 percent return on investment (ROI) over required contribution); improving project design and amenities (within the definition of economical development); and adjusting reserves or other serving actions. In areas where rents are below CRCU, Rental Assistance (RA) costs and loan levels may increase. However, it will also ensure ''marketable units'' should the Agency lose RA.

The Agency is asking public input on whether exclusions to CRCU may be needed in certain areas of the country where conventional rents may not be adequate to fund operation and maintenance, debt service and replacement reserve expenses plus an

aged upon owner's return on investment.

Cost Reasonableness Basis for Evaluation of Project Proposals

The proposed rule also includes changes related to evaluating the cost reasonableness of project proposals. Under current regulations, the agency has applied a policy of cost containment when evaluating whether the costs of the proposed design for new projects are reasonable. While this policy has effectively held down construction costs for new projects, agency field staff and borrowers report that lower-cost project design features are not always cost-effective over the long term. They report that while certain design features reduce initial construction costs, they actually cost more over the life of the project because the components used require higher levels of maintenance and more frequent replacement.

Projects with these design features experience higher routine maintenance costs, higher expenditures of project reserves, and a greater need for subsequent financing for rehabilitation. The result is an upward pressure on project rents and increased use of rental assistance payment assistance. To the extent a project cannot support the rent increases needed to cover these costs, the project faces an increased risk of financial failure or compliance violations due to physical deficiencies.

Currently, RHS has no process for conducting life cycle analyses. The proposed requirement for a life cycle cost analysis will be used for new and existing facilities. The requirement is intended to assure quality construction as well as long-term viability of complexes. Reserve levels would be set based on life cycle costs to provide necessary resources when needed to replace essential building components. Existing loan agreements are to be modified as needed by an addendum properly executed by the borrower. Under the proposed rule, the agency would change its policy for evaluating project proposals to consider the life cycle costs of proposed project designs. Under this policy, the agency may approve a proposed project design that is not the lowest cost if a life cycle cost analysis prepared by the project architect reveals that the design achieves the lowest overall cost over the life of the project. Industry standards will be used for the analysis. To assure that new projects are affordable and appropriate to the local housing market, the proposed rule restricts the agency from approving project designs that would cause rents to exceed the market standard (except in exceptional circumstances where such costs are determined to be in the best interest of the Government and the tenants). Examples of two design features that may cost more initially but decrease operating expenses over the life of the project are brick exteriors and increased thermal standards. In the past, many projects were built using a popular exterior plywood siding. These buildings are now requiring replacement of the original siding. Similar buildings that utilized brick as an exterior finish or partial finish are not having similar expenses, therefore, decreasing demands on the reserve accounts. Thermal standards in RHS financed projects often exceed local codes. By building RHS projects more energy efficient, tenant and owner utility expenses are kept lower, thereby, decreasing the need for rent increases or tenant utility allowance increases. By avoiding the additional rent and utility allowance increases, tenant rent overburden is avoided, as is additional drain on scarce rental assistance resources.

Because this change will allow for more costly designs, the agency expects the size of initial loans and initial rents to grow slightly. However, higher up-front costs would be offset by lower long-term costs. The agency expects that new projects receiving funding under this policy will have lower maintenance and rehabilitation needs, leading to lower project rents and lower use of agency rental assistance over the life of the project. Lower maintenance expenses, resulting in rents essentially the same as projects built under cost containment guidelines, would offset the increased debt service due to higher construction costs. This change will also lower demand for subsequent loans from the agency in a time when additional loan funds are increasingly scarce.

Management Certification

Under current regulations, RHS must approve the management agreement between the borrower and the management entity for a project. This approval is designed to ensure that the management agent is also accountable for meeting program requirements. However, the agency has found that this policy results in a time-consuming approval process because these agreements frequently include complex contractual language that is difficult to evaluate. Further, OIG has found that many management agreements and plans lack the specificity to accurately describe how project and management agency costs are prorated between expenses paid by the project and those that are paid by the management fee.

The proposed rule eliminates agency approval of management agreements and requires borrowers to submit a management certification in an agency-approved format. In submitting this document, borrowers certify that their agreement with the management entity for the project obligates that entity to comply with program requirements, establishes sanctions for failure to comply with these requirements, including termination of the agent, and specifies penalties for false certifications. This change eliminates the administrative burden on RHS for approving management agreements, while strengthening the agency's ability to hold borrowers and their agents accountable for their management responsibilities. In addition, revisions to management fee policy, discussed below, allow for a more definitive method to differentiate between project and management agent expenses.

Management Plan

Under current regulations, borrowers are also required to obtain RHS' approval of the management plans for their projects. The purpose of this policy is to provide the agency assurance that the borrower and management entities have adequate systems in place to comply with program requirements. However, experience has shown that these plans are time consuming to process. The requirement to obtain agency approval for updates only adds to the burden for agency staff and borrowers. This policy also leaves the agency in an awkward position when borrowers with sound projects have changed their operations, but not updated their management plan. OIG has reported audit findings where borrowers and management agents have not been operating the properties in conformance with the executed management plan. While this is true, when examined, it has been found that the practice the agent and owner have engaged in is not improper, just not documented correctly in the management plan. The OIG has agreed that had the practice been correctly disclosed in the management plan, the practice would not have been listed as an audit finding. OIG has worked with the RHS during the stakeholder process and subsequently to eliminate this particular area of confusion. The result of the change will be that RHS will not be required to micromanage borrower and management agent business practices when the practice is one that is beneficial to the tenants and the project. Additionally, fewer OIG

findings will result, requiring less OIG and RHS staff time to resolve.

The proposed rule eliminates agency approval of project management plans and requires instead that borrowers submit a management plan that addresses a specified list of operational areas. RHS staff would review the plan to see if the required areas have been covered in the plan but will not approve the plan. The plan will be used to monitor project performance, but discrepancies between project operations and the plan will not constitute a violation of program requirements unless the discrepancies affect program performance. This change reduces the administrative burden on RHS staff and borrowers. It also provides borrowers with greater flexibility to make sound changes in project operations without creating a performance concern.

Management Fees

Current program regulations require that management fees for projects be reasonable and competitive. However, OIG staff found that the management fees approved for projects varied significantly, ranging from as low as $25 per unit per month to $55 per unit per month across States. This led OIG to question whether the higher fees found in some instances was reasonable. As with management plans, the OIG expressed concern that current regulations were neither clear nor consistent concerning what services were to be included in the management fee. In some States, many of the maintenance services provided by management company staff were included in the management fees and in other States, the charges were not. Another example is that in some States, insurance and tax costs for project employees were included in management fees while in other States the costs were billed directly to the project. Comments by agency staff at stakeholder meetings revealed that the variations were often due to differences in field office interpretations about the bundle of services covered by the management fee. They noted that services not covered by the fee were paid for as a line item on the budget. When management fees plus other fees for services were accounted for, management compensation was consistent.

Together with representatives of the property management industry and OIG, RHS developed the bundle of management services that is a part of this regulatory change. By moving to a standardized grouping of services that is to be included in the management fee, RHS and OIG believe that the change will greatly improve consistency between areas of the country and RHS offices. As stated in the previous paragraph, as these services were all being provided previously but charged to the project on different lines of the operating budget, the grouping of these expenses in a different manner would neither increase nor decrease the overall cost to the project or the rents being charged.

The proposed rule and accompanying handbooks address the inconsistencies in fees by establishing a standard bundle of services covered by the management fee and a framework for setting standard adjustments for project characteristics that warrant slightly higher fees, such as for a new management agent taking over a troubled property. However, the proposed rule should improve RHS' ability to document that the management fees for projects are reasonable. It should also ensure consistency between RHS field offices in interpretation of services included in fees. Additionally, the number of OIG findings should be reduced, requiring less OIG and RHS staff time to resolve.

Standards for Physical Conditions at Projects

Current regulations establish the borrower's responsibility to maintain their projects in decent, safe, and sanitary condition. However, the OIG raised concerns about consistency in the implementation of this standard.

Therefore, the proposed rule establishes specific standards for physical conditions that clarify the conditions that constitute decent, safe, sanitary housing. These standards do not represent a change in agency policy. Rather, they make agency expectations explicit and thus improve the agency's ability to enforce physical standards, thereby improving the quality of living conditions for tenants and better preserving the security for agency loans.

Recertifications of Tenant Eligibility

Recertifications are used to document a tenant's income for the purpose of determining eligibility to live in an MFH unit and qualify for rental assistance payments. Current regulations require both an annual recertification and an interim recertification whenever the tenant's income changes. Stakeholders indicated that the recertification process is time consuming for tenants, borrowers, and the agency.

The proposed rule simplifies the process by eliminating the requirements for an interim recertification for tenant income changes that have an impact on the rent of $25 or less. RHS arrived at the $25 threshold by comparing the cost of re-certifying a tenant with the benefit either the Government or the tenant would receive as a result of increased or decreased rent. Based on consultation with industry groups and OIG, RHS determined that the cost to re-certify a tenant was about $150. Assuming that any change would apply for only 6 months of the year, the $150 figure was converted to a monthly figure of $25, which became the threshold. The regulations allow a tenant to request a recertification any time their income decreases. This provision was included in order not to negatively impact tenants with the lowest income for which the $25 per month figure may constitute a significant portion of income for which the $25 per month figure may constitute a significant portion of income.

While a detailed analysis of how the impact of the $25 threshold might be distributed between the Government and tenants was not completed, recent OIG audits have indicated the current recertification process produces approximately the same amount of rent increases as rent decreases, and thus results in little or any overall change in rental assistance payments.

The proposed rule also adds a requirement for electronic reporting of information, including tenants' income. The faster transmission of this information provides RHS with more time for analyzing the information. Consequently, the proposed rule extends by 10 days the period for submitting recertifications, giving borrowers more time to comply with agency requirements, thus improving customer service while maintaining program performance.

Lease Protection

The proposed rule would require that leases for rental units that receive rental assistance include a clause that specifies that the tenant's contribution to rent will not increase if rental assistance is terminated due to actions by the borrower/owner. This requirement is not contained in current regulations. RHS estimates that there have been two to four incidents a year in which a borrower/owner has attempted to make up for the loss of rental assistance payments due to a default on his/her part, by raising tenants' rents. Such action usually occurs in a contentious situation, with the borrower/owner already in default and uncooperative. Consequently, requiring that the lease include a clause specifically prohibiting such action may not resolve all cases. However, it would provide tenants with

a regulatory and lease citation that could be used in bringing court proceeding against an abusive borrower/owner. Further, it would provide RHS with an additional instance of non-compliance with regulations that could be used against the owner in a liquidation action or criminal or civil court case. However, it is uncertain whether cases could be resolve more quickly at less cost to the Government.

While the proposed rule offers some additional protection to tenants and imposes some additional responsibility on borrower/owners, it is difficult to place a monetary value on these impacts. Each case is likely to be different, and the resolutions uncertain. The low incidence, however, suggests that the impacts would not be significant in value.

Application Process for Rental Subsidies

Rental subsidies provide critical funds for housing very low-income tenants. Projects that receive RHS' rental assistance, including interest subsidy and rental assistance payments, depend on the continued availability of these subsidies to maintain in-place tenants in their units.

Under the current regulations, borrowers must complete full rental assistance requests to renew expiring subsidies. Stakeholders noted that the agency gathers sufficient information through the budget approval process to assess project needs for rental assistance.

Therefore, the proposed rule states that expiring subsidies will be renewed, at the existing number of units; to the extent sufficient funds are available. To indicate that rental assistance units are needed, the borrower must fill in a single check box on the project budget form (which must be filed annually) instead of completing a separate form as currently required. These changes relieve borrowers of the burden of applying and the agency the burden of reviewing the requests. The review can instead be accomplished as part of the budget approval process. The change has no effect on project or program budgets, as it does not change the agency determination about rental subsidies, it simply streamlines the process.

Budget Approval

RHS requires its borrowers to submit an annual budget, which is used in setting rents. Approximately 92 percent of these budgets arrive for approval at the same time because most owners operate on a calendar year basis and their schedules for developing budgets is about the same. Budget approval is a time-consuming process that taxes RHS staff resources in times of high volume and forces borrowers to operate for extended periods of time with unapproved budgets while the review process is underway. Current regulations require that all budgets be reviewed in the same way, regardless of whether they represent no real change from the previous year or contain significant and potentially controversial changes. The proposed rule establishes an expedited review for those budgets that are within a certain threshold requiring little or no increase in rents. The threshold will be based on data to be obtained from the MFIS III ADP system on area-wide norms for projects within RHS' MFH portfolio as well as commercially-available family income and expense surveys. Details on how the threshold will be computed will be contained in a handbook rather than the proposed rule. This will facilitate making any necessary adjustments in the threshold to meet changing conditions.

The new process could improve program performance by allowing RHS to focus its review on those budgets that contain significant changes while expediting approval of those with little or no change. However, it is unlikely that the new process would have measurable budget impacts, such as reduced rental assistance costs or fewer defaults, because the decisions RHS makes on whether or not to approve a budget will most likely be the same under the new process as under the existing system. Those decisions will, however, be reached in a more efficient manner.

Annual Financial Reporting

Under the current regulations, the agency requires that for all projects of 25 units or more, the owner contract with a CPA perform an audit in accordance with generally accepted government auditing standards (GAGAS). Because a large percentage of the Agency's portfolio consists of projects with between 16 and 24 units, audited financial statements have not been prepared for a substantial number of projects financed by the Agency. In addition, the current audit guide currently does not require the auditor to provide information that is of specific importance to the agency, such as information on Identity-of-Interest transactions.

Under the proposed regulation, large MFH projects, defined as projects with 16 or more units, will be required to submit a GAGAS audit prepared by an independent CPA. The audit guide, which is currently being revised, will provide specific instructions on how the auditor should handle compliance issues. The audit must be completed using ''agreed upon procedures'' that help meet certain performance standards. It must be initiated by the borrower using an engagement letter, which will either:

- Reference the Audit guide, which will specify the program compliance issues that the Agency wants the CPA to address, and guidelines for testing compliance; or
- State the list of compliance issues that the Agency wants the CPA to address.

Small projects, defined as projects with fewer than 16 units, must submit annual financial statements that are prepared in a manner consistent with the agency's audit guide and that is accompanied by a certification signed by the borrower. The annual financial statements may be prepared by a CPA or other individual with the training and experience to prepare the report. The information presented in the annual financial statements must be prepared in a manner consistent with the requirements of the audit guide.

In response to OIG concerns, the agency is proposing to implement these changes to the annual financial reporting system to ensure that a higher percentage of projects are prepared by CPAs, that GAGAS principles are followed in the preparation of these audits, and that the auditors are made aware of specific concerns of the agency, to ensure that project funds are spent appropriately.

Special Servicing, Enforcement, Liquidation, and Other Actions

In response to stakeholder, OIG and agency staff comments, the agency made a number of changes to strengthen agency servicing. None of the changes to the regulation on servicing constitute changes in policy; rather they address a lack of clarity in existing rules and incorporate policies that previously existed only in administrative notices. As such, the changes are not anticipated to have either a negative or positive budget impact.

For example, the proposed rule clarifies the definition of ''default'' by spelling out specific actions that an owner may take or fail to take that would cause the agency to determine that the loan is at risk. The proposed rule also simplifies the submission requirements for transfers of project ownership. Other changes serve to simplify servicing actions in an effort to enhance the agency's flexibility to address servicing issues.

These changes would allow swifter and more consistent action to address troubled projects. For example, focusing action for the agency and the borrower. This would help to avert more serious problems in the long term and allow agency staff to concentrate their efforts on other portfolio management issues.

Management and Disposition of Real Estate Owned Properties

The proposed rule consolidates current regulations regarding real estate owned (REO) property and clarifies the specific requirements that apply to multifamily housing properties. Current regulations address many different types of REO properties acquired by USDA, including MFH properties. Often, the guidance provided is generic or relates to non-MFH properties. The proposed rule would provide specific guidance to MFH properties, taking into consideration the physical condition of the property, occupancy status of the property by eligible program tenants, and determinations of whether the property is still needed under the program.

The proposed rule also adds flexibility to the agency's requirements for selling the property. The change allows the sale to be conducted taking into account local market conditions. It also provides the field offices several options in selling REO properties, giving them authority that previously rested with the national office. With more options and flexibility, processing and sales times will be reduced.

Farm Labor Housing

The proposed regulation consolidates separate program regulations for the Farm Labor Housing Program along with separate regulations for the other MFH programs. It does, however, maintain separate subparts for off-farm labor housing and on-farm labor housing. This was necessary to preserve the distinction between off-farm labor housing consisting of multi-unit housing operated by nonprofit corporations or public bodies who receive loans or both loans and grants under the 514 and 516 programs, and on-farm labor housing consisting of single or small multi-family housing operated by farm operators who receive only loans. Several statutory changes to the Farm Labor Housing Program have been made over the past 4 years. The current regulations have been modified to incorporate those changes prior to the drafting of this proposed rule. As those changes are currently in place, they are not addressed again in this analysis. No further program changes other than regulation consolidation are included.

Office of Rental Housing Preservation

Recent changes to the 1949 Housing Act required the establishment of an Office of Rental Housing Preservation within RHS for handling matters relating the preservation on the agency's MFH portfolio. RHS recently established this office within its Multi-Family Housing Portfolio Management Division. The office has a Director of the Office and a Senior Loan Specialist. Additional positions within the office are to be filled.

The Office of Rental Housing Preservation has already taken steps to enhance the agency's consistency in the review of prepayment requests and the offer of incentives by making a single entity responsible for coordinating all preservation actions. The proposed rule recognizes the establishment of this office and defines its responsibility to coordinate, direct and monitor the RHS' multifamily housing preservation activities. This addition to the rule complies with the statute and clarifies the role of the national office in the preservation process.

Unauthorized Assistance

When tenants receive unauthorized assistance through their own error, the agency has a duty to try to recapture the assistance. Under current regulations, much of this responsibility is put on project owners. The process is both time consuming and burdensome. Furthermore, project owners as well as RHS, have only limited ability to collect unauthorized assistance and, in many cases, the cost of pursuing unauthorized assistance has outweighed the funds collected.

Recognizing these circumstances, the proposed rule relieves project owners of the responsibility of recovering unauthorized assistance due to tenant error once the tenant has moved out. It also provides for RHS to determine whether or not unauthorized assistance should be pursued. These changes give the agency greater flexibility to apply resources cost effectively toward cases that most deserve to be pursued, and relieve project owners of the burden of pursuing tenants who no longer live in their projects. The proposed rule also brings RHS into compliance with the Debt Collection Improvement Act by allowing the use of collection agencies and offsets to collect unauthorized assistance from project owners and tenants.

Changes in Definitions

Basic Rent

Under the current regulations, basic rent is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge. This definition does not take into consideration conventional rents for comparable units, and in effect, does not put any limitation on operating costs and rents.

The definition under the proposed regulation is similar to the definition shown above. However, it also takes into consideration, if appropriate, a return on the borrower's equity in a project. Further, the proposed definition states that basic rent must not exceed conventional rents for comparable units at the time the rent is established. This will prevent project rents from becoming excessively high and will cap the amount of RA that the agency is required to provide.

Disability

Agency regulations currently have separate definitions for the terms ''Individual with disability'' and ''Individual with handicap.'' The definition of the term ''Individual with disability'' is, in large part, taken from section 501(b) of the Housing Act of 1949. The definition of the term ''Individual with handicaps'' is taken from the Fair Housing Act. Other civil rights laws, such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, utilized the term ''disability'' rather than handicap; however, they define it in the same manner as the Fair Housing Act defines handicap.

Rather than having two separate terms, the Agency will only use the term ''Disability'' and it will be considered equivalent to the term ''Handicap.'' If a person meets either the Housing Act of 1949's definition of handicap or the Fair Housing Act's definition of handicap, they will be considered to be disabled.

Participation With Other Funding or Financing Sources

7 CFR 3560.66 encourages participation from public and private sources. The section 515 policy of restricting rental assistance to basic rents that do not exceed what they would have been had the Agency provided full financing is still maintained. Because the Agency is delivering financing at 1 percent, this provision would be difficult for an applicant to meet under the most aggressive leveraging or other low-interest loan funds financing package. Therefore, the Agency is inviting comment as to whether it would serve

the public to expand the underwriting standard of CRCU to guide the Agency in determining basic rent guidelines for Rental Assistance.

30-Year Term and 50-Year Amortization Period

Though not a new issue or policy, the reform regulations require that new loans have a 30-year term with a 50-year amortization schedule. The new regulation will make clear that, at end of 30 years, the borrower has the option to pay-off the residual balloon with no restrictive use on the property, and the Agency has the option to refinance (or not) for the facility's remaining economic life. In effect, loans will have a 30-year use restriction, versus the current 50-year, with additional use restrictions only should the Agency refinance.

Conforming Household Income Calculation to Industry Standards

By changing the calculation of tenant household income and assets to be consistent with other funding sources in the MFH industry, RHS has made a significant contribution to reducing paperwork burden to the public. No longer will a separate calculation have to be made for a MFH loan when a separate calculation was already executed for Low-Income Housing Tax Credit (LIHTC) or another affordable housing program. Tenant income and assets will be calculated in accordance with 24 CFR 813.106 and 24 CFR 813.102, which are regulations published by the U.S. Department of Housing and Urban Development.

Electronic Submission of Certifications/Recertifications

The proposed rule adds a requirement for electronic reporting of information, including tenants' income. The faster transmission of this information provides RHS with more time for analyzing the information. Consequently, the proposed rule extends by 10 days the period for submitting recertifications, giving borrowers more time to comply with agency requirements, thus improving customer service while maintaining program performance.

Regulatory Crosswalk

The following is a crosswalk that shows where the content of the 13 regulations that are being consolidated can be found in 7 CFR part 3560.

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TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
General Provisions and Definitions	**Numerous instructions**	**Subpart A**
Civil rights	7 CFR part 1901, subpart E	§ 3560.2
State, local, or tribal laws	7 CFR 1930.105(b)(6); 7 CFR 1944.53(c)(1); 7 CFR 1944.164(e)(2)(ii); 7 CFR 1944.169(c)(3); 7 CFR 1944.224(d)	§ 3560.5
Borrower responsibility and requirements	7 CFR 1944.211(b); 7 CFR 1930.101; 7 CFR part 1930, subpart C, Exhibit B, Paragraph III.	§ 3560.6
Administrator's exception authority	7 CFR 1930.144	§ 3560.8
Definitions	Numerous instructions	§ 3560.11
Direct Loan and Grant Origination	**7 CFR part 1944, subpart E**	**Subpart B**
Eligible use of funds	7 CFR 1944.212	§ 3560.53
Processing section 515 housing proposals	7 CFR 1944.231	§ 3560.56
Initial operating capital contribution	7 CFR 1944.211(a)(6)	§ 3560.64
Reserve account	7 CFR part 1944, subpart E, Exhibit A-9, Paragraph 9.b.	§ 3560.65
Participation with other funding or financing sources	7 CFR 1944.233	§ 3560.66
Rates and terms	7 CFR 1944.214	§ 3560.67
Permitted return on investment (ROI)	7 CFR 1944.215(n)	§ 3560.68
Supplemental requirements for congregate housing and group homes	7 CFR 1944.224	§ 3560.69
Subsequent loans	7 CFR 1944.237	§ 3560.73
Borrower Management and Operations Responsibilities	**7 CFR part 1930, subpart C, Exhibit B**	**Subpart C**
Housing project management	7 CFR part 1930, subpart C, Exhibit B, Paragraph V.	§ 3560.102
Maintaining housing projects	7 CFR part 1930, subpart C, Exhibit B, Paragraph X.	§ 3560.103

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
Fair housing	7 CFR 1930.103 and 104, 7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.104
Insurance and taxes	7 CFR part 1930, subpart C, Exhibit B, Paragraph XV.	§ 3560.105
Multi-Family Housing Occupancy	**7 CFR part 1930, subpart C, Exhibit B**	**Subpart D**
Tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.152
Calculation of household income and assets	7 CFR part 1930, subpart C, Exhibit B, Paragraph VII.	§ 3560.153
Tenant selection	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.154
Assignment of rental units and occupancy policies	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.155
Lease requirements	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.	§ 3560.156
Occupancy rules	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.	§ 3560.157
Changes in tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Paragraph VI.	§ 3560.158
Termination of occupancy	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIV.	§ 3560.159
Tenant grievances	7 CFR part 1944, subpart L	§ 3560.160
Rents	**7 CFR part 1930, subparts B and C**	**Subpart E**
Establishing rents and utility allowances	7 CFR part 1930, subpart C, Exhibit C	§ 3560.202
Tenant contributions	7 CFR part 1930, subpart C, Exhibit B, Paragraph II.	§ 3560.203
Security deposits and membership fees	7 CFR part 1930, subpart C, Exhibit B, Paragraph VIII.H	§ 3560.204
Rent and utility allowance changes	7 CFR part 1930, subpart C, Exhibit C	§ 3560.205
Rents during eviction or failure to recertify	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIV.A	§ 3560.208
Special servicing note rate rents	7 CFR part 1930, subpart C, Exhibit C, Paragraph IX.	§ 3560.210
Rental Assistance	**7 CFR part 1930, subpart C, Exhibit E**	**Subpart F**
Authorized rental subsidies	7 CFR part 1930, subpart C, Exhibit E, Paragraph II.	§ 3560.252
Eligibility for rental assistance	7 CFR part 1930, subpart C, Exhibit E, Paragraph II. A.	§ 3560.254
Rental assistance payments	7 CFR part 1930, subpart C, Exhibit E, Paragraph X.	§ 3560.256
Assigning rental assistance	7 CFR part 1930, subpart C, Exhibit E, Paragraph XI.	§ 3560.257
Rental subsidies from non-Agency sources	7 CFR part 1930, subpart C, Exhibit B, Paragraphs IV.	§ 3560.260

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
	C, D, and E	
Financial Management	**7 CFR part 1930, subpart C, Exhibit B**	**Subpart G**
Accounting, bookkeeping, budgeting, and financial management systems	7 CFR 1930.122, 7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII.	§ 3560.302
Housing project budgets	7 CFR part 1930, subpart C, Exhibit B, Paragraph XII.A.	§ 3560.303
Initial operating capital	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII. B.2.(a)(1)	§ 3560.304
Return on investment	7 CFR part 1930, subpart C, Exhibit B, Paragraph XII.B. 2.(c)	§ 3560.305
Reserve account	7 CFR part 1930, subpart C, Exhibit B, Paragraph XIII. B.2.(c)	§ 3560.306
Annual financial reports	7 CFR 1930.122(b)(4); 7 CFR part 1930, subpart C, Exhibit A-1	§ 3560.308
Agency Monitoring	**7 CFR part 1930, subpart C**	**Subpart H**
Agency monitoring scope, purpose, and borrower responsibilities	7 CFR 1930.109, 110, 113, 117	§ 3560.352
Scheduling of on-site monitoring reviews	7 CFR 1930.119(d)	§ 3560.353
Borrower response to monitoring review notifications	7 CFR 1930.119(f)	§ 3560.354
Servicing	**7 CFR part 1951, subpart A and 7 CFR part 1965, subpart B**	**Subpart I**
Account servicing	7 CFR part 1951, subpart A	§ 3560.403
Final loan payments	7 CFR part 1951, subpart D	§ 3560.404
Borrower organizational structure or ownership interest changes	7 CFR 1965.63	§ 3560.405
Multi-family housing ownership transfers or sales	7 CFR 1965.65	§ 3560.406
Subordinations or junior liens against security property	7 CFR 1965.83	§ 3560.409
Consolidation	7 CFR 1965.58	§ 3560.410
Special Servicing, Enforcement, Liquidation, and Other Actions	**Numerous Instructions**	**Subpart J**
Monetary and non-monetary defaults	7 CFR 1955.15(d)(2)	§ 3560.452
Workout agreements	7 CFR part 1965, subpart B, Exhibit B	§ 3560.453
Special servicing actions related to housing operations	7 CFR part 1930, subpart C, Exhibit C, Paragraph IX.	§ 3560.454
Special servicing actions related to loan accounts	7 CFR 1965.85	§ 3560.455
Liquidation	7 CFR part 1955, subpart A	§ 3560.456

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
Negotiated debt settlement	7 CFR 1956.57(c)	§ 3560.457
Management and Disposition of Real Estate Owned (REO) Properties	**7 CFR part 1955, subparts B and C**	**Subpart K**
General	7 CFR 1955.1 and 2	§ 3560.501
Conversion of single family type REO property to multi-family housing use	7 CFR 1955.114(c)	§ 3560.506
Off-Farm Labor Housing	**7 CFR part 1944, subpart D**	**Subpart L**
Eligibility requirements for off-farm labor housing loans and grants	7 CFR 1944.157	§ 3560.555
Design and construction requirements	7 CFR part 1944, subpart D, Exhibit A-3	§ 3560.559
Loan and grant limits	7 CFR 1944.164	§ 3560.562
Participation with other funding or financing sources	7 CFR 1944.163	§ 3560.565
Loan and grant rates and terms	7 CFR 1944.159	§ 3560.566
Supplemental requirements for off-farm labor housing	7 CFR 1944.163(e)	§ 3560.568
Rental assistance	7 CFR 1944.182	§ 3560.573
Occupancy restrictions	7 CFR 1944.154	§ 3560.575
Tenant priorities for off-farm labor housing	7 CFR 1944.154	§ 3560.576
On-Farm Labor Housing	**7 CFR part 1944, subpart D**	**Subpart M**
Eligibility requirements	7 CFR 1944.157	§ 3560.605
Site and construction requirements	7 CFR part 1944, subpart D, Exhibit A-3	§ 3560.608
Loan limits	7 CFR 1944.164	§ 3560.612
Reserve accounts	7 CFR part 1944, subpart E, Exhibit A-9, Paragraph 9.b	§ 3560.614
Participation with other funding sources	7 CFR 1944.163	§ 3560.615
Rates and terms	7 CFR 1944.159	§ 3560.616
Supplemental requirements for on-farm labor housing	7 CFR 1944.163(e)	§ 3560.618
Housing management and operations	7 CFR part 1944, subpart D, Exhibit B	§ 3560.623
Occupancy restrictions	7 CFR 1944.154	§ 3560.624
Housing Preservation	**7 CFR part 1965, subpart E**	**Subpart N**
Prepayment and restrictive-use categories	7 CFR 1965.208 and 209	§ 3560.652
Prepayment requests	7 CFR 1965.205	§ 3560.653
Tenant notification requirements	7 CFR 1965.206(b)(5) and (b)(6); 7 CFR 1965.215(e)(3) and (f)(2)	§ 3560.654
Agency requested extension	7 CFR 1965.215(f)(2)	§ 3560.655
Incentive offers	7 CFR 1965.213	§ 3560.656
Processing and closing incentive offers	7 CFR 1965.214	§ 3560.657
Borrower rejection of incentive offer	7 CFR 1965.214(b)	§ 3560.658
Sale or transfer to nonprofit organizations and public		

TOPIC	CURRENT LOCATION	LOCATION IN 7 CFR 3560
bodies	7 CFR 1965.217	§ 3560.659
Acceptance of prepayment	7 CFR 1965.215	§ 3560.660
Unauthorized Assistance	**7 CFR part 1951, subpart N**	**Subpart O**
General	7 CFR 1951.653	§ 3560.701
Identification of unauthorized assistance	7 CFR 1951.656	§ 3560.703
Unauthorized assistance determination notice	7 CFR 1951.657	§ 3560.704
Recapture of unauthorized assistance	7 CFR 1951.658	§ 3560.705
Program participation and corrective actions	7 CFR 1951.658(b)	§ 3560.707
Unauthorized assistance received by tenants	7 CFR 1951.661(a)(3)	§ 3560.708
Demand letter	7 CFR 1951.658(c)	§ 3560.709
Appraisals	**7 CFR part 1922, subpart B**	**Subpart P**
Appraisal use, request, release, and review	7 CFR 1922.52	§ 3560.752
Agency appraisal standards and requirements	7 CFR part 1922, subpart B, Exhibit A	§ 3560.753
Non-completion of appraisal assignment	7 CFR 1922.52(f)	§ 3560.754

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List of Subjects in 7 CFR Part 3560

Accounting, Accounting servicing, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs—Housing and community development, Government acquired property, Government property management, Handicapped, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Sale of government acquired property, Surplus government property.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended as follows:

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

1. Part 3560, consisting of subparts A through P, is added to read as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

Subpart A—General Provisions and Definitions

Sec.
3560.1 Applicability and purpose.
3560.2 Civil rights.
3560.3 Environmental requirements.
3560.4 Compliance with other federal requirements.
3560.5 State, local or tribal laws.
3560.6 Borrower responsibility and requirements.
3560.7 Delegation of responsibility.
3560.8 Administrator's exception authority.
3560.9 Reviews and appeals.
3560.10 Conflict of interest.
3560.11 Definitions.
3560.12–3560.49 [Reserved]
3560.50 OMB control number.

Subpart B—Direct Loan and Grant Origination

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3560.52 Program objectives.
3560.53 Eligible use of funds.
3560.54 Restrictions on the use of funds.
3560.55 Applicant eligibility requirements.
3560.56 Processing section 515 housing proposals.
3560.57 Designated places for section 515 housing.
3560.58 Site requirements.
3560.59 Environmental requirements.
3560.60 Design requirements.
3560.61 Loan security.
3560.62 Technical, legal, insurance, and other services.
3560.63 Loan limits.
3560.64 Initial operating capital contribution.
3560.65 Reserve account.
3560.66 Participation with other funding or financing sources.
3560.67 Rates and terms for section 515 loans.
3560.68 Permitted return on investment (ROI).
3560.69 Supplemental requirements for congregate housing and group homes.
3560.70 Supplemental requirements for manufactured housing.
3560.71 Construction financing.
3560.72 Loan closing.
3560.73 Subsequent loans.
3560.74 Loan for final payments.
3560.75–3560.99 [Reserved]
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Subpart C—Borrower Management and Operations Responsibilities

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3560.102 Housing project management.
3560.103 Maintaining housing projects.
3560.104 Fair housing.
3560.105 Insurance and taxes.
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Subpart D—Multi-Family Housing Occupancy

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3560.152 Tenant eligibility.
3560.153 Calculation of household income and assets.
3560.154 Tenant selection.
3560.155 Assignment of rental units and occupancy policies.
3560.156 Lease requirements.
3560.157 Occupancy rules.
3560.158 Changes in tenant eligibility.
3560.159 Termination of occupancy.
3560.160 Tenant grievances.
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Subpart E—Rents

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3560.203 Tenant contributions.
3560.204 Security deposits and membership fees.
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3560.207 Annual adjustment factors for Section 8 units.
3560.208 Rents during eviction or failure to recertify.
3560.209 Rent collection.
3560.210 Special servicing note rate rents (SNRs).
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Subpart F—Rental Subsidies

3560.251 General.
3560.252 Authorized rental subsidies.
3560.253 Allocation and prioritization of Agency rental assistance.
3560.254 Eligibility for rental assistance.
3560.255 Requesting rental assistance.
3560.256 Rental assistance payments.
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3560.259 Transferring rental assistance.
3560.260 Rental subsidies from non-Agency sources.
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Subpart G—Financial Management

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3560.304 Initial operating capital.
3560.305 Return on investment.
3560.306 Reserve account.
3650.307 Reports.
3560.308 Annual financial reports.
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3560.404 Final loan payments.
3560.405 Borrower organizational structure or ownership interest changes.
3560.406 Multi-family housing ownership transfers or sales.
3560.407 Sales or other disposition of security property.
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3560.409 Subordinations or junior liens against security property.
3560.410 Consolidations.
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Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

3560.451 General.
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3560.453 Workout agreements.
3560.454 Special servicing actions related to housing operations.
3560.455 Special servicing actions related to loan accounts.
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3560.502 Tenant notifications and assistance.
3560.503 Disposition of REO property.
3560.504 Sales price and bidding process.
3560.505 Agency loans to finance purchases of REO properties.
3560.506 Conversion of single family type REO property to multi-family housing use.

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3560.551 General.
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3560.555 Eligibility requirements for off-farm labor housing loans and grants.
3560.556 Application requirements and processing.
3560.557 [Reserved]
3560.558 Site requirements.
3560.559 Design and construction requirements.
3560.560 Security.
3560.561 Technical, legal, insurance and other services.
3560.562 Loan and grant limits.
3560.563 Initial operating capital.
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3560.571 Loan and grant closing.
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3560.573 Rental assistance.
3560.574 Rental structure and changes.
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3560.576 Tenant priorities for labor housing.
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3560.578 Servicing off-farm labor housing.
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3560.600 OMB control number.

Subpart M—On-Farm Labor Housing

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3560.605 Eligibility requirements.
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3560.612 Loan limits.
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3560.654 Tenant notification requirements.
3560.655 Rural Housing Service requested extension.
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3560.657 Processing and closing incentive offers.
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3560.753 Agency appraisal standards and requirements.
3560.754 Non-completion of appraisal assignment.
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Authority: 42 U.S.C. 1480

Subpart A—General Provisions and Definitions

§ 3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing direct loan and grant programs to serve eligible very-low, low- and moderate-income households. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are:

(1) Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing. Section 515 loans may be made to finance multi-family units in rural areas as defined in § 3560.11.

(2) Sections 514 and 516 Farm Labor Housing loans and grants. Housing under these programs may be built in any area with a need and demand for housing for farm workers.

(3) Section 521 Rental Assistance. A project-based tenant rent subsidy which may be provided to Rural Rental Housing and Farm Labor Housing facilities.

(b) The programs covered by this part provide economically designed and constructed rural rental, cooperative, and farm labor housing and related facilities operated and managed in an affordable, decent, safe, and sanitary manner.

§ 3560.2 Civil rights.

(a) All actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, marital status, national origin, age, or disability. These actions include any actions in the sale, rental, or advertising of the dwellings, in the provision of brokerage services, or in residential real estate transactions involving RHS assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make accommodations in rules, policies, practices, or services that would provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; or

(2) To refuse to provide a reasonable accommodation at the borrower's expense that would not cause an undue financial or administrative burden, or to refuse to allow an individual with a disability to make reasonable modifications to the unit at their own expense with the understanding that the owner may require the tenant to return the unit to its original condition when the unit is vacated by the tenant making the modifications (see § 3560.104(c)).

(b) Any tenant or prospective tenant seeking occupancy in or use of a multi-family housing project or related facility for which a loan or grant has been provided by the Rural Housing Service and who believes they are being discriminated against because of race, color, religion, sex, familial status,

marital status, national origin, age, or disability may complain to the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or the Secretary of Housing and Urban Development, U.S. Department of Housing and Urban Development, Washington, DC 20410.

(c) Borrowers or grantees that fail to comply with the requirements of title VIII of the Civil Rights Act are subject to sanctions authorized by law.

§ 3560.3 Environmental requirements.

The Rural Housing Service (RHS) will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, federal agencies, Indian tribes, State and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Loan and grant processing and servicing actions taken by RHS under this part are subject to an environmental review conducted in accordance with 7 CFR part 1940, subpart G.

§ 3560.4 Compliance with other federal requirements.

RHS is responsible for ensuring that the application is in compliance with all applicable federal requirements, including the following specific requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, or any successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1940–J, available in any Rural Development office.

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act, Executive Order 11738, and 40 CFR part 32.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F.

(e) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A.

§ 3560.5 State, local or tribal laws.

Applicants must comply with all applicable State and local laws, and laws of federally-recognized Indian tribes to the extent they are not inconsistent with this part.

§ 3560.6 Borrower responsibility and requirements.

(a) Borrower responsibilities and requirements specified in this part may be carried out by an individual or entity designated by the borrower to act on behalf of the borrower such as a resident manager or management agent. Ultimate accountability to the Agency, however, is with the borrower whether or not the borrower designated another person or entity to act on the borrower's behalf.

(b) Borrowers who have not executed a loan agreement, and who were not required to execute a loan agreement by the regulations in effect at the time of their loan closing are exempt from the requirements of subparts D through G of this part, as long as the borrower is not in default of any applicable requirement, security instrument, payment, or any other agreement with the Agency. Such borrowers must provide evidence of tenant income eligibility in accordance with § 3560.152(a), except in Farm Labor Housing where the tenant is not paying shelter cost.

§ 3560.7 Delegation of responsibility.

The Rural Housing Service Administrator may delegate, on an individual or other basis, any decision-making responsibility for RHS programs, unless otherwise noted.

§ 3560.8 Administrator's exception authority.

The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception or other action is consistent with the applicable statute and is in the best financial interest of the Federal government. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development State Office or a Deputy Administrator in the RHS National Office.

§ 3560.9 Reviews and appeals.

Rural Housing Service decisions may be appealed pursuant to 7 CFR part 11.

§ 3560.10 Conflict of interest.

To reduce the potential for employee conflict of interest, all RHS activities will be conducted in accordance with 7 CFR part 1900, subpart D.

§ 3560.11 Definitions.

Unless otherwise noted, terms listed in this part shall be defined as follows:

Administrator. The head of the Rural Housing Service (RHS) who reports directly to the Under Secretary for Rural Development in the U.S. Department of Agriculture.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture.

Amortization. Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments.

Assistance. Financial assistance in the form of a loan, grant, interest credit, or rental assistance.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Basic rent. The rent necessary to cover expenses in a housing project's approved budget and the required loan payment set in the borrower's promissory note reduced by the interest credit agreement.

Borrower. An individual, partnership, cooperative, trust, public agency, private or public corporation, or other entity which has received a loan from the Agency.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a multi-family housing project.

Congregate housing. A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves.

Consumer cooperative. A corporation organized under the cooperative laws of a State or Federally recognized Indian tribe which will own and operate the housing on a cooperative basis solely for the benefit of its members.

Conventional rents for comparable units (CRCU). Market rents for comparable rental units in non-government assisted conventional housing in the same geographic area as the RHS project.

Current appraisal. An appraisal of a multi-family housing project's value which is no more than 1 year old.

Daily Interest Accrual System (DIAS). A system where interest is charged daily on outstanding principal. Level loan payments are made by the borrower. The amount of interest due on any date is equal to the unpaid daily interest that has accrued.

Default. Failure by a borrower to meet monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency within 30 days of the date such obligation is due

or required to be paid or performed, or within time periods specified in notices of compliance violations.

Delinquent account. An account with a payment more than 10 days past due from the payment due date under the terms of a note or loan agreement.

Disability. The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in §§ 3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) *As defined in section 501(b) of the Housing Act of 1949.* The person is the head of household (or his or her spouse) and is determined to have an impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) *As defined in the Fair Housing Act; the Americans with Disabilities Act; and Section 504 of the Rehabilitation Act of 1973.* The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Domestic farm laborer. An individual or an immediate family member residing with an individual who, consistent with the requirements in § 3560.575(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for residence.

Due diligence on hazardous substances. Due diligence is the process of inquiring into the environmental conditions of real estate, in the context of a real estate transaction to determine the presence of contamination from hazardous substances, and to determine the impact such contamination may have on the market value of the property.

Elderly person. A person who is at least 62 years old. The term also means a person with a disability as separately defined in this paragraph, regardless of age.

Elderly household or individual with a handicapped household. A household in which the tenant or co-tenant of the household is 62 years old or older or is an individual with a disability. An elderly household may include persons younger than 62 years old and the household of an individual with a handicap may include persons without disabilities.

Engagement. An Agency defined financial review of a housing project's financial status which a borrower will contract with a certified public accountant to perform. An engagement will result in annual financial reports for use by the Agency as described in § 3560.308.

Familial status. A classification granted to an individual who has not attained the age of 18 years domiciled with persons having legal custody of such individual or with persons having the written permission of the persons having legal custody. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family farm corporation or partnership. A private corporation or partnership involved in agricultural production in which at least 90 percent of the stock or interest is owned and controlled by persons related by blood, which shall include parents, siblings, and children, or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the State,

(2) Legally able to carry out the purposes of the loan, and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.

Farm labor contractor. A person—other than an agricultural employer, a member of an agricultural association, or an employee of an agricultural employer or agricultural association—who recruits, solicits, hires, employs, furnishes, or transports any year-round or seasonal migrant farm laborer for money or other valuable consideration.

Farm labor housing. On-farm or off-farm housing for farm laborers authorized by section 514 and section 516 of the Housing Act of 1949.

Farmer. A person involved in day to day on-site operations of a farm as defined in 7 CFR 1941.4, and who devotes a substantial amount of personal time to operation of a ''family farm,'' as defined in 7 CFR 1941.4.

Farm owner. An individual who meets the requirements as defined in 7 CFR part 1941, subpart A.

Foreclosure. A proceeding in or out of court to extinguish all rights, title, and interest of the owners of property in order to sell the property to satisfy a lien against it.

General overhead. Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: Tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's, clerical, and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General requirements. Include items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering; field office, sheds, toilets, phone; performance and payment or latent defects bonds; cost certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

Grantee. An entity that has received a grant from the Agency.

Group home. Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

Home base state. The state which a farm laborer claims as their domicile.

Household. The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.

Household furnishings. Basic durable items such as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers and beds.

Housing project. A property with two or more affordable, decent, safe and sanitary rental units and related facilities operated under one management plan and financed with funds appropriated under the authority of sections 515, 514, or 516 of the Housing Act of 1949.

Identity-of-Interest (IOI). A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions:

(1) There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;

(2) One or more of the officers, directors, stockholders or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;

(3) An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;

(4) The supplying entity has or will advance funds to an applicant, borrower, or management agent;

(5) The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;

(6) The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or

(7) There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property, except as approved by the Agency.

Indian tribe. The term *Indian tribe* means any Indian tribe, band, group, and nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under Chapter 67 of Title 31 prior to repeal of such chapter.

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Land lease. A written agreement between a land owner and a borrower stipulating the terms for possession and use of land for a specified period of time.

Lease. A contract setting forth the rights and obligations of a tenant or cooperative member and a property owner, including charges and terms under which a tenant or cooperative member will occupy or use the housing or related facilities.

Legal or qualified alien. Legal or qualified alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Letter of Priority Entitlement (LOPE). A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.

Leveraged participation loan. A loan made in conjunction with an Agency loan by a lender other than the Agency to finance a multifamily housing project.

Life cycle cost. The Life Cycle Cost has 2 purposes:

(1) To determine the expected usable life (utility) of a building component or furnishing and

(2) To determine which building components or furnishings are the most cost efficient over the life of the building. Cost efficient is not to be construed to mean the least initial cost.

Life Cycle Cost Analysis.

(1) Life cycle cost analysis is the comparison of different materials to examine anticipated useful life and the cost of using a specific material or building component. The analysis has multiple uses, such as:

(i) To conduct a cost efficiency comparison between products,

(ii) For developing component replacement time tables, and

(iii) For estimating future component replacement costs.

(2) Life cycle cost analysis can be accomplished through various methods, such as: insurance actuary tables or Agency documentation of a component's life expectancy.

(3) Life cycle cost analysis is conducted by a design professional. For Agency financed projects, a life cycle cost analysis is to be conducted for specific components:

(i) Drives and parking,

(ii) Roofing system and roofing material,

(iii) Exterior finishes, and

(iv) Energy source items.

Limited Liability Company (L.L.C.). An unincorporated organization of one or more persons or entities established in accordance with applicable state laws and whose members may actively participate in the organization without being personally liable for the debts,

obligations or liabilities of the organization.

Limited partnership. An ownership arrangement consisting of general and limited partners; general partners manage the business, while limited partners are passive and liable only for their own capitol contributions.

Loan agreement. A written agreement between the Agency and the borrower which sets forth the borrower's responsibilities with respect to Agency financing.

Low-income household. A household that has an adjusted income that is greater than the Department of Housing and Urban Development's (HUD) established very-low income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size for the county where the property is or will be located).

Low-Income Housing Tax Credit (LIHTC). A federal tax credit allowed for investment in qualified low-income housing administered by the Internal Revenue Service (IRS) under section 42 of the Internal Revenue Code.

Management agent. A firm or individual employed or designated by a borrower to act on the borrower's behalf in accordance with a written management agreement.

Management agreement. A written agreement between a borrower and a management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with a management agreement.

Management plan. A detailed description of the policies and procedures to be followed by the borrower in managing a multi-family housing project.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a multi-family housing project based on the appraised value or total development cost excluding costs ineligible for payment from loan or grant funds, whichever is less, reduced by all funding available to the borrower from sources other than the Agency, multiplied by 95, 97, or 102 percent depending upon the applicant entity and their use of the low-income housing tax credit, in accordance with § 3560.63(b).

Member or co-member. A stockholder or other person who has executed documents or stock pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Migrants or migrant agricultural laborers. Individuals performing agriculture work and their family dependents who establish a temporary residence at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Minor. An individual under 18 years of age who is a dependent of a tenant or an individual age 18 or older who is a full-time student and a dependent of a tenant.

Moderate-income household. A household that has an adjusted income that is greater than the HUD-established low-income limit but does not exceed the low-income limit by more than $5,500.

Mortgage. A legal document pledging a described property for repayment of a loan under certain terms or conditions.

Net recovery value. The value realized from the Government's acquisition of security property in a default situation after subtracting all costs, actual or anticipated, from acquiring, holding, and disposing of the security property.

New construction. A multi-family housing project being constructed to be occupied for the first time.

NOFA. A ''Notice of Funding Availability'' issued by the Agency to inform interested parties of the availability of assistance and other matters pertinent to the program.

Nonprofit organization. A private organization that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization although a nonprofit organization may be sponsored or created by a for-profit entity provided—

(i) The for-profit entity is not an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm,

(ii) The for-profit entity does not have the right to appoint more than one-third of the membership of the organization's governing body,

(iii) The board members appointed by the for-profit entity are not permitted to appoint the remaining two-thirds of the board members, and

(iv) The local nonprofit organization is free to contract for goods and services from vendors of its own choosing;

(4) Has documentation of tax exempt status under section 501(c)(3) or (4) of the Internal Revenue Code of 1986, from the Internal Revenue Service;

(5) Does not include a public body as one of its members; although a state or local government chartered organization may qualify as a local nonprofit organization;

(6) Has standards of financial accountability that conform to 24 CFR 84.21;

(7) Has among its purposes the provision of decent housing that is affordable to very-low, low, and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by—

(i) Maintaining at least one-third of its Board of Director's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations, and

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a capacity for developing and operating affordable rural housing as demonstrated by hiring experienced key staff members who have successfully completed similar projects, or by contracting with a consultant with housing experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted is to be located as demonstrated by being able to show 1 year of the organization's service in the community or 1 year of service to the community by members of the organization's governing board, prior to receiving an Agency loan or grant or by demonstrating that its parent organization has at least 1 year of service to the community.

Nonprofit organization of farm workers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership and whose membership is composed of at least 51 percent farm workers.

Note. The rent necessary to cover expenses in a housing project's approved budget and the required loan payment set in the borrower's promissory note.

Occupancy agreement. A contract establishing the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the

other terms under which the member will occupy the housing.

Occupancy charge. The amount of money charged a cooperative member to cover their proportional share of the cooperative's operating costs and cash requirements.

Office of the General Counsel (OGC). The USDA Office of the General Counsel, including the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney.

Office of Inspector General (OIG). The USDA Office of Inspector General.

Overage. That portion of a tenant's net rent contribution that exceeds basic rent up to note rate rent. Full overage is an amount equal to the difference between the note rate rent for a unit and the basic rent.

Patronage capital refund. Amounts received by a cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's maturity date.

Program requirements. All provisions related to multi-family housing contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other court action.

Related facilities. Facilities in a multi-family housing project that are related to the housing and are in addition to rental units, (*e.g.*, community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Renovation. Renovation is when the remodeling of a property is of a complex nature involving structural repairs; or when two or more of the life cycle cost components are included in the remodeling of a property. Examples: changing the use of a building, replacing wall or floor system members, altering a building that has shifted due to settlement, remodeling an entire property that includes new roofing and siding.

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed multi-family housing. The following terms are used to describe rents for various program purposes.

(1) *Note rate rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) *Basic rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rent* is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) *Low-income housing tax credit (LIHTC) rent* is the rental charge established in accordance with LIHTC requirements.

Rental assistance (RA). The portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution.

Rental assistance obligation. The number of rental assistance units and dollar amounts of rental assistance specified in a rental assistance agreement between the Agency and a borrower for a multi-family housing project.

Rental assistance units. Dwelling units in a multi-family housing project qualified for rental assistance. There are three types of rental assistance units.

(1) New construction units are units provided in conjunction with initial loans for construction or substantial rehabilitation of the multi-family housing projects.

(2) Replacement units are Agency-funded rental assistance units which replace units with expiring rental assistance agreements or which replace Section 8 units which have expired under the Section 8 contract.

(3) Servicing units are units provided to an operational multi-family housing project provided as an incentive to avert prepayment of a loan or as part of a debt forgiveness package.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples: painting, carpeting, appliances, cabinets, and other fixtures.

Resident assistant. A person residing in a rental unit who is essential to the well-being and care of an elderly person or an individual with a disability, but who:

(1) Is not obligated for the tenant's financial support;

(2) Would not be living in the unit except to provide the needed services;

(3) May be a family member, but is not a dependent of the tenant for tax purposes;

(4) Is not subject to the eligibility requirements of a tenant; and

(5) Is not considered a household member in the determination of household income.

Resident or site manager. The individual employed by the borrower and who is responsible for the day-to-day operations of the housing.

Retired domestic farm laborer or domestic farm laborer with a farm labor-related disability. An individual who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer *or* an individual with a disability as separately defined in this paragraph and who was a domestic farm laborer prior to becoming disabled.

Return on Investment (ROI). The annual amount of profit an owner operating on a limited or full profit basis may withdraw from a project, as established in the loan agreement. The amount is calculated as a percentage of the owner's investment in the project.

Rural area. (1) Any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the state of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which:

(i) Has a population not in excess of 2,500 inhabitants, or

(ii) Has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or

(iii) Has a population in excess of 10,000 but not in excess of 20,000 and:

(A) Is not contained within a standard metropolitan statistical area; and

(B) Has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development.

(2) For purposes of this part, any area classified as ''rural'' or a ''rural area'' prior to October 1, 1990, and determined not to be ''rural'' or in a ''rural area'' as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 10,000, but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this paragraph, the city of Plainview, Texas, shall be considered a rural area for purposes of this part, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this part until the receipt of data from the decennial census in the year 2000.

Rural Cooperative Housing (RCH). A housing program authorized under section 515 of the Housing Act of 1949, in which a consumer cooperative, organized and operating on a nonprofit basis, may own and operate a multi-family housing development.

Rural Housing Service (RHS). The Agency within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers programs authorized by sections 514, 515, 516, and 521 of the Housing Act of 1949, as amended.

Rural Rental Housing (RRH). A housing program authorized by section 515 of the Housing Act of 1949 to provide rental housing in rural areas for persons of very low, low and moderate income.

Seasonal housing. Housing operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year round.

Security deposit. A one-time fee charged a tenant prior to occupancy of a unit to cover possible loss or damage to the housing unit caused by the tenant.

Self-employed. A person who meets the IRS definition of self-employed at 26 CFR 1.401–10.

Service agreement. A written agreement between a borrower and a service provider establishing the specific service to be provided to a multi-family housing project, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a multi-family housing project and which, at a minimum, must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Service provider. A person who signs a written agreement with a borrower to provide services to a multi-family housing project.

Servicing note rent (SNR). A rental rate charged at a Plan II project experiencing vacancies that is less than note rent but higher than basic rent.

Shelter costs. Basic or note rate rent plus the utility allowance, when used, or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Sources and Uses Comprehensive Evaluation (SAUCE). A computer software program used by the Agency to analyze the total funds provided to a multi-family housing project to ensure that the Agency is not providing excess assistance.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a multi-family housing project. The term tenant or co-tenant also refers to a member of cooperative housing occupying or planning to occupy a dwelling unit in cooperative housing.

Tenant contribution. The net or gross amount due from a tenant to pay for occupancy of a rental unit in a multi-family housing project.

(1) Net tenant contribution equals the amount of rent paid by a tenant from the tenant's own resources.

(2) Gross tenant contribution equals the amount of rent plus the utility allowance paid by tenants from their own resources.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing multi-family housing and related facilities, buying household furnishings (for sections 514/516 only), and purchasing or improving the necessary land, including architectural, engineering, or legal fees, and charges and other technical and professional fees and charges, but excluding fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. Although a developer's fee is part of the project's development cost for purposes of tax credit calculations basis, such fees are not eligible for payment from Agency loan or grant funds and are not included in determining the Agency authorized development cost.

Utility allowance. An amount determined by a borrower as the amount to be considered a tenant's portion of utility cost in the calculation of a tenant's total shelter cost when utility costs are not included in the rent.

Very low-income household. A household that has an adjusted income that does not exceed the HUD established very low-income limit (generally 50 percent of median income adjusted for household size in the county where the property is or will be located).

Workout agreement. An agreement between a borrower and the Agency listing actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

§§ 3560.12–3560.49 [Reserved]

§ 3560.50 OMB control number. [Reserved]

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L for Off-Farm Labor Housing and subpart M for On-Farm Labor Housing.

§ 3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of multi-family housing and related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§ 3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) *Construct housing.* Funds may be used to construct multi-family housing.

(b) *Purchase and rehabilitate buildings.* Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction

of a similar type and unit size property in the same area.

(c) *Subsequent loans.* Funds may be used to provide subsequent loans in accordance with the provisions of § 3560.73.

(d) *Purchase and improve sites.* Funds may be used to purchase and improve the site on which multi-family housing will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) *Develop and install necessary systems.* Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the multi-family housing project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) *Landscaping and site development.* Funds may be used to provide landscaping and site development related to a multi-family housing project such as lighting, walks, fences, parking areas, and driveways.

(g) *Tenant-related facilities.* Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a multi-family housing project, such as a community room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) *Management-related facilities.* Funds may be used to develop management-related facilities appropriate to the size and economics of a multi-family housing project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) *Purchase and install equipment and appliances.* Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) *Household furnishings (Section 514/516).* For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) *Initial operating capital.* Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving LIHTC, to make the initial operating capital contribution required by § 3560.64. Other borrowers must use their own resources to make the required initial operating capital contribution and may not use loan funds for that purpose.

(l) *Builder's profit, overhead and general requirements.* Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) *Legal, technical and professional services.* Funds may be used for the costs of legal, technical, and professional services related to the borrower's multi-family housing project, including appraisals, environmental documentation, and due diligence reports.

(n) *Permit and application fees.* Funds may be used for required multi-family housing permits and application fees.

(o) *Reimbursement to nonprofit organizations and public bodies.* Funds may be used to reimburse a nonprofit organization or public body for costs that are reasonable and typical for the area, up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, of:

(1) Development and packaging of a loan application and a multi-family housing proposal, and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and multi-family housing proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and multi-family housing proposal.

(p) *Educational programs.* Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to RHS approval and availability of financial resources from the project.

(q) *Interest and customary charges.* Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) *Purchase housing from an interim lender.* Funds may be used to purchase multi-family housing from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Funds may be used for necessary costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(t) *Demonstration programs.* With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of title V of the Housing Act of 1949.

(u) *Conversion of section 502 properties.* In accordance with § 3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under section 502 of the Housing Act of 1949, to multi-family housing authorized by section 515 of the Housing Act of 1949.

§ 3560.54 Restrictions on the use of funds.

(a) *Ineligible uses of funds.* Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve

migrant farm workers in accordance with § 3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in § 3560.60;

(4) Any costs associated with space in a housing project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in § 3560.63(c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under § 3560.58.

(b) *Obligations incurred before loan approval.* Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G has been completed.

§ 3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to § 3560.555, and applicants for on-farm labor housing loans should refer to § 3560.605.

(a) *General.* To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U.S. citizen or qualified alien(s); a corporation; a state or local public Agency; an American Indian tribe as defined in § 3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

(6) Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through Agency funds); and

(7) Not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in § 3560.55(b).

(b) *Additional requirement for applicants with prior debt.* If an applicant has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Civil Rights Act of 1964 and all applicable civil rights laws.

(c) *Additional requirements for nonprofit organizations.* In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

(1) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(2) The applicant must include as part of its organization purposes the provision of decent, safe, and sanitary housing that is affordable to very-low, low- and moderate-income persons.

(3) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(4) The applicant must be legally organized under state and local law.

(5) The applicant's membership should be composed of:

(i) At least one-third representatives of the low-income community.

(ii) No more than one-third representatives of the public sector.

(d) *Additional requirements for limited partnerships.* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

(1) The general partners must be able to meet the equity contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(3) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

(e) *Additional requirements for Limited Liability Companies (LLCs).* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria.

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§ 3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L for Off-Farm and subpart M for On-Farm.

(a) *Notice of Funding Availability (NOFA) responses.*

(1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction multi-family housing proposals, including expansion of existing multi-family housing in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, multi-family housing proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) Multi-family housing proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must provide information required by § 3560.260(c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order which do not require rental assistance.

(b) *Preliminary proposal assessment.* The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA;

(2) The proposal is complete as specified in the NOFA;

(3) The proposal is for an authorized purpose; and

(4) The applicant meets Agency eligibility requirements.

(c) *Scoring and ranking project proposals.* The Agency will score and rank each housing proposal which meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for multi-family housing.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

(D) The overall cost of the multi-family housing is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in § 3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) *Processing initial loan applications.* The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates;

(2) A market feasibility review;

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of § 3560.58;

(4) A review of the Affirmative Fair Housing Marketing Plan;

(5) An analysis of current credit reports; and

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P.

(7) Completion of the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G.

(e) *Processing order of initial loan applications.* The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) *Other assistance.* During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) *Proposal withdrawal or rejection.* An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) *Final applications.* Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final

application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) *Rural cooperative housing proposals.* Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

§ 3560.57 Designated places for section 515 housing.

(a) *Establish a list of designated places.* The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the Notice of Funding Availability (NOFA) is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

(1) Qualification as a rural area as defined in § 3560.11;

(2) Lack of mortgage credit;

(3) Demonstrated need for multi-family housing based on:

(i) The incidence of poverty;

(ii) The existence of substandard housing;

(iii) The lack of affordable housing; and

(iv) The following high need areas:

(A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report;

(B) Indian reservations or communities located within the boundaries of tribal allotted or trust land; and

(C) EZ/EC or REAP communities.

(b) *Establishing partnership designated place list.* The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator.

(c) *Administrator's discretion.* The Administrator may add to the list of designated places any place that is determined to have a compelling need for multi-family housing, for example, a place that has had a substantial increase in population not reflected in the most recent Census data, or a place that has experienced a loss of affordable housing because of natural disaster.

(d) *Restrictions on loans in certain designated places.*

(1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist.

(i) The Agency has selected another multi-family housing proposal in the designated place for processing.

(ii) A previously funded Agency, HUD, low-income housing tax credit or other similar assisted multi-family housing in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted multi-family housing in the designated place is experiencing high vacancy levels.

(iv) A special note rate rent or other loan servicing tool is pending or in effect for other assisted housing in the designated place, or

(v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in § 3560.57(d)(1) may be made:

(i) When a group home is proposed for persons with disabilities in an area where the existing multi-family housing is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional multi-family housing, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

§ 3560.58 Site requirements.

(a) *Location.*

(1) New construction section 515 loans will be made only in designated places selected by the Agency in accordance with the requirements of § 3560.57.

(2) Agency-financed multi-family housing must be located in residential areas as part of established rural communities, except as permitted in § 3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed multi-family housing is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, are not acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be found as unacceptable if any of the above concerns exist.

(b) *Structures located in central business areas.* The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) *Site development costs and standards.* The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a state or local government.

(d) *Densities.* Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the multi-family housing is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) *Flood or mudslide-prone areas.*

(1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete FEMA Form 81–93, Standard Flood Hazard Determination, to document the site's location in relation to the

floodplain and the availability of insurance under NFIP.

§ 3560.59 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G, or any successor regulation. Likewise, the applicant should be informed that the environmental review must be completed and considered before the Agency can make a commitment of resources to the project.

§ 3560.60 Design requirements.

(a) *Standards.* All Agency-financed multi-family housing will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for group homes and cooperative housing. Also, manufactured homes may be used to create multi-family housing and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to multi-family housing. Maintenance requirements are listed in § 3560.103(a)(3).

(b) *Residential design.* All multi-family housing must be residential in character, except as provided for in § 3560.58(b), and must meet the needs of eligible residents.

(c) *Economical construction, operation and maintenance.* Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life cycle cost analysis acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not economical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) *Accessibility.* All housing will meet the following accessibility requirements.

(1) For new construction of multi-family housing, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS), as defined in 36 CFR part 1190, will be followed. When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash value of the building * * * UFAS further defines full and fair cash value as the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value. The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom sizes of fully accessible units will be comparable to the variety of bedroom sizes of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom size. In addition, accessible units should be distributed throughout the complex so not to segregate the units in one location.

(4) All multi-family housing must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

§ 3560.61 Loan security.

(a) *General.* Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan based on a value-in-use appraisal consistent with the requirements of subpart P of this part.

(b) *Lien position.*

(1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) *Liability.* Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) *Housing and land ownership.* Applicants must own the multi-family housing and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. Use of leased land for MFH projects is limited to loan applicants who are nonprofit bodies, states, political subdivisions, public bodies, public agencies, and American Indian tribes where land is not available for purchase. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated market value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not

exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§ 3560.62 Technical, legal, insurance, and other services.

(a) *Legal services.* Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) *Title clearance.* Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) *Architectural services.* Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) *Insurance.* Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in § 3560.105.

(e) *Surety bonding.* Applicants must comply with the surety bonding provisions of 7 CFR part 1924 subpart A.

§ 3560.63 Loan limits.

(a) *Determining the security value.* The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's value as determined by a value-in-use appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under § 3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The value-in-use appraisal shall be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) *Limitations on loan amounts.* The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts.

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) *Equity contribution.* Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(d) *Review of assistance from multiple sources.* The Agency will analyze Federal government and other assistance provided to any multi-family housing project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) *Determining minimum assistance.* For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in § 3560.53(l).

(2) *Developer's fee.* While, in accordance with § 3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal government assistance to the housing. The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal government program. Likewise for transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) *Limits on equity loans.* For equity loans to avert prepayment, the amount of the Agency equity loan will be limited to no more than the difference between 90 percent of current value of the property when appraised as conventional unsubsidized multi-family housing and all current unpaid balances.

(f) *Cost overruns.*

(1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause

the maximum debt limit to be exceeded and the cost increases were caused by:

(i) Unforeseen factors beyond the borrower's control;

(ii) Design changes required by the Agency, state, or the local government; or

(iii) Financing changes approved by the Agency.

§ 3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in § 3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of § 3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in § 3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§ 3560.65 Reserve account.

To meet major capital expenses of a housing project, borrowers must establish and fund a reserve account which meets requirements of § 3560.306. At a minimum, the borrower must agree to make monthly contributions to the reserve account in amounts that will equal an annual contribution of 1 percent of the multi-family housing's total development cost.

§ 3560.66 Participation with other funding or financing sources.

(a) *General requirements.* The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for multi-family housing, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the low-income housing tax credit (LIHTC) rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility documentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) *Rental assistance.* The Agency may provide rental assistance with multi-family housing loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) *Security requirements.* The security requirements of § 3560.61 must be met for all Agency-financed multi-family housing participating with other sources of funding.

(d) *Reserve requirements.* Reserve account requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of § 3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) *Design requirements.* Housing and related facilities must be planned and constructed in accordance with 7 CFR part 1924, subparts A and C. Agency loan funds may only be used for common facilities such as those described in § 3560.53(g). If housing includes common facilities other than those listed in § 3560.53(g), the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility;

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants; and

(3) The facility must be fully available and accessible to all tenants.

§ 3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L for Off-Farm and subpart M for On-Farm.

(a) *Interest.* Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) *Interest credit.* The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) *Amortization period and term.*

(1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with § 3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in § 3560.70(c).

§ 3560.68 Permitted return on investment (ROI).

(a) *Permitted return.* Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with § 3560.63(c).

(b) *Calculation of permitted return.* The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the multi-family housing project as specified in § 3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income housing tax credit and contributed to the multi-family housing project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its value. A return may not be allowed on the amount above the equity contribution required by § 3560.63(c) if the value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the multi-family housing project as specified in § 3560.63(a).

(c) *Return on additional investment.* The initial investment may exceed the equity contribution required by § 3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

§ 3560.69 Supplemental requirements for congregate housing and group homes.

(a) *General.* Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) *Design criteria.* Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) *Services.* Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how the following services will be provided or made available:

(i) One cooked meal per day, seven days per week;

(ii) Transportation to and from the property;

(iii) Assistance in housekeeping;

(iv) Personal services;

(v) Recreational and social activities; and

(vi) Access to medical services.

(2) For group homes, the resident services plan must address how access to the following services will be provided or made available:

(i) A common kitchen in which to prepare meals;

(ii) Transportation;

(iii) Nearby recreational and social activities which may be coordinated by the resident assistant, if applicable; and

(iv) Medical services as necessary.

(d) *Necessary items.* Borrowers must ensure items such as tables, chairs, and cookware necessary to furnish common areas are made available to congregate housing or group homes. The 2 percent initial operating capital may be used to purchase these items.

(e) *Association with other organizations.* Congregate housing and group homes may coordinate services or training with another organization, such as a workshop for the developmentally disabled. However, the housing facility must be a separate entity and not dependent on the other organization.

(f) *Market feasibility documentation.* Market feasibility documentation for congregate housing and group homes is subject to the following requirements:

(1) Must address the need for housing with services and include information concerning alternative service providers;

(2) Must contain demographic information pertaining to the population that is to be served by the congregate housing or group home project; and

(3) May consider an expanded market area that includes nondesignated places, but the facility must be located in a designated place.

(g) *Rental assistance for group homes.* A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§ 3560.70 Supplemental requirements for manufactured housing.

(a) *Design requirements.* Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) *Eligible properties.* The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by the Agency. The proposal will include the results of the applicant's consultation with the manufacturers to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) *Terms.* The maximum loan amount will be determined in accordance with the requirements of § 3560.63. The amortization period and term of loans for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Special warranty requirements.* The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide

units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§ 3560.71 Construction financing.

(a) *Construction financing plan.* Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securitization of the loan.

(b) *Interim financing.* Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, prior to issuance of the interim financing letter.

(c) *Multiple advances.* When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

§ 3560.72 Loan closing.

(a) *Requirements.* Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(3) Provide evidence that construction financing arrangements are adequate;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) *Cost certification.* In all cases, the borrower must report actual construction costs. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4(i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a CPA. In some cases, the Agency will contract directly with a CPA for the cost certification. Funds which were included in the loan for cost certification and which are ultimately not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize Exhibit M (7 CFR part 1924, subpart A) to assist in the evaluation of the cost certification process.

(c) *Notification of loan cancellation.* Loans may be canceled after approval and before loan closing. The Agency will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

§ 3560.73 Subsequent loans.

(a) *Applicability.* The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to multi-family housing initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial loan request and must compete under the NOFA.

(b) *Application requirements and processing.* Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) *Amortization and payment period.* Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) *Equity contribution.* Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in § 3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

(2) An initial operating capital contribution to the general operating account as described in § 3560.64 is required for a subsequent loan approved under the conditions set in § 3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) *Environmental requirements.* Subsequent loans are subject to the completion of an environmental review in accordance with 7 CFR part 1940, subpart G.

(f) *Design requirements.* All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) *Architectural services.* The applicant must obtain architectural services when any of the following conditions exist.

(1) Enclosed space is being added.

(2) The improvements involve materials or systems that have an impact on the health and safety of the occupants.

(3) When required by state law.

(4) When the Agency determines that the work being performed requires architectural services.

(h) *Restrictive-use requirements.* Subsequent loans are subject to restrictive-use provisions as outlined in § 3560.662(a) and borrowers must execute a restrictive-use contract in accordance with § 3560.72(a)(2).

(i) *Designation changes from rural to nonrural.* If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) *Agency's discretion.* The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

§ 3560.74 Loan for final payments.

(a) *Use.* The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) *Requirements.* The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing multi-family housing than to build another property in the same location; or

(2) The multi-family housing has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) *Term.* The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

§§ 3560.75–3560.99 [Reserved]

§ 3560.100 OMB control number. [Reserved]

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing projects financed by the Agency. As noted in § 3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.

§ 3560.102 Housing project management.

(a) *General.* Borrowers hold final responsibility for housing project management and must ensure that operations comply with the terms of all loan or grant documents, Agency requirements and applicable local, state and federal laws and ordinances.

(b) *Management plan.* Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements.

(1) At a minimum, management plans must address the following items:

(i) Maintenance systems, including procedures for routine maintenance, capital item repair and replacement, and effective energy conservation practices;

(ii) Personnel policies, job descriptions, staffing plans, training procedures for on-site staff;

(iii) Front-line management functions to be performed by off-site staff.

(iv) Plans and procedures for providing supplemental services including laundry, vending, and security;

(v) Plans for accounting, record keeping and meeting Agency reporting requirements;

(vi) Procurement procedures;

(vii) Rent and occupancy charge collection procedures, and procedures for requesting and implementing changes in rents, utility allowances, or occupancy charges;

(viii) Plans and procedures for marketing rental units and maintaining compliance with the Affirmative Fair Housing Marketing Plan in accordance with § 3560.104;

(ix) Unit leases and leasing policies and procedures, including procedures for maintaining and purging waiting lists, determining applicant eligibility, certifying and recertifying income, tenant selection, and occupancy policies such as security deposit amounts, occupancy rules, termination of leases or occupancy agreements and eviction;

(x) Plans for allowing tenant participation in property operations and for fostering tenant relationships with management; and

(xi) Procedures for applicant and tenant appeals.

(xii) Describe how management will make known to tenants and applicants that management will provide reasonable accommodations under the Americans with Disabilities Act and regulations implemented thereunder at the borrower's expense unless to do so would cause an undue financial or administrative burden, how such requests are to be made, and who within management will have the authority to approve or disapprove a request for an accommodation.

(2) Loan or grant applicants must submit a management plan before the Agency will give final approval to the loan or grant application. The plan must address the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to monitor housing project performance.

(3) If the Agency determines that a proposed management plan does not address the items in paragraph (b)(1) of this section in sufficient detail or contains policies that would violate Agency requirements, loan or grant agreements, or applicable local, state and Federal laws and ordinances, the Agency will provide written notice to the applicant indicating the deficiencies and a time period for submitting an acceptable plan. Approval of the management plan does not indicate that the Agency has determined the plan complies with state or local requirements.

(c) *Management plan effective period.* A management plan approved by the Agency remains in effect as long as it accurately reflects housing project operations and the housing project is in compliance with the Agency requirements.

(1) Borrowers must submit an updated management plan to the Agency if operations change or are no longer consistent with the management plan on file with the Agency.

(2) When there are no changes in operations, borrowers must submit a certification to the Agency every 3 years stating that operations are consistent with the management plan and the plan is adequate to assure compliance with the loan and grant documents and Agency requirements or applicable local, state and Federal laws.

(3) If the Agency determines that operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, state, and Federal laws, but are not consistent with the management plan, the Agency will require the borrower to:

(i) Revise the management plan to accurately reflect housing operations;

(ii) Take actions to ensure the management plan is followed; or

(iii) Advise the Agency in writing of the action taken.

(4) When a housing project is being transferred from one borrower to another, the transferee must submit a management plan that addresses the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to give final approval of the transfer.

(d) *Housing projects with compliance violations.* Upon receiving notice of compliance violations in accordance with § 3560.354, borrowers must submit to the Agency:

(1) Revisions to the management plan establishing the changes in housing operations that will be made to restore compliance; or

(2) If the borrower determines the compliance violations were due to a failure to follow the management plan, the borrower must certify to the Agency that the management plan is adequate to assure compliance with the applicable requirements of this part and submit a written description of the actions they will take to ensure the management plan is followed.

(3) If the Agency discovers continued discrepancies between a management plan and housing project operations or compliance violations, the Agency may require the borrower to install a different management agent acceptable to the Agency as described in paragraph (e) of this section.

(e) *Acceptable management agents.* Borrowers must obtain Agency approval of the agent proposed to manage a housing project prior to entering into any formal agreement with the agent and prior to allowing the agent to assume responsibility for housing project operations. Borrowers that plan to self-manage a housing project also must receive Agency approval before assuming responsibility for housing operations.

(1) Borrowers must submit a written request for Agency approval of the proposed management agent at least 45 days prior to the date the agent is to assume responsibility for operations. This request must include a profile of the proposed management agent that provides sufficient information to allow the Agency to evaluate whether the agent is acceptable.

(2) The Agency will deny approval of any proposed management agent that cannot provide evidence of at least two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted multi-family housing.

(3) The Agency may issue approval of a management agent that does not meet the requirements of § 3560.102(e)(2) if the management agent can provide evidence that indicates the ability to successfully manage a multi-family housing project in accordance with Agency requirements.

(4) If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status and, if not a self-management situation, will require the borrower to immediately terminate the contract with the management agent.

(5) With Agency consent, borrowers may self-manage housing on a 30-day temporary basis or may enter into a 30-day temporary agreement with a management agent if management services are needed to ensure proper operation of a housing complex prior to completion of the Agency management agent approval process. Such 30 day temporary agreements may be renewable for additional 30-day periods with Agency approval.

(f) *Self-management.* Borrowers may self-manage a housing project but must receive Agency approval before assuming responsibility for housing operations. Borrowers that plan to self-manage must meet all requirements of § 3560.102, except for paragraph (h).

(g) *Identity-of-interest disclosure.* Borrowers and management agents must disclose to the Agency all identity-of-interest relationships which they have with firms and must receive Agency approval to use such firms prior to entering into any contractual relationships with such entities that involve Agency funds.

(1) This disclosure must include any identity-of-interest relationships between:

(i) The borrower and the management agent;

(ii) The borrower or management agent and the providers of supplies and services to the housing project; and

(iii) The borrower or the management agent and employees of any of the above.

(2) Failure to disclose such relationships may subject the borrower, the management agent, and the other firms or employees found to have an identity of interest relationship to suspension, debarment, or other remedies available to the Agency.

(3) After disclosure of an identity-of-interest relationship:

(i) The borrower, management agent, and supplier of goods and services must provide documentation proving that use of identity-of-interest firms is in the best interest of the housing project;

(ii) Any supplier of goods and services must certify in writing to the Agency that the individual or organization has a viable, on-going trade or business qualified and licensed, if appropriate, to do the work for which a contract is being proposed;

(iii) The borrower, management agent, and supplier of goods and services must agree, in writing, that all records related to the housing project will be made available to the Agency, OIG, GAO, or a representative of the Agency, upon request; and

(iv) The Agency will deny the use of an identity-of-interest firm when the Agency determines such use is not in the best interest of the Federal government or the tenants.

(h) *Management agreement.* Borrowers contracting with a management agent must execute a management agreement that establishes:

(1) The management agent's responsibility to comply with Agency requirements and local, state, and Federal laws;

(2) That the management fee is payable out of the housing project's general operating account consistent with the requirements of paragraph (i) of this section; and

(3) The Agency's authority to terminate the agreement for failure to operate the housing project in accordance with Agency requirements or local, state, or Federal laws.

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity only for the specifically identified bundle of services to be provided to the housing project.

(2) Management fees may consist of a base per occupied unit fee, add-on fees for specific housing project characteristics, and incentive fees to encourage superior performance. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop and publish for public comment a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop and publish for public comment the amount and qualifications

to receive add-on fees and incentive fees. The final set of qualifications will be made available to all borrowers.

(j) *Management certification.*

(1) As a condition of approval of the management agent and the management fee, the borrower and the management agents must execute an Agency-approved certification establishing an allowable management fee to be paid out of the housing project's general operating account and certifying that:

(i) The borrower and management agent agree to operate the housing project in accordance with the Agency-approved management plan;

(ii) The borrower and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) The borrower and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) The management agreement between the borrower and management agent complies with the requirements of this section;

(v) The borrower and the management agent will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an identity-of-interest with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time a management agent is proposed and a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

(k) *Procurement.* The borrower and the agents of the borrower must obtain contracts, materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms to the housing project. Any discounts, rebates, fees, proceeds, or commissions obtainable with respect to purchases, service contracts, or other transactions must be credited to the housing project.

§ 3560.103 Maintaining housing projects.

(a) *Physical maintenance.*

(1) The purposes of physical maintenance are the following:

(i) Provide decent, safe, and sanitary housing; and

(ii) Maintain the security of the property.

(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project.

(3) At all times, borrowers must maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing. Agency design requirements are discussed in § 3560.60.

(i) *Utilities.* The housing project must have an adequate and safe water supply, a functional and safe waste disposal system, and must be free of hazardous waste material.

(ii) *Drainage and erosion control.* The housing project must have drainage that effectively protects the housing project from water damage from standing water and erosion. Units, basements or crawl spaces must be free of water seepage.

(iii) *Landscaping and grounds.* The housing project must be landscaped attractively. Lawns, plants and shrubs must be maintained and must allow air to windows, vents and sills. Recreation areas must be maintained in a safe and clean manner and trash collection areas must be adequately sized, screened, and maintained.

(iv) *Drives, parking services and walks.* The housing project must have drives, parking lots, and walks that are free of holes and deterioration. Walks with changes in height between slabs of approximately 1/2 inch or greater will be considered unacceptable.

(v) *Exterior signage.* All signs at the housing project, including those related to the housing project name, buildings, parking spaces, unit numbers and other informational directions must be visible and well-kept. Sign requirements must conform to § 3560.104(d).

(vi) *Fences and retaining walls.* The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation. Fences must be free of holes and damaged or loose sections. The bases of all retaining walls must be erosion free and drainage weep holes must be cleaned out to prevent excessive pressure behind the retaining wall.

(vii) *Debris and graffiti.* The housing project, including common areas, must be free of trash, litter, and debris. Public walkways, walls of buildings and common areas must be free of graffiti.

(viii) *Lighting.* The housing project must have functional exterior lighting and functional interior lighting in common areas which permits safe access and security.

(ix) *Foundation.* The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.

(x) *Exterior walls and siding.* The housing project must have walls that are free from deterioration which allows elements to infiltrate the structure, eaves, gables, and window trim that are free from deterioration, exterior wall coverings that are intact, securely attached, and in good condition. Brick veneers must be free of missing mortar or bricks.

(xi) *Roofs, flashing, and gutters.* The housing project must have gutters and downspouts that are securely attached, clean, and finished or painted properly with splash blocks or extenders that direct water flow away from the building. The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling. Fascia and soffits must be intact.

(xii) *Windows, doors, and exterior structures.* The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken. Window thermopane seals must be unbroken and caulking on the exterior of windows and doors must be continuous and free of cracks. Doors must be weather tight, free of holes, and provide security with functional locks. Porches, balconies and exterior stairs must be free of broken, missing, or rotting components.

(xiii) *Common area accessibility.* The housing project must have accessible, designated handicapped parking spaces with handicapped space signs properly posted. Common areas must be

accessible through walks, ramps, porches, and thresholds. The laundry room must have accessible appliances and mailboxes must be at an accessible level. Elevators or mechanical lifts must be functional and kept in good repair.

(xiv) *Common area signage.* The following must be posted in common areas: ''Justice for All'' poster, equal housing opportunity poster, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

(xv) *Flooring.* If a housing project has carpeting, the carpet must be clean, without excessive wear, and seams that are secure and stretched properly. If the housing project has resilient flooring, the flooring must be clean, unstained, free of tears and breaks, and seams that are secure.

(xvi) *Walls, floors, and ceilings.* The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks, and free of material that appears in danger of falling. The housing project must have wallboard joints that are secure and free of cracks.

(xvii) *Doors and windows.* The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure, and, if doors are metal, free of rust. The housing project must have windows which are easily operated, free of bent blinds or torn curtains, and window interiors must be free of evidence of moisture damage.

(xviii) *Electrical, air conditioning and heating.* The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats. The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable.

(xix) *Water heaters.* The housing project must have water heaters which are operating properly, free of leaks, supply adequate hot water, and are fitted with temperature and pressure relief valves.

(xx) *Smoke alarms.* The housing project must have smoke alarms which are properly located according to local code and which operate properly.

(xxi) *Emergency call system.* If a housing project has an emergency call system, the switches must be located in the bathroom and bedroom, furnished with a pull cord, with the down position set to ''ON'', and must operate properly.

(xxii) *Insect or vermin infestation.* The housing project must have all units free of visible signs of insects or rodents and must be free of signs of insect or rodent damage.

(xxiii) *Range and range hood.* The housing project must have range units in which all elements are operable, electrical connections are secure and insulated, doors and drawers which are secure, control knobs and handles which are in place and secure, and housing which is sound and the finish is free of chips, damage or signs of rust. The range hood fan and light must be operable.

(xiv) *Refrigerator.* The housing project must have refrigerators in which the cooler and freezer are operating properly, the shelves and door containers are secure and free of rust, door gaskets are in good condition and functioning properly, and the housing is sound and the finish is free of chips, damage, or signs of rust.

(xv) *Sinks.* The housing project must have sinks in which the fittings work properly and are free of leaks, plumbing connections under the cabinet which are free of leaks, the finish is free of chips, damage or signs of rust, the strainer is in good condition and in place, and which are secured to a wall, counter or vanity top.

(xvi) *Cabinets.* The housing project must have cabinets and vanities which are secure to walls or floor and have faces, doors and drawer fronts that are in good condition and free of breaks and peeling. Shelving must be in place, fastened securely and free of warps. The housing project must have counter tops which are secure and free of burn marks or chips, bottoms under sinks which are free of evidence of warping, breaks, or being water soaked. Kitchen counter, vanity tops, and back splashes must be properly caulked.

(xvii) *Water closets.* The housing project must have the base of the water closets at the floor properly caulked. The tanks must be free of cracks or leaks and have a lid which fits and is in good condition. The seats must be secure and in good condition, and the flushing mechanisms must be in good condition and operating properly. The stools must be free of cracks and breaks and be securely fastened to the floor.

(xviii) *Bathtub and shower stalls.* The housing project must have tubs or shower stalls which are free of cracks, breaks, and leaks, and a strainer in good condition and in place. The housing project must have walls and floors of the bathtubs which are properly caulked, tops and sides of shower stalls must be properly caulked, and the finish is free of chips, damage or signs of rust.

(4) Borrowers must correct or repair any conditions that do not meet these standards, including any deficiencies identified by the Agency as a result of monitoring activities. Failure to make such corrections or repairs constitutes a non-monetary default under § 3560.452(c).

(b) *Maintenance systems.* Borrowers must establish the following maintenance systems and must describe these systems in their management plan.

(1) A system for routine maintenance, including:

(i) Regular maintenance tasks that can be prescheduled or planned; and

(ii) Tasks performed on a regular basis to maintain compliance with the standards established in paragraph (a)(3) of this section.

(2) A system for responsive maintenance including:

(i) A process for responding to requests for maintenance from tenants;

(ii) A process for responding to unexpected malfunctions of equipment or damages to building systems such as a furnace breakdown or a water leak; and

(iii) A ''work order'' process for managing and tracking responses to maintenance requests and the performance of maintenance tasks.

(3) A system for preventive maintenance including:

(i) Maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems which require specially trained personnel; and

(ii) Maintenance that supports energy-efficient operation of the housing project.

(4) A system for correcting deficiencies identified by periodic inspections, which must include:

(i) A move-in inspection;

(ii) A move-out inspection; and

(iii) An annual inspection of occupied units.

(c) *Capital budgeting and planning.*

(1) Borrowers must develop a capital budget as part of their annual housing project budget required under § 3560.303. The capital budget must include anticipated expenditures on the long-term capital needs of the housing project to assure adequate maintenance and replacement of capital items.

(2) Borrowers must prepare and submit a capital needs assessment to reflect anticipated ''life-cycle'' needs of the housing project for replacement of capital equipment and systems. The cost for preparation of a capital needs assessment will be approved by the Agency as an eligible housing project expense provided the capital needs

assessment is reasonable in cost and meets Agency requirements.

(3) Borrowers must also prepare and submit capital needs assessment to the Agency for approval as a part of a request to:

(i) Transfer ownership of a housing project;

(ii) Reamortize an Agency loan;

(iii) Write-down an Agency loan;

(iv) Substantially rehabilitate a housing project;

(v) Significantly change housing project operations; or

(vi) Receive a preservation incentive.

(4) As a part of the annual budget process, borrowers may request an increase in the amount to be contributed and held in the housing project reserve account to fund the needs identified in an Agency-approved capital needs assessment.

(5) At any time, borrowers may request and the Agency may approve amendments to loan or grant documents to increase the amount of funds to be contributed and held in a reserve account to cover the cost of capital improvements based on the needs identified in an Agency approved capital needs assessment. Borrowers must assure improvements are performed as specified in the capital needs assessment.

§ 3560.104 Fair housing.

(a) *General.* Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities.

(b) *Affirmative Fair Housing Marketing Plan.*

(1) Borrowers with housing projects that have four or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

(2) Loan or grant applicants must submit an AFHMP for Agency approval prior to loan closing or grant approval. Plans must be updated by the borrower whenever components of the plan change.

(3) Borrowers must post the approved AFHMP for public inspection at the housing project site, rental office, or at any other location where tenant applications are received.

(4) When developing the plan, the following items must be considered by the borrower:

(i) *Direction of marketing activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area, regardless of race, color, religion, sex, age, familial status, national origin, or disability. The plan must show which efforts will be made to reach very low-income or low-income groups who would least likely be expected to apply without special outreach efforts.

(ii) *Marketing program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are in the market area but who are least likely to apply for occupancy. Marketing must not rely on ''word of mouth'' advertising.

(*A*) *Advertising.*

(*1*) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications. Advertising by newsprint or electronic media should occur at least annually to promote project visibility, even if there is an adequate waiting list.

(*2*) *Posters, brochures, etc.* Any radio, TV or newspaper advertisement, pamphlets, or brochures used must identify that the complex is operated on an equal housing opportunity basis. This must be done through the use of the equal housing opportunity statement, slogan, or logo type. Copies of the proposed material must be sent when requesting approval of the plan.

(*B*) *Community contacts.* Community leaders and special interest groups such as community, public interest, religious organizations for the disabled must be contacted. Owners and managers of projects with fully accessible apartments must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. In addition, owners and managers of elderly housing must ensure that information regarding eligibility reaches people who are less than 62 years old but who are eligible because they are disabled. Appropriate contacts are with physical rehabilitation centers, hospitals, workshops for the disabled, commissions on aging, and veterans organizations.

(*C*) *Rental staff.* All staff persons responsible for renting the units must have had training provided on Federal, state, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing and a summary of the training they have received must be attached to the plan when requesting approval.

(iii) *Marketing records.* Records must be maintained by the borrower reflecting efforts to fulfill the plan. These records will be reviewed by the Agency during civil rights compliance reviews. Plans will be updated as needed.

(c) *Accommodations and communication.* The borrower must take appropriate steps to ensure effective communication with applicants, tenants, and members of the public with disabilities. At a minimum, the following steps must be taken.

(1) Furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary, to afford an individual with disabilities an equal opportunity to participate in and enjoy the benefits of Agency financed housing.

(i) In determining what auxiliary aids are necessary, the borrower must give primary consideration to the requests of individuals with disabilities.

(ii) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a borrower communicates with applicants and tenants by telephone, telecommunication devices for deaf persons or equally effective communication systems must be available for use.

(3) The borrower must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of accessible services, activities, and facilities in the housing project and community.

(4) The borrower is required to provide reasonable accommodations at the borrower's expense unless doing so would cause an undue financial or administrative burden. Examples of reasonable accommodations may include such items as the installation of grab bars, ramps, and roll-in showers. Reasonable accommodations may also include the modification of rules or policies such as permitting a disabled tenant to have a two-bedroom unit to accommodate a resident assistant or to permit a disabled tenant to have a companion animal. The decision whether the requested accommodation is reasonable or unreasonable or whether to provide the accommodation would cause an undue financial or administrative burden lies with the borrower and would be for the borrower to defend should a complaint subsequently be filed. Borrowers may wish to consult with their legal counsel prior to denying a request. If the borrower takes the position that providing an accommodation would cause an undue financial or

administrative burden, the borrower must permit the tenant to make reasonable modifications at the tenant's expense. Requests for reasonable accommodations must be handled in accordance with the management plan.

(d) *Housing sign requirements.*

(1) A permanent sign identifying the housing project is required for all housing projects approved on or after September 13, 1977. Permanent signs are recommended for all housing projects approved prior to September 13, 1977. The sign must meet the following requirements:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside;

(ii) Must be located near the site manager's office when the housing project has multiple sites. Portable signs must be placed where vacancies exist at other site locations of a ''scattered site'' housing project;

(iii) May be of any shape;

(iv) Must be not less than 16 square feet of area for housing projects with 8 or more rental units (smaller housing projects may have smaller signs);

(v) Must be made of durable material including its supports;

(vi) Must include the housing project name;

(vii) Must show rental contact information including but not limited to the office location of the housing project and a telephone number where applicant inquiries may be made;

(viii) Must show either the equal housing opportunity logotype (the house and equal sign, with the words equal housing opportunity underneath the house); the equal housing opportunity slogan ''equal housing opportunity'; or the equal housing opportunity statement, ''We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.'' If the logotype is used, the size of the logo must be no less than 5 percent of the total size of the project sign.

(ix) May display the Agency or Department logotype; and

(x) Must comply with state and local codes.

(2) Accessible parking spaces must be reserved for individuals with disabilities by a sign showing the international symbol of accessibility. The sign must be mounted on a post at a height that is readily visible from an occupied vehicle. In snow areas, the sign must be visible above piled snow. If there is an office, the designated parking space must be van accessible.

(3) When the continuous unobstructed ingress or egress disabled accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for disabled accessibility must be clearly marked with international accessibility symbols and directional signs to aid a disabled person's ingress or egress to the building, through an accessible entrance, and to the accessible common use and public and living areas.

§ 3560.105 Insurance and taxes.

(a) *General.* Borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan. Also, borrowers must furnish fidelity coverage, liability insurance, and any other insurance coverage required by the Agency in accordance with this paragraph to protect the security of the asset. Failure to maintain adequate insurance coverage or pay taxes may lead to a non-monetary default under § 3560.452(c).

(b) *General insurance requirements.* All insurance policies must meet the requirements established by the loan documents and this section.

(1) At loan closing, prior to loan approval, applicants must provide documentary evidence that insurance requirements have been met and must maintain such evidence throughout the life of the loan or terms of the grant.

(2) Insurance companies must meet the requirements of paragraph (e) of this section.

(3) Insurance coverage amount, terms, and conditions must meet the requirements of paragraph (f) of this section.

(4) The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire.

(5) The Agency must be named as co-payee on all property insurance policies.

(c) *Borrower failure or inability to meet insurance requirements.* The Agency will take the following actions in cases where a borrower is unwilling or unable to meet the Agency's insurance requirements.

(1) The Agency will obtain insurance for Agency financed property if the borrower fails to do so. If borrowers refuse to pay the insurance premium, the Agency will pay the insurance premium and charge the premium payment amount and all costs associated with procurement of the required insurance to the borrower's Agency account and will place the borrower in default as described in § 3560.452(c).

(2) If borrowers habitually fail to pay premiums in a timely manner, the Agency will require borrowers to escrow amounts appropriate to pay insurance premiums.

(3) If insurance that meets the Agency's specified requirements is not available (*e.g.* flood or hurricane insurance), the Agency may accept the insurance policy that most nearly conforms to established requirements.

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(8) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

(d) *Credits, refunds, or rebates.* Borrowers must credit any refund or rebate from an insurance company to the project's general operating account or reserve account.

(e) *Insurance company requirements.* All insurers, insurance agents, and brokers must meet the following requirements:

(1) Be licensed or authorized to do business in the state or jurisdiction where the housing project is located;

(2) Be deemed reputable and financially sound as determined by the Agency; and

(3) Not have any identity-of-interest relationships with the borrower, management agent, or partners, directors or officers of the borrower entity.

(f) *Property insurance.* The following conditions apply to property insurance purchased for Agency-financed housing projects.

(1) At a minimum, borrowers must obtain the following types of property insurance.

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, windstorms, hail, earthquake, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as ''Fire and Extended Coverage,'' ''Homeowners,'' ''All Physical Loss,'' or ''Broad Form'' policies.

(ii) *Flood insurance.* This coverage is required for properties located in Special Flood Hazard Areas (SFHA) as defined in 44 CFR part 65, as determined by the Federal Emergency Management Agency (FEMA).

(iii) *Builder's risk insurance.* A policy which insures dwellings under construction.

(iv) *Elevators, boiler, and machinery coverage.* This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) For property insurance, the minimum coverage amount must equal the ''Total Estimated Reproduction Cost of New Improvements,'' as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must be adequate to cover the lesser of the depreciated replacement value of essential buildings or the unpaid balance of all secured debt, unless such coverage is financially unfeasible for the housing project.

(i) If the cost of the minimum level of property insurance coverage exceeds what the housing project can reasonably afford, the borrower, with Agency concurrence, must obtain the maximum amount of property insurance coverage that the housing project can afford.

(ii) If the coverage amount is less than the depreciated replacement value of all essential buildings, borrowers must obtain coverage on one or more of the most essential buildings, as determined by the Agency.

(iii) When required, the coverage amount for flood insurance must equal the outstanding loan balance or the maximum coverage allowed by FEMA's ''National Flood Insurance Program.''

(3) Except for flood insurance, property insurance is not required if the housing project:

(i) Has a depreciated replacement value of $2,500 or less; or

(ii) Is in a condition which the Agency determines makes insurance coverage not economical.

(4) Policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that each secured building or property related to the housing project is as fully protected as if a separate policy were issued.

(5) Borrowers must notify the Agency and their insurance company agents of any loss or damage to insured property and collect the amount of the loss.

(6) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(7) When the Agency is not in the first lien position and the insurance settlement represents satisfactory adjustment of the loss, the Agency will release the settlement funds to the primary mortgagee upon agreement of all parties to the provisions contained in agreements between the Agency and the primary lienholder.

(8) Deductible clause amounts must be accounted for in the reserve account unless the deductible amount does not exceed:

(i) $1,000 on any housing project with an insurable value under $200,000; or

(ii) One-half of one percent (0.0050) of the insurable value, up to $5,000 on housing project with insurance values over $200,000.

(g) *Liability insurance.* The borrower must carry comprehensive general liability insurance with coverage amounts that meet or exceed Agency requirements. This coverage must insure all common areas, commercial space, and public ways in the security premises. Coverage may also include borrower exposure to certain risks such as errors and omissions, environmental damages, or protection against discrimination claims. The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1 million.

(h) *Fidelity coverage.* Borrowers must provide fidelity coverage on any personnel entrusted with the receipt, custody, and disbursement of any housing monies, securities, or readily salable property other than money or securities. Borrowers must have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. In addition, the following conditions apply to fidelity insurance.

(1) Fidelity insurance coverage must be documented on a bond form acceptable to the Agency.

(2) Fidelity coverage policies must declare in the insuring agreements that the insurance company will provide protection to the insured against the loss of money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any employee, whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage. The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(3) Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage.

(4) At a minimum, borrowers must provide an endorsement, listing all of the borrower's Agency financed properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency financed properties on separate endorsement listings.

(5) Individual or organizational borrowers must have fidelity coverage when they have employees with access to the multi-family housing complex assets. Borrowers who use a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the housing assets. If active management reverts to the borrower, the borrower must obtain fidelity coverage, as a first course of business.

(6) Fidelity coverage is not required under the following circumstances.

(i) The borrower is an individual or a general partnership and the individual or general partner will be responsible for the financial activities of the housing project.

(ii) In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

(iii) A limited partnership (or its general partners) unless one or more of its general partners perform financial acts within the scope of the usual duties of an ''employee.''

(7) The premium for fidelity coverage of employees and general partners at a housing project is an eligible operating account expense.

(i) The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (*i.e.*, it is included within the management fee).

(ii) When a housing project employee is covered under the ''umbrella'' of the management agent's fidelity coverage, the portion of the premium covering the employee must be reflected in the management plan.

(8) Borrowers must review fidelity coverage annually and adjust it as

necessary to comply with the requirements of this section.

(i) *Taxes.* The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent. Annually, borrowers must certify to the Agency that all taxes are current.

(1) An exception to the above may be made if the borrower has formally contested the amount of the property assessment and escrowed the amount of taxes in question in a manner approved by the Agency.

(2) Failure to pay taxes and assessments when due will be considered a default. If a borrower fails to pay outstanding taxes and assessments, the Agency will pay the outstanding balance and charge the tax or assessment amount, assessed penalties, and any additional incurred costs to the borrower's Agency account.

(3) The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

§§ 3560.106–3560.149 [Reserved]

§ 3560.150 OMB control number. [Reserved]

Subpart D—Multi-Family Housing Occupancy

§ 3560.151 General.

This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing projects. Occupancy eligibility requirements apply to the following:

(a) Family housing projects, including farm labor housing;

(b) Elderly housing projects;

(c) Mixed housing projects for both family and elderly households; and

(d) Congregate housing or group homes for persons with special needs.

§ 3560.152 Tenant eligibility.

(a) *General requirements.* Except as specified in paragraph (b) of this section, households eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or legal or qualified alien as defined in § 3560.11, and either.

(2) Qualify as a very low-, low-, or moderate-income household; or

(3) Be eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as HUD Section 8 assistance or LIHTCs, when a household receives such housing benefits.

(b) *Exception.* Households with incomes above the moderate-income level may occupy housing projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

(c) *Requirements for elderly housing, elderly units in mixed housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing, elderly units in mixed housing, and congregate housing or group homes.

(1) For elderly housing, elderly units in mixed housing, and congregate housing the following provisions apply.

(i) Households must meet the definition of an elderly household in § 3560.11 to be eligible for occupancy in elderly or congregate housing.

(ii) If non-elderly persons are members of a household where the tenant or co-tenant is an elderly person, the non-elderly persons are eligible for occupancy in the tenant's or co-tenant's rental unit.

(iii) Applicants who will agree to participate in the services provided by a congregate housing project may be given occupancy priority.

(2) For group homes, the following provisions apply.

(i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's management plan.

(ii) Tenants must meet the requirements of paragraph (a) of this section and must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to be a part of an ongoing training or rehabilitation program.

(iv) Tenants must be selected from the market area prior to considering applicants from other areas.

(d) *Ineligible tenant waiver.* The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed 1 year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to age or income restrictions.

(4) The borrower agrees to continue with aggressive efforts to locate eligible tenants and submit monthly reports of their marketing efforts to the Agency.

(5) The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.

(6) That the lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.

(7) Tenants residing in RRH units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.

(8) Tenants residing in off-farm LH units who are ineligible because their adjusted annual income exceeds the maximum for the area will be charged the lesser of the LH project's note rate rent or the prevailing market rent rate for the project. For on-farm tenants, rent determination may be subject to local discretion within limitations contained in subpart L of this part. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

(e) *Tenant certification and verification.* Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household status

results in a net tenant contribution change that is greater than $25 per month. Borrowers must make modifications to tenant certifications for changes with a $25 or less impact on the net tenant contribution, if the tenant requests that such a change be made.

(1) Tenant requirements.

(i) Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

(ii) Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

(iii) Tenants must report all changes in household status that may affect their eligibility to borrowers.

(iv) Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in subpart O of this part.

(2) Borrower requirements.

(i) Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

(ii) Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or net tenant contribution.

(iii) Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c). Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

§ 3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR part 5.

(b) Adjusted income will be calculated in accordance with 24 CFR part 5.

(c) Net assets will be calculated in accordance with 24 CFR part 5.

§ 3560.154 Tenant selection.

(a) *Application for occupancy.* Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act and title VI of the Civil Rights Act of 1964 during compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their ages;

(3) Annual income information calculated in accordance with § 3560.153(a);

(4) Adjustments to income calculated in accordance with § 3560.153(b);

(5) Net assets calculated in accordance with § 3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a legal or qualified alien as defined in § 3560.11; and

(8) Signature of the applicant and date.

(9) Race, ethnicity, and sex designation. This designation shall be placed on the application form beneath the signature and date section. The following disclosure notice shall be used (verbatim) and the race, ethnicity, and sex designation shall be collected in the following manner on the application form:

The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname.

Please identify your ethnicity, your race and your sex as follows:

List the Race and Ethnicity Categories as Found on the Agency Tenant Certification Form

(10) Taxpayer identification number.

(b) *Additional information.* Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information).

(c) *Application submission.* Borrowers must establish and maintain a specific place and time when tenant applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

(d) *Selection of eligible applicants.* Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria is contained in the borrower's Agency approved management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(e) *Recordkeeping.* Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) *Waiting lists.*

(1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a)(8) of this section), they must be notified in writing within 10 days of the items that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Selections from the waiting list shall be made in the following priority order:

(i) Very low-income applicants;

(ii) Low-income applicants; and

(iii) Moderate-income applicants.

(g) *Priorities and preferences for admission.*

(1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with § 3560.660(d).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with HUD regulations. The use of such preferences must be documented in the project's management plan.

(h) *Notices of ineligibility or rejection.* Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with § 3560.160, the notice must advise the applicant of ''the right to respond to the notice within ten calendar days after receipt'' and of ''the right to a hearing in accordance with § 3560.160 which is available upon request.'' When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) *Purging waiting list.* Procedures used by borrowers to purge waiting list must be documented in the project's management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing.

(j) *Criminal activity.* Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 884.216(b).

§ 3560.155 Assignment of rental units and occupancy policies.

(a) *General.* Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in § 3560.154.

(b) *Rental units accessible to individuals with disabilities.* If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided:

(1) The accessible unit has been marketed as an accessible unit,

(2) Outreach has been made to organizations representing the disabled, and

(3) Marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) *Transfer of existing tenants within a housing project.* When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) *Applicant placement.* When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in § 3560.154.

(e) *Occupancy policies.* Borrowers must establish occupancy policies for each housing project. The borrower's occupancy policies must establish a minimum threshold of one person per bedroom for each rental unit. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project's occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower's occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source; and

(2) The order in which eligible applicants and existing tenants will be housed or rehoused.

(f) *Agency concurrence.* The Agency must concur with a borrower's occupancy rules prior to initial occupancy of the housing project. All modifications to occupancy rules must be posted for tenant comment in accordance with § 3560.160 and receive Agency concurrence prior to implementation.

§ 3560.156 Lease requirements.

(a) *Agency concurrence.* Borrowers must use a lease approved by the Agency. The lease must be consistent with Agency requirements and the requirements of all programs participating in the housing project. Prior to submitting the lease to the Agency for approval, borrowers must have their attorney certify that the lease complies with state and local laws, Agency requirements, and the requirements of all programs participating in the housing project. If there are conflicting requirements the borrower shall notify the Agency of the conflict and request guidance. Borrowers must execute their Agency approved lease with each tenant household prior to tenant occupancy of a rental unit.

(b) *Lease requirements.*

(1) All leases must be in writing.

(2) Initial leases must be for a 1-year period.

(3) If the tenant is not subject to occupancy termination according to § 3560.158 and § 3560.159, a renewal

lease or lease extension must be for a 1-year period.

(4) In areas with a concentration of non-English speaking populations, leases (including the occupancy rules) must be available in both English and the non-English language.

(5) Leases must give the address of the management agent to which tenants may direct complaints.

(6) Leases must include a statement of the terms and conditions for modifying the lease.

(c) *Required items and provisions.*

(1) Leases must include the following clauses:

(i) A requirement that tenants move out of the housing project within 30 days of being notified by the borrower that they are no longer eligible for occupancy unless the conditions cited in § 3560.158(c) exist;

(ii) A requirement that tenants notify borrowers regarding changes in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit;

(iii) A requirement that tenants notify borrowers of extended tenant absences, typically four weeks or more;

(iv) A requirement that tenants make restitution when unauthorized assistance is received and a statement advising tenants that submission of false information could result in legal action.

(v) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under § 3560.152; and

(vi) A requirement that, during acceleration and foreclosure proceedings, the tenant contribution will remain as if any interest credit and rental subsidy in effect prior to acceleration were still in place and available and the terms of the lease remain in effect until the date the acceleration or foreclosure action is resolved.

(2) Leases for tenants who hold a LOPE issued according to § 3560.655(d) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

(3) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.

(4) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default, loan prepayment, or when rental assistance or interest credit, other than Federal assistance, is suspended, canceled, or terminated due to the borrower's fault.

(5) Leases must include a statement that the housing project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

(6) Leases must state that the housing project is subject to:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title VIII of the Fair Housing Act;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975; and

(v) The Americans with Disabilities Act.

(7) Leases must establish the tenant's responsibility according to the housing project's occupancy rules to move to the next available appropriately sized rental unit if the household becomes over housed or under housed in the unit they occupy.

(8) Leases must include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification.

(9) Leases must include a provision stating that tenancy continues until the tenant's possessions are removed from the housing either voluntarily or by legal means, subject to state and local law.

(10) Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.

(11) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(12) Leases, including renewals, must include the following language.

It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, state, or Federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a ''drug violation'') may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.

(13) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit when an appropriate unit becomes available or when the unit is needed by an eligible individual with disabilities. Additionally, the lease clause must require the borrower to provide tenants written notification of the date by which they must move to another unit in the project.

(14) If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections required under subpart N of this part.

(15) All leases must contain the following information and provisions:

(i) The name of the tenant, any co-tenants, and all members of the household residing in the rental unit;

(ii) The identification of the rental unit;

(iii) The amount and due date of monthly net tenant contributions, any late payment penalties, and security deposit amounts;

(iv) The utilities, services, and equipment to be provided for the tenant;

(v) The tenant's utility payment responsibility;

(vi) The certification process for determining tenant occupancy eligibility and contribution;

(vii) The limitations of the tenant's right to use or occupancy of the dwelling;

(viii) The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;

(ix) The agreement of the borrower to accept the tenant net contribution prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;

(x) The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements;

(xi) The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;

(xii) The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;

(xiii) The tenant's responsibility to notify the borrower of an extended absence, typically four consecutive weeks or more;

(xiv) A provision that tenants may not assign the lease or sublet the property;

(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease including lease violation notices;

(xvii) The good-cause circumstances under which the borrower may terminate the lease and the length of notice required;

(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;

(xix) The procedures for resolution of tenant grievances consistent with the requirements of § 3560.160;

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration (*e.g.*, when a tenant is required to move to another location for employment or due to a job loss, severe illness, death of spouse, or other reasons customary or mandatory in the community, or when a tenant has received notification that a borrower will be prepaying an Agency loan); and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) *Prohibited provisions.* Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may bring suit against the tenant without notice;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorney to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) *Housing projects and units receiving HUD assistance.*

(1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) *State and local requirements.* Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

§ 3560.157 Occupancy rules.

(a) *General.* The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) *Requirements.* The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources; and

(10) When a guest becomes a member of the tenant household.

(c) *Modification of occupancy rules.* The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of

such rules in accordance with § 3560.160.

(d) *Federal, state and local requirements.* The occupancy rules must be consistent with federal, state and local law.

(e) *Pets.* All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or companion animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) *Tenant organizations.* Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) *Community rooms.* Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

§ 3560.158 Changes in tenant eligibility.

(a) *General requirements.* Tenants must continue to meet the requirements of § 3560.152 to remain eligible for occupancy.

(b) *Tenants no longer eligible.* Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or Agency requirements must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) *Temporary continuation of tenancy.* If conditions described in § 3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) *Surviving and remaining household members.*

(1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the departure or death of the tenant or co-tenant;

(iii) They execute a tenant certification form establishing their own tenancy; and,

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-tenant's death, even if the household is over housed according to the housing project's occupancy rules as follows:

(i) Continued occupancy of the rental unit will not be allowed when in either situation of paragraph (d)(1) or (d)(3) of this section, the rental unit has accessibility features for individuals with disabilities, the household no longer has a need for such accessibility features, and the housing project has a tenant application from an individual with a need for the accessibility features;

(ii) If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit with such features until the housing project receives an application from an individual with a need for accessibility features and shall be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features; and

(iii) If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

§ 3560.159 Termination of occupancy.

(a) *Tenants in violation of lease.* Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Such terminations may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

(1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules which are substantial and repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules beyond agreed to grace periods; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities; or

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons.

(b) *Lease expiration or tenant eligibility.* A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause.

(3) A statement detailing the nature and frequency of the violations with adequate information to allow the tenant to respond with contrary evidence or with a corrective action plan;

(4) A statement specifying where and when, prior to the lease termination date, a tenant may meet with the borrower to present contrary evidence or to develop a corrective action agreement; and

(5) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) *Other terminations.* If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) *Criminal activity.* Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 884.216(b).

§ 3560.160 Tenant grievances.

(a) *General.*

(1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant or prospective tenant seeking occupancy in or use of a housing project for which a loan or grant has been provided by the Agency and who believes they are being discriminated against because of age, race, color, religion, sex, marital status, familial status, disability, sexual preference or national origin may complain to the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250 or the Secretary of Housing and Urban Development, U. S. Department of Housing and Urban Development, Washington, DC 20410.

(b) *Applicability.*

(1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of § 3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with § 3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of loan prepayment handled according to subpart N of this part.

(c) *Borrower responsibilities.* Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedure at the housing project's management office for inspection by the tenants and the Agency upon request. Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed. If a housing project is located in an area with a concentration of non-English speaking individuals, the borrower must provide grievance procedures in both English and the non-English language.

(d) *Reasons for grievance.* Tenants or prospective tenants may file a grievance with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with § 3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;

(4) Occupancy rule changes;

(5) Rent changes not authorized by the Agency according to § 3560.205; or

(6) Denial of approval for occupancy.

(e) *Notice of adverse action.* In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of ''the right to respond to the notice within ten calendar days after date of the notice'' and of ''the right to a hearing in accordance with § 3560.160 (f), which is available upon request.'' For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) *Grievances and responses to notice of adverse action.* The following procedures must be followed by tenants, prospective tenants, or borrowers involved in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within five calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency. The tenant also may submit a summary of the problem to the Agency.

(g) *Hearing process.* The following procedures apply to a hearing process.

(1) *Request for hearing.* If the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a

person to serve as the sole hearing officer.

(3) *Standing hearing panel.* In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) *Examination of records.* The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) *Scheduling of hearing.* If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) *Escrow deposits.* If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) *Failure to request a hearing.* If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) *Requirements governing the hearing.* The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or another person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified of the determination of the hearing officer or hearing panel.

(i) *Decision.* Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 days to allow time for an Agency review as specified in paragraph (i)(3) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

§§ 3560.161–3560.199 [Reserved]

§ 3560.200 OMB control number. [Reserved]

Subpart E—Rents

§ 3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multi-family housing projects financed by the Agency.

§ 3560.202 Establishing rents and utility allowances.

(a) *General.* Rents and utility allowances for rental units in Agency-financed housing projects are set by the borrower and must be based on the operating and management expenses and other costs related to the housing project including loan payment amounts due to the Agency.

(b) *Agency approval.* All rents and utility allowances set by borrowers are subject to Agency approval.

(c) *Rents.* As applicable, borrowers must establish the following rents.

(1) *Note rent.* The borrower must establish a note rent to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) *Basic rent.* The borrower must establish a basic rent to cover expenses

in the housing project's approved budget and the required loan payment set in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rents.* For housing receiving project-based Section 8 rental subsidies, the HUD contract rent will be established in accordance with 24 CFR part 880 or part 884, as applicable, available at any Agency servicing office.

(4) *Low-income housing tax credit (LIHTC) rents.* Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget including the required payments on borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

(d) *Utility allowances.* In projects where tenants pay the utilities, borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs. Borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. If no changes are needed, the borrower must notify the Agency that no changes were made. Documentation to justify utility allowances must be maintained in the housing project files.

(e) *Funds contributed to reduce rents.* If borrowers use funds contributed from sources other than the Agency (e.g., state or local grants, private contributions) to reduce general operating and management expenses, housing project rents must be reduced to reflect the funding being used to offset housing project expenses. When funds contributed from sources other than the Agency are used for housing project expenses, the borrower must certify to the Agency, in writing, that the funds provided will not need to be repaid with Agency funds.

(f) *Rents for resident manager, caretaker, or owner-occupied unit.*

(1) If approved as a part of a management plan, a borrower may occupy a rental unit in a housing project when they are acting as a management agent or resident manager as specified in § 3560.102(e).

(2) If the rental unit being occupied by a borrower or resident manager is designated as a revenue-producing unit, borrowers must calculate the rental charge to the borrower or resident manager in the same manner as tenant contributions.

(3) If the rental unit being occupied by a borrower or resident manager is designated as a non-revenue producing unit, borrowers must treat the cost of providing the unit the same as other non-revenue producing portions of the housing project.

§ 3560.203 Tenant contributions.

(a) *Tenant contributions.* A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

(1) *Gross tenant contributions.* Borrowers must set gross tenant contributions to rent at the highest of the following standards but never more than the note rent:

(i) Thirty percent of monthly adjusted income;

(ii) Ten percent of gross monthly income;

(iii) An amount equal to the portion of an assistance payment specifically designated to meet the household's shelter costs if the household is receiving assistance payments from a public agency; or

(iv) The basic rent, unless RHS rental assistance is provided to the household.

(2) *Net tenant contributions.* Borrowers must set net tenant contributions to rent at an amount equal to the gross tenant contribution less any utility allowance assigned to the rental unit occupied by the tenant.

(3) *Tenant contribution surcharge.* Tenants in a Plan I housing project with incomes above the eligibility standards set in § 3560.152(a)(1) must pay a 25 percent surcharge in addition to note rent.

(b) *Adjustment of net tenant contribution.* Borrowers must adjust gross tenant contribution whenever there is a change in tenant household status or income sufficient to generate a revised tenant certification in accordance with § 3560.152(e) or an Agency approved rent or utility allowance change that affects the net tenant contribution amount.

(c) *Overage.* If a tenant's net tenant contribution is higher than basic rent, borrowers must remit to the Agency the rent collected in excess of the basic rent and up to the note rent.

§ 3560.204 Security deposits and membership fees.

(a) *General.* Borrowers may collect security deposits when it is reasonable and customary for the area in which the housing is located. Borrowers must hold security deposits in a separate bank or bookkeeping account in accordance with § 3560.302(c)(3).

(b) *Allowable amounts.* Borrowers may charge security deposits that are typical for the area in which the housing is located, as long as the security deposit charged a tenant does not exceed that tenant's net contribution for one month's rent or basic rent, whichever is greater.

(1) As noted in § 3560.102(b)(1)(viii) and § 3560.156(c)(15)(iii), borrowers must specify in the housing project's management plan how the amount to be charged as a security deposit will be established and must specify the amount to be charged to individual tenants in the lease to be signed by the tenant.

(2) Borrowers may charge security deposits to households receiving HUD assistance in accordance with HUD requirements.

(3) Members of a cooperative shall be required to pay a membership fee no greater than one month's occupancy charge.

(4) Additional security deposits for pets may be charged as long as the additional deposit is not greater than basic rent for 1 month. No additional security deposit for pets is allowed where a service animal is necessary for the normal function of a household member.

(5) Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

(c) *Payment plans.* Borrowers must offer, for persons who are eligible for rental assistance or Section 8 assistance, the option of paying the security deposit on an installment payment plan. Should installments not be met, the total charge may become due and payable in full.

(d) *Charges for damage or loss.* Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

(1) Borrowers must consider routine turnover expenses a normal operating expense and must not charge tenants a fee or withhold security deposits to pay for such costs.

(2) Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts.

(e) *State and local security deposit requirements.* Borrowers must follow all state and local laws and other requirements governing the handling and disposition of security deposits.

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) *Unclaimed security deposits.* Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§ 3560.205 Rent and utility allowance changes.

(a) *General.* Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) *Agency approval.* Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) *Timing of request for changes.* Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under § 3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) *Tenant notification.* Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the borrower or to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at the housing project site in a visible location frequented by tenants.

(3) Within 5 calendar days following the end of the 20-day tenant comment period, the borrower must send the Agency a summary of the tenant comments received by the borrower along with any changes the borrower proposes to make to the initial request for a rent change.

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, the borrower will deliver a notice announcing the rent or utility allowance change to the tenants to be effective 30 calendar days from the date of the notification.

(f) *Denial of change request.* The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that housing operating costs in the proposed budget exceed reasonable costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(4) Basic rents in Plan II housing or note rate rents in Plan I or full profit housing would exceed conventional rents for comparable units in the area or a similar area.

(g) *Notice of denial.* If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with § 3560.303(d).

§ 3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§ 3560.207 Annual adjustment factors for Section 8 units.

(a) *General.* For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set note and basic rents for housing receiving HUD project based Section 8 assistance, as specified in § 3560.202(c)(3).

(1) Borrowers must notify the Agency of any HUD rent changes.

(2) If allowed by the interest credit agreement, the borrower will remit the amount collected in excess of the basic rent up to the note rent to the Agency as overage.

(3) When HUD contract rents exceed note rents, borrowers must deposit HUD funds equal to the difference between the Agency approved note rent and the HUD approved rent into the reserve account for the housing project.

(c) *Excess HUD rents.* When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

§ 3560.208 Rents during eviction or failure to recertify.

(a) *Rents during eviction.* Tenants being evicted for lease violation must pay the rent established in their lease until their lease is terminated. If the tenant is appealing the eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy.

(b) *Rents when tenants fail to recertify.* If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Eviction proceedings are being initiated;

(2) Rental assistance and interest credit benefits being suspended; and

(3) The tenant will be charged note rent until their lease is terminated.

(c) *Unauthorized assistance due to tenant recertification failure.* Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) *Rents when borrowers fail to recertify tenants.* If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.

(e) *Unauthorized assistance due to borrower recertification failure.* Any unauthorized assistance received as a result of the borrower's failure to recertify a tenant will be collected from the borrower in accordance with the provisions of subpart O of this part and may not be paid from housing project funds or funds collected from the tenant.

§ 3560.209 Rent collection.

(a) *General.* Borrowers must collect rents on a monthly basis and maintain a system for collecting and tracking rents.

(b) *Fees for late rent payments.* Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the Agency for approval as part of the housing project's management plan, be in accordance with state and local law, and consistent with the following requirements.

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

(c) *Improperly advanced rents.* Improperly advanced interest credit or rental assistance is considered unauthorized assistance and is subject to recapture in accordance with subpart O of this part.

§ 3560.210 Special servicing note rate rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a servicing note rent (SNR), which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay note rent. The requirements for requesting and receiving an SNR are established under § 3560.454.

§§ 3560.211–3560.249 [Reserved]

§ 3560.250 OMB control number. [Reserved]

Subpart F—Rental Subsidies

§ 3560.251 General.

This subpart contains policies for borrower administration and tenant use of rental subsidies in Agency financed multi-family housing projects.

§ 3560.252 Authorized rental subsidies.

(a) *General.* The purpose of rental subsidies is to reduce amounts paid by tenants for rent. Rental subsidies equal the difference between the approved shelter costs and tenant contributions as calculated in accordance with § 3560.203(a)(1).

(b) *Forms of rental subsidies.*

(1) Rental subsidies may be in the form of:

(i) Agency rental assistance;

(ii) HUD section 8 assistance, including project-based, vouchers, and certificates;

(iii) Private rental subsidies; or,

(iv) State or local government rental subsidies.

(c) *Multiple rent subsidies.*

(1) Multiple types of rent subsidies may be used in the same multi-family housing project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher or certificate.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) *Agency rental assistance (RA).* Agency RA is obligated to multi-family housing projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) *Renewal units.* RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) *New construction units.* RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of multi-family housing projects.

(3) *Servicing units.* Additional RA may be provided to operational multi-family housing projects as a part of the Agency's general loan servicing or preservation activities.

§ 3560.253 Allocation and prioritization of Agency rental assistance.

(a) *Allocation of rental assistance.* The Agency will establish priorities for use, allocation and distribution of rental assistance in 7 CFR part 1940, subpart L.

(b) *Priorities for rental assistance.* In the absence of priorities under 7 CFR part 1940, subpart L, the Agency will allocate its rental assistance according to the following priorities:

(1) Renewal units;

(2) New construction units; and

(3) Servicing units.

§ 3560.254 Eligibility for rental assistance.

(a) *Eligible housing.* Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1,1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of § 3560.66 are met.

(b) *Eligible units.* Borrowers may not request RA for rental units that are not habitable in accordance with § 3560.103.

(c) *Eligible households.* Households eligible for rental assistance are those:

(1) With very low- or low-incomes who are eligible to live in multi-family housing;

(2) whose net tenant contribution to rent determined in accordance with § 3560.203(a)(2) is less than the basic rent for the unit;

(3) whose head of the household is a United States citizen or a legal alien as defined in § 3560.11;

(4) who meet the occupancy rules established by the borrower in accordance with § 3560.155(e); and,

(5) who have a signed, unexpired tenant certification form on file with the borrower.

§ 3560.255 Requesting rental assistance.

(a) *Submitting requests.* Borrowers seeking an allocation of rental assistance for multi-family housing must request the rental assistance from the Agency as follows.

(1) *Renewal rental assistance.* To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) *New construction units.* Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with § 3560.56.

(3) *Servicing units.* Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) *Denial of requests.*

(1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§ 3560.256 Rental assistance payments.

(a) *Borrower submission requirements.* The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day of the month previous to the month in which the request is being made.

(b) *Basis of RA requests.* Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) *Payments to borrower.* Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) *Utility payments to tenants.* The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.*

(1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

(b) *Continued eligibility.* Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under § 3560.254(c), and as long as rental assistance units are available.

(c) *Assignment of rental assistance.* Except as provided in § 3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

(1) When a rental assistance unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide the borrower rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first of the month following the assignment of the rental assistance.

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) *Incorrectly assigned rental assistance.* Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§ 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will be consistent with available funding. Rental assistance agreements expire when the funds obligated for rental assistance units are fully disbursed in accordance with the conditions of the agreement.

(b) *Replacing expiring obligations.* To the extent funds are available for replacement units, the Agency will renew rental assistance agreements for a 5 year obligation period.

§ 3560.259 Transferring rental assistance.

(a) *Agency authority.* The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

(3) After a liquidation or prepayment;

(4) When some or all rental assistance units have not been used for a 4-month period; and,

(5) Due to an unclosable loan.

(b) *Transferring rental assistance for displaced tenants.* The Agency may transfer rental assistance from one housing project to another eligible housing project to which a tenant is moving due to displacement as a result of prepayment, liquidation, or a natural disaster for that tenant's use. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

§ 3560.260 Rental subsidies from non-Agency sources.

(a) *General.* The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) *HUD vouchers and certificates.* When tenants receive rental subsidies through section 8 vouchers or certifications issued by the U.S. Department of Housing and Urban

Development (HUD), borrowers operating under Plan II must set rental unit rents as follows.

(1) *HUD certificates.* For tenants with HUD certificates, the borrower must set the rental unit rent at the basic rent or the net tenant contribution, whichever is higher. The public housing authority distributing the section 8 subsidy may set the utility allowance.

(2) *HUD vouchers.* For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is higher. The value of the voucher exceeding basic rent up to the note rent will be remitted to the Agency. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) *Loan proposals using non-Agency rental subsidy.* Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) *Rental subsidy agreement.* The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency source must be at least 5 years and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§ 3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

§§ 3560.262–3560.299 [Reserved]

§ 3560.300 OMB control number. [Reserved]

Subpart G—Financial Management

§ 3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing projects, including accounts, budgets, reports, and engagements. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

§ 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) *General.* Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an audit or engagement and must be able to report accurate operational results to the Agency from these accounts and records.

(b) *Acceptable methods of accounting.*

(1) Borrowers may use a cash, accrual, or modified accrual method of accounting, bookkeeping, and budget preparations.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures, including Agency-approved engagements, in their management plan.

(3) Borrowers must notify the Agency of any changes in their accounting, bookkeeping, budget preparation, and financial management reporting systems through a revision of their management plan.

(c) *Account requirements.*

(1) As used in this paragraph, the term account is used interchangeably to mean a bookkeeping account (ledger), or a bank account.

(2) At a minimum, borrowers must maintain the accounts required by their loan agreement or resolution.

(3) The following list identifies the financial accounts that are required for each housing project. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv) and (v) of this section are funded directly by tenant security deposits or patron capital receipts respectively:

(i) General operating account;

(ii) Real estate tax and insurance account (if not part of the general operating account);

(iii) Reserve account;

(iv) Tenant security deposit account;

(v) Membership fee account for cooperative housing; and

(vi) For cooperative housing only, a patron capital account.

(4) Amounts escrowed for taxes and insurance may be kept in the general operating account as long as the accounting system reflects the amount escrowed.

(5) Regardless of the number or types of accounts established, the borrower must meet the following requirements.

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government, backed by collateral provided by the bank, or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for federal deposit insurance. If funds exceed the amount covered by federal deposit insurance, borrowers must obtain a collateral pledge from the institution to cover all funds or must move funds to an institution that will insure the funds.

(iii) All funds and proceeds in any account must be used only for authorized purposes as described in Agency's regulations, loan or grant documents and management plan regulations. Use of funds for non-program purposes may constitute non-monetary default as described in § 3560.452(c).

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, must be held in trust by the borrower for the loan obligation until used and serve as security for the Agency loan or grant.

(v) Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project.

(vi) Each borrower must have access to at least one demand deposit or checking account.

(vii) Housing project funds may not be pledged as collateral for debts without Agency approval. If such a need arises for an eligible program purpose, the borrower must obtain prior Agency approval.

(6) *Tenant security deposits.* Tenant security deposit accounts or

membership fee accounts and patron capital accounts must be maintained in a separate account in trust for the tenants or members and handled in a manner consistent with State and local laws.

(d) *Documentation of separate accountability.* Housing project funds may be combined in one or more bank accounts for two or more housing projects as long as the borrower's accounting system segregates and tracks funds for each project separately.

(1) When borrowers request Agency approval of an accounting system that combines funds from two or more housing projects, they must demonstrate to the Agency that the accounting systems are structured to segregate and maintain separate accountability for each housing project. Such demonstration must include a statement issued by a Certified Public Accountant stating that the accounting system is structured to meet this principle of separate accountability.

(2) The accounting system and management plan must document the method for prorating revenue and expenses that are not clearly identifiable as being associated with a particular housing project.

(3) Funds for housing projects managed by the same management company must not be co-mingled.

(e) *Records.*

(1) Borrowers must retain all housing project financial records, books, and supporting material for three years after the issuance of the audit or engagement and financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of Inspector General (OIG), or the General Accounting Office (GAO).

(2) Borrower accounts and records will be kept or made available in a location with reasonable access for inspection, review, and copying by the Agency, other authorized representatives of the USDA, OIG, or GAO.

(3) Automated records may be used if they meet the conditions of paragraph (f) of this section.

(f) *Forms generated by automated systems.*

(1) The forms and formats approved for use by borrowers may be prepared on automated systems when they meet the requirements of this paragraph.

(2) Forms may be automated if they meet the following requirements.

(i) The identical wording and nomenclature of an official form must be included in the automated version of the form, including the Office of Management and Budget (OMB) approval number.

(ii) The logic or mathematical calculation of an official form must be the same in an automated version of the form.

(iii) The name or logo of the source of the automated form must be visible on each output of the automated form.

(iv) Output size must be 8½ x 11 inches.

(v) Nominal spacing adjustment and colored paper are allowed.

(g) *Farm Labor Housing.* Borrowers with on-farm labor housing units will be considered in compliance with this section by virtue of completing the record keeping and reporting requirements outlined in subpart M of this part.

§ 3560.303 Housing project budgets.

(a) *General requirements.*

(1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c).

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting evidence to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) *Allowable and unallowable project expenses.*

(1) *Allowable expenses.* Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee.

(ii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors.

(B) Board of Director review and approval of proposed RHS annual operating budgets, including proposed repair and replacement outlays and accruals.

(C) Board of Director review and approval of capital expenditures, audited financial statements, and consideration of any management comments noted.

(D) Long-term asset management reviews.

(2) *Unallowable expenses.* Housing project funds may not be used for any of the following:

(i) Equity skimming as defined by title V of the Housing Act of 1949, section 543(a), 42 U.S.C.

(ii) Purposes unrelated to the housing project.

(iii) Reimbursement of inaccurate or false claims.

(iv) Settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation.

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, evictions, and building codes.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Critical operating and maintenance expenses, including taxes and insurance;

(2) Agency debt payments;

(3) Reserve account requirements;

(4) Other authorized expenditures; and

(5) Return on owner investment.

(d) *Agency review and approval.*

(1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a), (b) and (c) of this section.

(2) If no rent increase is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission is incomplete.

(ii) The Agency will notify the borrower if the budget does not meet the requirements of paragraphs (a), (b), or (c) of this section.

(3) If a rent increase is requested, the borrower must submit budget documents to the Agency and notify

tenants of the requested rent increase at least 105 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission is incomplete.

(ii) The Agency will notify the borrower if the budget does not meet the requirements of paragraphs (a), (b), or (c) of this section or if the rent and utility allowance request has been denied in accordance with § 3560.205(f).

(iii) The rent increase is not approved until the Agency issues a written approval.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing and indicate the deficiencies in the budget submission.

(5) Upon notification of the deficiencies, borrowers will have 10 calendar days to submit additional documentation. The Agency will notify the borrower if the budget has been accepted or rejected.

(6) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

§ 3560.304 Initial operating capital.

(a) *Purpose.* To provide a source of capital for start-up costs, such as the purchase of equipment, operating, maintenance, and debt service expenses, borrowers are required to make an initial operating capital contribution to the general operating account as described in § 3560.64.

(b) *Authorized uses of initial operating capital.* Initial operating capital may be used only to pay for approved budgeted expenses.

(c) *Withdrawal of initial operating capital.* Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 13th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

§ 3560.305 Return on investment.

(a) *Borrower's return on investment.* Borrowers may receive a return on their investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower immediately after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in § 3560.306(d)(2) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) *Unpaid return on investment.* An earned, but unpaid ROI for any previous year may be requested by the borrower and authorized by the Agency under the provisions of § 3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

§ 3560.306 Reserve account.

(a) *Purpose.* To meet the major capital expense needs of a housing project, borrowers must establish and maintain a reserve account.

(b) *Financial management of the reserve account.* Borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(c) *Funding of the reserve account.* Borrowers must make monthly payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents. Borrowers must continue these payments until the account reaches the total amount specified in the loan documents.

(d) *Transfer of surplus general operating account funds.*

(1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 10 percent of the operating and maintenance expenses, including debt service to the Agency, transfers to reserves, and a return to the borrower, including repayment of the borrower's contribution to initial operating capital, if it has not been repaid. If the borrower is escrowing taxes and insurance premiums, include the amount that should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 10 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year, the Agency may require the borrower to reduce rents in the following year, use the surplus funds to address capital needs, reduce the debt service on the borrower's loan, or make a deposit in the housing project's reserve account, if the reserve account is not fully funded.

(3) At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds in the general operating account to the reserve account, the transfer does not change the required contributions to the reserve account in the following year. Funds transferred to the reserve in this manner may be counted towards the required contribution for the following year or years depending on the amount of the required transfer of surplus funds.

(e) *Resumption of payments.* When the account balance falls below the total amount specified in the loan or grant documents, borrowers must resume making monthly payments to the reserve account and continue until the required balance has been restored.

(f) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.64, § 3560.302(c)(6), and the following requirements.

(1) Reserve accounts must be deposited in interest-bearing accounts or securities with rates equal to or greater than passbook savings or checking accounts.

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(g) *Funds invested in securities.* In addition to the requirements specified in § 3560.305(f), the following requirements apply when reserve funds are invested in securities.

(1) Any securities in which reserves are invested must be backed by the federal or state government, or an Agency of the federal or state government, or be triple A rated tax-exempt bonds.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit,

the price paid must equal the required contribution to reserves.

(3) Investors must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases, sales and maintenance of an account, when making investment decisions. Such fees may be paid for out of reserves, only with the consent of the Agency. Housing project funds may not be used to pay for a financial advisor.

(h) *Use of the reserve account.*

(1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal.

(2) Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time.

(3) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(4) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(5) The Agency may ''post-approve'' the use of reserve funds only under extraordinary circumstances and only if the funds were used for authorized purposes and their expenditure would have been approved by the Agency had a request been submitted prior to the withdrawal.

(6) The Agency may approve the use of reserve funds for operating costs when circumstances that are determined by the Agency to be beyond the borrower's control have resulted in a shortfall in the housing project's general operating account.

(i) *Allowable uses.* Allowable uses of reserve funds include the following.

(1) Major capital improvements and replacements.

(2) Housing project operating expenses provided the requirement of paragraph (h)(6) of this section has been met, including:

(i) Payments due on the loan, or

(ii) Payment of a return on investment at the end of the borrower's fiscal year.

(3) With Agency approval, borrowers operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the amounts earned on a reserve account during the prior year.

(4) For other purposes, which in the judgment of the Agency will promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(j) *Records.* Borrowers must maintain records documenting all expenses which were paid by withdrawals from the reserve account.

(k) *Changes to reserve requirements.*

(1) At a borrower's request, the Agency may permit the loan agreement or loan resolution to be amended to adjust the required funding of the reserve account to meet anticipated ''life-cycle'' capital needs, including equipment and facility replacement costs. Such a request may be based on a capital needs assessment performed in response to § 3560.103(c)(2).

(2) Borrowers may use an Agency approved capital needs assessment as the basis for requesting adjustments to the reserve account.

(3) The Agency may approve a change in the reserve account funding level based on the findings of an approved capital needs assessment. The approval to increase reserve account funding levels will take into consideration the housing project's approved budget and the housing project's ability to support increased reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area.

(l) *Excess reserves.* Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, to:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments on the Agency loan;

(3) Reduce rents by a transfer to the general operating account;

(4) Fund preservation incentives authorized in subpart N of this part; or

(5) Cover other expenditures determined to be related to the purpose of the housing project and in the best interest of the Federal Government.

(m) *Procurement.* The requirements of § 3560.102(c), (d) and (i), and all other Agency requirements relating to procurement, bidding, identity-of-interest, cost-reasonableness, and construction management apply to any work or services paid out of reserve funds. Structural repairs and other significant work on major building systems such as heating or air conditioning must be done in accordance with the requirements of 7 CFR part 1924, subpart A.

§ 3560.307 Reports.

(a) *Required reports.* Borrowers must submit required reports using Agency-approved formats.

(b) *Quarterly and monthly reports.* The Agency may require quarterly or monthly reports to monitor financial progress when closer supervision is warranted.

§ 3560.308 Annual financial reports.

(a) *General.* Borrowers must submit annual financial reports that meet the requirements of this section. The annual financial reports to be submitted are the Multi-Family Housing (MFH) Project Budget with actual expenditures and the MFH Balance Sheet. Annual financial reports are due to the Agency within 90 days of the end of the borrower's fiscal year.

(1) Borrowers with 16 or more units in their housing project must base their annual financial reports on an engagement report completed according to agreed upon procedures established by the Agency as specified in paragraph (c) of this section. Borrowers must include the engagement report with their annual financial reports submitted to the Agency.

(2) Borrowers with less than 16 units in their housing project must submit annual financial reports using Agency-approved formats and certify that the housing meets the performance standards established in paragraph (d) of this section. Borrowers may use a CPA to prepare this report.

(b) *Housing projects with common management.* In housing projects managed by a common management entity, operate under a common accounting system and procedures, and have a common managing general partner, the Agency may designate a sample of the housing projects for annual financial reports that meet the requirements of paragraph (a)(1) of this section. For the housing projects not included in the sample, the borrower must submit annual financial reports that meet the requirements of paragraph (a)(2) of this section.

(c) *Engagement requirements.* Borrowers required to submit annual financial reports based on an engagement performed by a CPA must meet the following requirements.

(1) Borrowers must submit the results of an engagement that examines specific records using agreed upon procedures established by the Agency and that describes the borrower's performance in meeting the standards described in paragraph (d) of this section.

(2) The engagement will be initiated by the borrower using the Agency's engagement letter, which will specify the engagement program and establish the reporting requirements for the engagement.

(3) The engagement must be conducted by a Certified Public Accountant (CPA) in accordance with American Institute of Certified Public

Accountant (AICPA) Standards and Agency requirements.

(4) All engagement reports must be prepared for use by the Agency.

(d) *Performance standards.* Borrowers must ensure that:

(1) Required accounts are properly maintained and tracked separately;

(2) Payments from operating accounts are disclosed and accurately represented on financial reports;

(3) The reserve amount is at the authorized level and there are no encumbrances;

(4) Tenant security deposit accounts are fully-funded and are maintained in separate accounts and meet State and local requirements;

(5) Payment of owner return was consistent with the terms of the applicable loan agreement;

(6) The borrower has maintained proper insurance in accordance with the requirements of § 3560.105(b); and

(7) All financial records are adequate and suitable for examination.

(e) *Other financial reports.*

(1) Nonprofit and public borrower entities must submit audits in accordance with 7 CFR part 3052.

(2) The Agency may require additional opinions of financial condition and compliance, such as audits, to assure the security of the asset, determine whether the housing project is being operated at a reasonable cost, or to detect fraud, waste, or abuse.

(3) Any audits independently obtained by the borrower also must be submitted to the Agency for review.

(f) *Full audit expense approval.* For 2 years from the effective date of these regulations, the Agency will approve as a housing project expense, additional reasonable costs of obtaining a full audit.

§§ 3560.309–3560.349 [Reserved]

§ 3560.350 OMB control number. [Reserved]

Subpart H—Agency Monitoring

§ 3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing projects.

§ 3560.352 Agency monitoring scope, purpose, and borrower responsibilities.

(a) *Scope of Agency monitoring activities.* The Agency will review reports, records, and other materials related to the housing project, including borrower financial reports, housing project records, and other communications. The Agency also will review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, state, and local laws and Agency requirements, the Agency will conduct periodic on-site monitoring reviews of a housing project.

(b) *Purpose of Agency monitoring activities.* Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements, and to:

(1) Ensure housing projects are managed in accordance with the goals and objectives of the Agency's multi-family housing programs and are maintained in accordance with Agency requirements for affordable, decent, safe, and sanitary housing;

(2) Preserve the value of the Agency-financed housing projects;

(3) Detect waste, fraud, and abuse in housing project operations or management and to ensure the cost of operations and management are necessary and reasonable costs;

(4) Verify compliance with Affirmative Fair Housing Marketing requirements, title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the Age Discrimination Act of 1975, Americans with Disabilities Act, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

(c) *Borrower responsibilities.* The borrower is responsible for cooperating fully and promptly with Agency monitoring activities. Agency monitoring activities do not diminish borrower operation and management responsibilities and do not relieve borrowers from any Agency requirements including, but not limited to, borrower requirements to comply with:

(1) The terms of all agreements with the Agency, including the loan or grant agreement, assurance agreement, loan resolution, promissory note, mortgage, interest credit agreement, rental assistance agreement, mitigation measures contained in the environmental review document, and workout agreement;

(2) The requirements contained in this part;

(3) The requirements of title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the Age Discrimination Act of 1975, Americans with Disabilities Act, and

(4) Applicable federal, state, and local laws.

§ 3560.353 Scheduling of on-site monitoring reviews.

Generally, the Agency will provide the borrower prior notice of an on-site monitoring review and will conduct the on-site monitoring review in the presence of the borrower. However, the Agency may visit a housing project, without prior notice, to observe physical conditions, operations and management activities, or other borrower or tenant activities. In addition, the Agency may conduct on-site reviews without the presence of the borrower, the management agent, or other designated representative of the borrower.

§ 3560.354 Borrower response to monitoring review notifications.

The Agency will notify borrowers, in writing, whenever Agency monitoring activities result in deficiency findings or compliance violation. The monitoring review notification will describe the deficiencies findings or compliance violations and will specify a time period by which corrective action must be taken by the borrower. The notification will offer borrowers an opportunity to discuss the reported deficiency findings or compliance violations with the Agency and will explain enforcement actions that the Agency may take if corrective action is not taken within the time period specified in the monitoring review notification. When civil rights non-compliance is found, the State Civil Rights Coordinator or Manager (SCRC/M) will be notified. If voluntary compliance cannot be obtained, appropriate enforcement or remedial action will be taken.

§§ 3560.355–3560.399 [Reserved]

§ 3560.400 OMB control number. [Reserved]

Subpart I—Servicing

§ 3560.401 General.

(a) *Purpose.* This subpart contains actions the Agency may take to service and collect loans or other debts owed by multi-family housing borrowers. The loan servicing and other actions set forth are designed to protect Agency and tenant interests and assist borrowers in meeting program objectives.

(b) *General servicing policies.* Borrowers must repay loans or other amounts due to the Agency according to provisions specified in promissory notes, loan agreements and resolutions, mortgages, deeds-of-trust, assumption agreements, reamortization agreements,

or other agreements executed between the borrower and the Agency.

(c) *Special servicing actions.* The Agency will not agree to any proposal for loan servicing or debt collection action other than actions consistent with this section, debt instruments, and other agreements. When payments due to the Agency from a borrower are more than 30 days past due, the Agency may initiate the special servicing actions described in subpart J of this part.

§ 3560.402 Loan payment processing.

(a) *Predetermined Amortization Schedule System (PASS) requirements.* All loans, except the loans specified in paragraph (c) of this section, must be closed and serviced using the Predetermined Amortization Schedule System (PASS).

(b) *Required conversion to PASS.* Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS whenever a loan servicing action on the account involves a change in the loan rates or terms or whenever a subsequent loan to the borrower is closed.

(c) *Exceptions.* Seasonal farm labor housing loans and on-farm labor housing loans may be closed on DIAS, monthly, or annual payment schedules.

§ 3560.403 Account servicing.

(a) *Payment due dates.* Loan or other payments due to the Agency are due on the first day of each month unless otherwise established in the debt instrument or other agreement executed with the Agency.

(b) *Payment application order.* Loan payments will be applied to the borrower's account in the following order of priority.

(1) Amortized audit receivables. (*i.e.*, amounts due to the Agency, over a period of time, as a result of a finding from an audit or other monitoring activity.)

(2) Unamortized audit receivables. (*i.e.,* amounts due to the Agency, in a lump sum payment, as a result of a finding from an audit or other monitoring activity.)

(3) Late fees. (*i.e.,* amounts due to the Agency as a result of late payments.)

(4) Amortized recoverable costs. (*i.e.,* amounts due to the Agency, over a period of time, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(5) Unamortized recoverable costs. (*i.e.,* amounts due to the Agency, in a lump sum payment, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(6) Overage. (*i.e.,* amounts due to the Agency as a result of a tenant's net tenant contribution being higher than basic rent.)

(7) Interest. (*i.e.,* amounts due to the Agency as a result of scheduled interest on a loan and as a result of interest charged on unpaid delinquent principal amounts.)

(8) Principal. (*i.e.,* amounts due to the Agency as the loan principal.)

(9) Advance payments. (Any funds remaining after disbursement of a payment to all other payment priorities will be applied to the borrower's account as an advance regular payment unless a borrower specifically designates, in writing, another application.)

(c) *Late fees.* If payments on a borrower's account, under PASS, are more than $15 delinquent after the close of business on the 10th day after the payment due date, a late fee will be charged to the borrower's account.

(1) Late fees charged to a borrower's account will equal 6 percent of the total regular payments due as specified in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal government.

(d) *Interest on unpaid overdue principal.* On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (*i.e.*, interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§ 3560.404 Final loan payments.

(a) *Payoff statements.* At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) *Final payments.* A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) *Final payment loans.* Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of § 3560.73.

(d) *Loan prepayment requests.* If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) *Payment forms.* Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) *Release of security instruments.* The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) *Special circumstances—Refund of entire principal.* If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest.

(1) If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(2) Persons who exercise substantial influence over the oversight or operations of a multi-family housing project, regardless of their ownership status have a controlling interest in the housing project.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.307 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§ 3560.406 Multi-family housing ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (*e.g.*, title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items.

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions.

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part.

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do not exceed conventional rents for comparable units in the area.

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to

a level that fully protects the Agency's interest.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the value of the housing may be determined through either: An Agency review of monitoring reports conducted in accordance with the requirements in subpart H of this part or an ''as-improved'' value-in-use appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the value of the housing project must be determined through an ''as-improved'' value-in-use appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with § 3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review, as required under the National Environmental Policy Act and in accordance with 7 CFR part 1940, subpart G, must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the capital needs of the property based on a life cycle cost analysis provided the requirements of § 3560.303 are met.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with Agency requirements for decent, safe, and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the requirements of § 3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(10) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(11) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(12) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of a ownership transfer or sale, if any of the following conditions exist.

(1) The borrower's indebtedness to the Agency has not been paid in full or is not being assumed by the transferee. The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

(2) Any non-Agency prior liens against a housing project are not paid in full.

(3) Any housing project financial accounts are not funded at required levels, less authorized withdrawals, or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of § 3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) *Equity payment funding sources.* If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an Agency equity loan to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project funds and must identify the sources of such payments.

(g) *Restrictive-use requirement.* Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in § 3560.662(b) or (c). The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) *Subsequent loans.* The Agency may approve a subsequent loan in conjunction with an ownership transfer or sale of a housing project.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) *Loan assumption interest rates.* The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows.

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved; or,

(iii) The Agency note rate on the day the transfer is closed.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) *Loan assumption terms.* The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the market value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) *Processing ownership transfers or sales.*

(1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (*e.g.*, mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with § 3560.457.

(l) *Ownership transfers or sales under special rates, terms, and conditions.* Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) The balance of Agency indebtedness assumed will be scheduled for repayment for no more than 15 years.

(4) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency approves all such sales or other dispositions of security property.

(b) *Request requirements.* Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of § 3560.53, § 3560.553 and § 3560.603, approve the leasing of facilities related to a housing project (*e.g.*, central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower

will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met.

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* The Agency will handle mineral leases according to the requirements of 7 CFR part 3550.

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property (*i.e.*, granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in § 3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (*e.g.*, a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following.

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the ''subordination'' of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The ''subordination'' of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a ''subordination'' of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) *Required conditions for subordinations and junior liens.* Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) *Other liens against a property or other assets.*

(1) Borrowers must not enter into any agreements to place a lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

(i) The transaction will not adversely affect the Agency's security position;

(ii) The lien is not related to a non-program eligible action;

(iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and

(iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

§ 3560.410 Consolidations.

(a) *General.* With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (*i.e.*, record keeping, budgeting), to improve the cost effectiveness and efficiencies of housing project operations, and to effectively utilize facilities common to housing projects.

(b) *Loan consolidations.* Loan consolidations will only be considered when

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with § 3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the

loans were closed on the same date and with the same rates and terms.

(c) *Loan agreement or loan resolution consolidations.* Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation is processed, unless otherwise approved by the Agency.

§§ 3560.411–3560.449 [Reserved]

§ 3560.450 OMB control number. [Reserved]

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions which the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) *Agency obligations.* The Agency is under no obligation to offer or agree to any special servicing actions.

(b) *Relationship to workout agreements.* Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with § 3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§ 3560.452 Monetary and non-monetary defaults.

(a) *General.* Borrowers are in default when they have received a compliance violation notice, issued in accordance with § 3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include, but are not limited to, violations of promissory note provisions, loan or grant agreement provisions, regulatory, or other Agency requirements, including requirements imposed on a borrower through a workout agreement developed in accordance with § 3560.453.

(b) *Monetary defaults.* A monetary default exists when any amount due to the Agency under a promissory note, loan or grant agreement, workout agreement, or other agreement is past due.

(c) *Nonmonetary defaults.* A nonmonetary default exists when a borrower fails to correct a compliance violation, other than a monetary amount past due, within the time period specified in a compliance violation notice issued in accordance with § 3560.354. Nonmonetary defaults include, but are not limited to, failure to:

(1) Operate and manage a housing project in accordance with the Agency approved management plan or Agency requirements;

(2) Maintain the physical condition of a housing project in a decent, safe, and sanitary manner and in accordance with Agency requirements;

(3) Keep general operating expense, reserve, and other financial accounts related to a housing project at required funding levels;

(4) Occupy rental units with eligible tenants, unless granted an exception by the Agency;

(5) Charge correct rents or to correctly calculate net tenant contributions, utility allowances, or rental assistance payments or to properly administer the Agency rental assistance assigned to the housing project;

(6) Submit required annual financial reports to the Agency within time periods specified in § 3560.308;

(7) Submit management plans, leases, occupancy rules, and other required materials to the Agency in accordance with Agency requirements; and,

(8) Comply with applicable Federal laws including laws related to civil rights, fair housing, disabilities, and environmental conditions.

(d) *Default notice.* When borrowers are in default, the Agency will notify borrowers, in writing, that they are in default. The default notice will identify the compliance violation that led to the default, will specify actions necessary to cure the default, and will establish a date by which the default must be cured to preclude Agency initiation of enforcement actions, liquidation, or other actions.

(e) *Agency action.* If a borrower fails to cure a default within the time period specified in the default notice, the Agency may initiate the enforcement actions described in § 3560.456 or liquidation as described in § 3560.457. Also, Agency compliance violation notices and related default notices may be referred to Federal, state, and local agencies with jurisdictions related to the violations for handling, in accordance with their requirements.

§ 3560.453 Workout agreements.

(a) *General.*

(1) Prevention or resolution of compliance violations or default cures are a borrower's responsibility.

(2) A borrower may develop and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

(3) A borrower developed workout agreement may propose, but is not limited to, the following actions:

(i) A combination of one or more of the special servicing actions outlined in §§ 3560.454 and 3560.455;

(ii) A change in operations and management at a housing project; or

(iii) A commitment of additional financial resources to the housing project with the amount and source of the additional resources to be committed to the housing project specifically identified.

(b) *Workout agreement approval.*

(1) The Agency is under no obligation to approve a workout agreement as submitted by a borrower or to act with forbearance when a housing project is in monetary or non-monetary default.

(2) Borrower developed workout agreements may not be implemented until the borrower receives written approval from the Agency.

(3) The Agency will only approve a workout agreement if the Agency determines that the actions proposed are likely to prevent or correct compliance violations or cure a default and approval is in the best interest of the Federal Government and tenants.

(4) The Agency will only approve a workout agreement if the proposed actions are consistent with the borrower's management plan. If proposed actions are not consistent with the borrower's management plan, applicable revisions to the borrower's management plan must be approved before approval of the workout agreement is given.

(c) *Workout agreement required content.*

(1) Workout agreements submitted to the Agency for approval must be in writing and signed by the borrower. Workout agreements must describe proposed actions in sufficient detail to demonstrate the likelihood of the actions to prevent or correct compliance violations or cure defaults.

(2) At a minimum, workout agreements must include the following.

(i) The name and address of the housing project, project number, borrower's tax identification number, and other information necessary to identify the housing project.

(ii) A description of the potential or actual compliance violation or default situation, including an explanation of related causes, such as cash flow concerns, budget revisions, deferred maintenance, vacancies, or violations of statutes.

(iii) A definition and description of the housing project's market area, including information on housing availability, rents, and vacancy rates in the market area.

(iv) A description of the proposed actions to prevent or correct compliance violations or to cure defaults along with a date specific schedule indicating when interim and final actions will be taken to correct the compliance violation or cure the default.

(v) A description of financial and other resources necessary to prevent or correct the compliance violation or cure the default including an identification of the sources for such resources.

(d) *Workout agreement budgets.* Budget revisions submitted as a part of a workout agreement for a housing project experiencing cash flow problems must prioritize cash disbursements in the following order:

(1) Health and safety violations;

(2) Critical operating needs, such as utilities, taxes, and insurance;

(3) Debt service payments to the Agency;

(4) Reserve account requirements;

(5) Other authorized expenditures; and

(6) Return on owner investment.

(e) *Workout agreement terms and cancellation.*

(1) Workout agreements shall be in effect for no longer than a 2-year time period, beginning on the date of Agency approval. If an approved workout agreement calls for actions that extend beyond a 2-year period, borrowers must submit an updated and, if necessary, revised workout agreement to the Agency for approval. The updated workout agreement must be submitted to the Agency, 30 days prior to the expiration of the workout agreement in effect.

(2) The Agency may cancel a workout agreement at any time if the borrower fails to comply with the terms of the agreement.

§ 3560.454 Special servicing actions related to housing operations.

(a) *Changing rents or revising budgets.* The Agency may approve a borrower request for a rent change, rent incentives, or a revised budget, at any time during a housing project's fiscal year.

(b) *Occupancy waivers.* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by allowing the borrower to accept as tenants persons with incomes above the income eligibility standards specified in § 3560.152(a), the Agency, in writing, may grant the borrower an occupancy waiver to allow such persons as tenants. Occupancy waivers will be in effect only during the time period specified by the Agency when the waiver is granted. In addition, borrowers must rent to all eligible applicants on the housing projects waiting list prior to accepting persons with incomes above the Agency standards as tenants.

(c) *Additional rental assistance (RA).* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by increasing the amount of RA allocated to the housing project, the Agency, subject to available funds, may offer the housing project RA as a means of preventing or correcting compliance violation or curing a default.

(d) *Servicing Note Rate (SNR) rents.* When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may approve a rent less than the note rate rent to attract and keep tenants whose incomes, according to the formula in § 3560.203, would require them to pay the note rate rent. The reduced rent is called a Servicing Note Rent (SNR) and, as noted in § 3560.210, approval of a SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) A SNR rent may only be requested as a part of a proposed workout agreement and must include documentation of market conditions, the housing project's vacancy rates, evidence of marketing efforts, and other concerns necessitating the request for an SNR.

(2) Borrowers must forego the annual return to owner for each housing project's fiscal year that a SNR is in effect for all or part of a fiscal year at a housing project.

(3) SNR's may be increased, decreased, or terminated any time during a housing project's fiscal year when market conditions, vacancy rates, or other concerns that necessitated the SNR warrant a change.

(4) In addition to any state lease law requirements that might be related to the implementation of a SNR, the borrower must notify each tenant of any change in rents or utility allowances that result from approval of an SNR, in accordance with § 3560.205(c) and must submit the appropriate budget changes to the Agency for approval.

(e) *Termination of management agreement.* If the Agency determines that a compliance violation or loan default was caused, in full or in part, by actions or inactions of the housing project's management agent, the Agency will require the borrower to terminate the management agreement with that agent, or in the case of a borrower managed housing project, to enter an agreement with a third-party non-identity of interest management agent, unless the borrower and the Agency agree on a written plan to prevent reoccurrence of the violation. Housing project funds may not be used to pay a management fee to a management agent after the Agency has directed the borrower to terminate a management agreement with that agent, except during an Agency approved transition period.

§ 3560.455 Special servicing actions related to loan accounts.

(a) *General.* To prevent or correct a compliance violation or to prevent or cure a default in a situation that cannot be resolved through regular servicing, the Agency may approve a deferral of loan payments or a loan restructuring. Nothing herein precludes the Agency from initiating appropriate legal action to correct a compliance violation if the Agency determines such action is more in the Government's interest than entering into a special servicing agreement as provided for in this section.

(1) *Loan payment deferrals.* As part of a workout agreement, the Agency may agree to accept less than full monthly payment installments due on an Agency loan for a specified period of time, not to exceed the effective period of the workout agreement.

(2) *Loan restructuring.* Methods of restructuring a loan may include reamortizations or writedowns. If a loan restructuring results in a larger principal balance from the inclusion of cost items or interest, borrowers must execute a restrictive-use agreement, in accordance with § 3560.662, regardless of whether the restructuring is with or without revised rates and terms.

(b) *Loan reamortizations.* A loan reamortization is a restructuring of loan terms and conditions over a period of time which does not exceed the remaining useful life of the housing project.

(1) Loan reamortizations will only be approved when they are in the best

interest of the Federal Government and tenants and when the following conditions are met.

(i) The Agency determines that the borrower will be unable to meet their obligations without a reduction in monthly payment installments; and

(ii) The Agency is satisfied that the security, including the potential income for debt service, will be adequate to protect the Agency's interest over the term of the reamortization and that the reamortization will not adversely affect the Federal Government's lien priority.

(2) When the reamortization will extend the term of the repayment period more than 5 years beyond the scheduled final payment date, the borrower must obtain an ''as-is'' value-in-use appraisal of the housing project conducted in accordance with subpart P of this part. The Agency will not approve a reamortization unless the appraisal indicates the security is adequate for the principal and interest being reamortized.

(3) The Agency may approve reamortization of a loan at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(4) Loan reamortization may be used to:

(i) Restructure loan repayments to prevent or correct a compliance violation or cure a default caused by circumstances beyond the borrower's control in situations where the borrower is otherwise in compliance with Agency requirements;

(ii) Repay principal, outstanding interest, overage, and advances made by the Agency for recoverable cost items when less than full payments were authorized under the provisions of an Agency approved workout agreement;

(iii) Restructure a borrower's loan payments in conjunction with an incentive package developed in accordance with § 3560.656 to prevent prepayment of the loan;

(iv) Restructure an existing loan in conjunction with a subsequent loan for rehabilitation;

(v) Bring a delinquent account current in the case of a loan transfer and assumption when all equity available has been used to pay delinquent amounts and a delinquency balance remains; or,

(vi) Restructure remaining debt when a portion of the property serving as loan security is sold and there is a need to reestablish the financial stability of the housing project.

(c) *Loan writedowns.* A loan writedown is a reduction of a borrower's debt approved by the Agency.

(1) Loan writedowns will only be approved when they are in the best interest of the Federal Government and when the following conditions exist:

(i) Sound management of the housing project is evident or unsound management practices are proposed for correction in accordance with an Agency approved workout agreement;

(ii) The housing project's financial stability is being affected by conditions beyond the borrower's control, such as market weaknesses, unforeseen site problems, or natural disasters; and

(iii) There are no previous writedowns of indebtedness associated with the housing project.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an ''as-is'' value-in-use appraisal of the housing project conducted in accordance with subpart P of this part. The Agency will not approve a loan write-down unless the appraisal indicates the Federal Government's interests are secured at the proposed writedown level.

(3) Loan writedowns may be used to allow for a loan transfer and assumption for less than the total amount of outstanding debt.

§ 3560.456 Liquidation.

Prior to any servicing action which might lead to the acquisition of real property by the Agency, the Agency must complete a due diligence report to assess any potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products. The borrower must cooperate with the Agency in the development of this report.

(a) *Acceleration.* When a borrower is in monetary or non-monetary default, the Agency will accelerate the loan unless the Agency decides other enforcement measures are more appropriate.

(1) If the borrower does not pay the full account balance and meet the other terms of the acceleration notice within in the time period set forth in the acceleration notice, the Agency will foreclose or acquire the security property through deed in lieu of foreclosure.

(2) The Agency will suspend interest credit and rental assistance immediately following the issuance of an acceleration notice.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(b) *Voluntary liquidation.* After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) The Agency will accept a deed in lieu of foreclosure to the security property when it is in the best interest of the Federal Government.

(2) Prior to an acceptance of a deed in lieu of foreclosure, the borrower must satisfy all junior liens on the property and pay all real estate taxes or assessments which are or will become a lien on the property. If the borrower provides the Agency with evidence that borrower has insufficient funds to satisfy the junior liens and pay taxes and assessments, the Agency will pay what cannot be paid by the borrower if it is in the best interest of the Federal Government.

(3) If a junior lienholder makes an offer in the amount of at least the net recovery value, the Agency may assign the note and mortgage to such lienholder after all appeal rights have expired.

(4) The borrower is responsible for all expenses associated with liquidation and acquisition and will not be released from liability until the account is satisfied in full.

(c) *Foreclosure.*

(1) The Agency will initiate foreclosure when a borrower is in monetary or non-monetary default and foreclosure is in the best interest of the Federal Government.

(2) When a junior lienholder foreclosure does not result in payment in full of the Agency debt but the property is sold subject to the Agency lien, the Agency will liquidate the account as an unauthorized transfer.

(d) *Acquisition of chattel properties.*

(1) The Agency will accept voluntary conveyance of chattel property only when the borrower can convey ownership free of other liens and the Agency has agreed to release the borrower from further liability on the account.

(2) If the Agency decides to accept an offer of voluntary conveyance of chattel property, the borrower must provide an itemized listing of each chattel property item being conveyed and provide title to vehicles or other equipment, where applicable.

§ 3560.457 Negotiated debt settlement.

(a) *Borrower proposals to settle debt.* A borrower who cannot pay the full amount of loan payments may propose an offer to settle an outstanding debt for less than the full amount of that debt. The Agency may approve a negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Federal Government and tenants.

(b) *Required information.* Borrowers requesting debt settlement must submit

complete and accurate information from which a full determination of financial condition can be made. Debt settlement offers will not be approved by the Agency unless the financial information submitted by the borrower indicates that the borrower will be able to make the debt settlement payments as proposed.

(c) *Effective date of approval.* Debt settlement offers will be not be accepted until the borrower receives written approval from the Agency.

(d) *Appraisal requirement.* No debt settlement offer will be accepted for less than the net liquidation value of the security as determined by a licensed appraiser or other qualified official, and concurred in by the Agency's qualified appraisal review official or other qualified official.

(e) *Rejected offers.* Offers that are rejected will be returned to the borrower with Agency comments on potential points of negotiation and may be resubmitted to the Agency at any time.

(f) *Disposition of security prior to offer.* Borrowers are not required to dispose of security prior to making a debt settlement offer. However, if a borrower has disposed of security prior to making a debt settlement offer, the proceeds from the disposed security must be applied to the borrower's account prior to any negotiations on the debt settlement offer.

(g) *Final release condition.* Upon full payment of the approved debt settlement, the Agency will release the borrower from liability.

§ 3560.458 Special property circumstances.

(a) *Abandonment.* When the Agency determines that a borrower has abandoned security for a loan under this part, the Agency will take the steps necessary to protect the Federal Government's security interest in the security. Costs associated with managing abandoned property are the responsibility of the borrower and will be charged to the borrower's account until liquidation is completed and the title has been transferred to the Agency.

(b) *Other security.* The Agency will service security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest according to acceptable practices in the respective states.

(c) *Taking of additional security to protect Agency interests.* The Agency may require borrowers to provide additional security in the form of real estate, cash reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

(1) The account is in default; or

(2) The property has not been properly managed or maintained; and

(d) *Due diligence.* When the Agency has completed an environmental review in accordance with 7 CFR part 1940, subpart G, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its due diligence report.

§ 3560.459 Special borrower circumstances.

(a) *Deceased borrower, bankruptcy, insolvency, and divorce actions.* The Agency will address borrower accounts affected by special circumstances such as death, bankruptcy, insolvency, and divorce on a case-by-case basis. The Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the agency:

(1) The status of the health of the borrowers and the members of the borrowers' family or key members of the borrower organization, if applicable;

(2) The financial status of the borrower and any member pledging additional security for the debt;

(3) The status of the security property; and

(4) The impact of the identified actions on the operation of the project.

(b) *Membership liability agreements.* If a borrower's note is endorsed by individuals other than the borrower or a borrower has security agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) *Security issues in participation loans.* When a multi-family housing project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under § 3560.65.

§§ 3560.460–3560.499 [Reserved]

§ 3560.500 OMB control number. [Reserved]

Subpart K—Management and Disposition of Real Estate Owned (REO) Properties

§ 3560.501 General.

This subpart contains Agency procedures and other policies related to the management and disposition of multi-family housing projects in the Agency's inventory (Real Estate Owned (REO) property.) Housing projects will not be accepted into the Agency's inventory unless one of the following has occurred.

(a) The borrower has abandoned the housing project and the Agency has performed the required steps to take the housing project into custody.

(b) The housing project title has been transferred to the Agency as a result of foreclosure, conveyance, redemption, or other action.

§ 3560.502 Tenant notifications and assistance.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing projects' non-program designation and will be given an opportunity to obtain a LOPE as specified in § 3560.159(c).

§ 3560.503 Disposition of REO property.

Preference will be given to purchase offers that allow REO property designated to be sold as program property to remain in the program under which the property was operating when the property came into the Agency's REO property inventory. However, REO property may be sold under whatever Agency program is most appropriate for the property and the community needs regardless of the program under which the property was originally financed or whether the property was being used to secure loans under more than one Agency program.

§ 3560.504 Sales price and bidding process.

(a) The loan documents related to REO property sold for program purposes must contain the restrictive-use language specified in § 3560.662(a).

(b) Entities bidding on REO property designated to be sold as program property must submit a loan application package that meets the requirements specified in subpart B of this part.

(1) Bidders on REO property designated to be sold as program property must meet the eligibility requirements established under § 3560.55.

(2) Bidders determined by the Agency to be ineligible to purchase REO property designated to be sold as program property will be notified in writing. The bidding process will continue regardless of pending appeals.

(3) All offers from bidders determined to be eligible to purchase REO property designated to be sold as program property will be considered in the bidding process and must provide evidence of financial stability and credit worthiness.

(c) The Agency will determine the successful bidder on REO property designated to be sold as program property by conducting a drawing of sealed bids.

(1) All sealed bids meeting the terms and conditions set forth in the sale notice will be part of the drawing. Award will be made to the first offer drawn. Offers drawn after the first bid will be considered back-up offers. Bidders who do not want their bids held as back-up offers must notify the Agency prior to the drawing. The Agency will notify all bidders of the public drawing outcome in writing.

(2) Bidders who desire to withdraw their bids must do so prior to the drawing date.

(d) Property designated to be sold as non-program property may be sold to entities that do not meet the Agency's eligible borrower requirements specified in § 3560.55, and must be sold for cash or on terms approved by the Agency. Cash sales will be given first preference and will be drawn before any sales on terms.

§ 3560.505 Agency loans to finance purchases of REO property.

(a) Agency loans to finance the purchase of REO property designated to be sold as program property must meet the same requirements as specified in subparts A and B of this part. In addition, the following provisions apply.

(1) At the borrower's option, the interest rate will be the prevailing rate at the time of loan approval or the prevailing rate at loan closing.

(2) Purchasers may pay closing costs from their own funds or, if allowable under subparts B, L, or M of this part, as applicable, may finance such costs as part of the Agency loan.

(b) Agency loans to finance the purchase of REO property designated to be sold as non-program property must meet the following terms.

(1) A down payment of not less than 10 percent of the purchase price is required at closing.

(2) The interest rate will equal the lesser of the prevailing interest rate at the time of loan approval or loan closing for multi-family housing loans plus one-half percent.

(3) The note amount will be amortized over a period not to exceed 10 years. If the Agency determines that more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full due no later than 10 years from the date of closing (balloon payment). In no case will the term be longer than the useful life of the property.

(4) Agency loans to finance the purchase of non-program REO property is subject to the availability of funds.

(c) Loan limits and allowable uses of loan funds specified in subparts B, L, and M of this part, as applicable, are applicable to any Agency-financed (credit) sale of REO property.

(d) Title clearance and loan closing for an Agency financed sale and any subsequent loan to be closed simultaneously with the sale must meet the requirements in subpart B of this part for an initial loan, with the following exceptions:

(1) A ''Quit Claim'' or other non-warranty deed will be used; and

(2) The buyer must pay attorney's fees, insurance costs, recording fees and other customary fees unless they are included in a subsequent loan and the subsequent loan is for purposes other than closing costs and fees.

(e) After approval of an Agency-financed sale of occupied REO property designated to be sold as program property, but prior to closing, the purchaser must prepare a budget for housing operations in accordance with subpart B of this part. If a rent increase is necessary, procedures specified in subparts E and F of this part for calculating rents, net tenant contributions, and rental assistance will be followed by the borrower.

§ 3560.506 Conversion of single family type REO property to multi-family housing use.

Single family type REO property may be sold for conversion to multi-family housing program use under the following conditions.

(a) The Agency will allow nonprofit organizations, public bodies, or for-profit entities to purchase single family type REO property for conversion to multi-family housing program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (*i.e.*, multi-family housing including group homes and homes for the elderly or disabled, farm labor housing, or rural cooperative housing), the sale price will be the lesser of the Federal Government's investment or an amount based on the ''as-is'' market value of the housing project as determined by an appraisal conducted in accordance with subpart P of this part.

(b) The Agency will only accept written offers to purchase two or more single family type REO properties for conversion to rural rental housing from nonprofit organizations, public bodies, or for-profit entities with a good record of providing housing under the Agency's multi-family housing programs. The single family type properties are not required to be contiguous, however, they must be located in close enough proximity so that management capabilities are not diminished because of distance.

§§ 3560.507–3560.549 [Reserved]

§ 3560.550 OMB control number. [Reserved]

Subpart L—Off-Farm Labor Housing

§ 3560.551 General.

This subpart establishes the requirements for making loans and grants for off-farm labor housing and for ongoing operations of this housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, O, and P of this part will apply in addition to the requirements in this subpart.

§ 3560.552 Program objectives.

In addition to the objectives stated in § 3560.52, off-farm labor housing loan and grant funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

§ 3560.553 Loan and grant purposes.

In addition to the purposes stated in § 3560.53, off-farm labor housing loan and grant funds may be used to provide facilities for seasonal or temporary use with appropriate furnishings and equipment.

§ 3560.554 Use of funds restrictions.

Off-farm labor housing loan and grant funds may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). Off-farm labor housing may be used to serve migrant farmworkers.

§ 3560.555 Eligibility requirements for off-farm labor housing loans and grants.

(a) *Eligibility for loans.* Applicants for off-farm labor housing loans must be:

(1) A local nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian tribe, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55(a) and (b), except that the board of a nonprofit organization which is an association of farm workers is not required to reflect the demographics of the community. Instead, a nonprofit association of farmworkers must have representation on the board from the area where the housing is located. Directors may be elected who are not members of the organization, but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board; or

(2) A limited partnership with a non-profit general partner which meets the requirements of § 3560.55(d).

(b) *Eligibility for grants.* To be eligible for off-farm labor housing grants, applicants must:

(1) Meet the requirements in § 3560.55(a), excluding subparagraph (6);

(2) Meet the requirements of § 3560.55(b) if the grant applicant has an outstanding Agency loan or grant;

(3) Meet the requirements in § 3560.55(c) with the exception specified for off-farm labor housing loan applicants specified in paragraph (a)(1) of this section;

(4) Be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of grant closing. An off-farm labor housing loan financed by RHS may be used to meet this requirement.

(5) Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants.

§ 3560.556 Application requirements and processing.

Off-farm loans and grants will be available under a Notice of Funding Availability (NOFA) that will be published in the **Federal Register** each fiscal year.

§ 3560.557 [Reserved]

§ 3560.558 Site requirements.

The requirements established in § 3560.58 apply to all applications for off-farm labor housing loans and grants except that off-farm labor housing are not limited to rural areas.

§ 3560.559 Design and construction requirements.

(a) *General.* The requirements established in § 3560.60 apply to all applications for off-farm labor housing loans and grants except that seasonal off-farm labor housing that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(b) *Additional requirements.* In addition to the requirements established in § 3560.60, the design of off-farm labor housing must incorporate exterior washing facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) *Davis-Bacon wage requirements.* For housing developed with grant funds, the borrower must not pay less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(b)), to all laborers and mechanics employed in the development of any part of the housing.

§ 3560.560 Security.

The security requirements established in § 3560.61 will apply to all applications for off-farm labor housing loans.

§ 3560.561 Technical, legal, insurance and other services.

The requirements established under § 3560.62 apply to all applications for off-farm labor housing loans and grants.

§ 3560.562 Loan and grant limits.

(a) *Determining the security value.* The requirements established under § 3560.63(a) apply to loans or combination loans and grants.

(b) *Maximum amount of loan.* The requirements established in § 3560.63(c)(1) and (2), regarding borrower equity contribution apply to all applications for off-farm labor housing loans. (For applicants eligible under § 3560.555(a)(2), the amount of Agency financing for the housing will not exceed 95 percent of the total development cost or 95 percent of the security value available for the Agency loan, whichever is lower.) In determining the amount of the loan, the Agency will also review the capacity of the applicant to amortize such loan, considering any rental assistance provided for use in the housing, and any rents anticipated to be paid by farmworkers expected to occupy the housing.

(c) *Maximum amount of grant.* The amount of any off-farm labor housing grant must not exceed the lesser of:

(1) Ninety percent of the total development cost, or 90 percent of security value, whichever is less; or

(2) That portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

§ 3560.563 Initial operating capital.

The requirements for § 3560.64 apply to all applications for off-farm labor housing loans and grants.

§ 3560.564 Reserve accounts.

The requirements for § 3560.65 apply to all applications for off-farm labor housing loans and grants.

§ 3560.565 Participation with other funding or financing sources.

(a) *General.* The requirements established in § 3560.66 apply to all applications for off-farm labor housing loans and grants.

(b) *Additional requirements.* In addition to the requirements established in § 3560.66, the following policies will also apply.

(1) Where Agency rental assistance is requested, Agency financial participation must equal or exceed 10 percent of the total development cost with a minimum of 5 percent of the total development cost in the form of off-farm labor housing loan.

(2) When the combined debt service for housing financed by the Agency and other sources is equal to or less than what the debt service would be for a 95 percent loan for total development cost of the entire housing provided solely by the Agency, the Agency will provide 100 percent rental assistance to an off-farm labor housing project.

(3) When the combined debt service for housing financed by the Agency and other sources exceeds what the debt service would be for a 100 percent loan for total development cost of the entire housing provided solely by the Agency, the Agency will provide less than 100 percent rental assistance as specified in § 3560.66.

§ 3560.566 Loan and grant rates and terms.

(a) *Amortization period.* The loan will be amortized over a period not to exceed 33 years. The amortization schedule will take into account the depreciation of the security and ensure that the loan will be adequately secured.

(b) *Interest rate.* The effective interest rate will be 1 percent.

(c) *Term of grant agreement.* The grant agreement will remain in effect for

50 years from the date of signature of all the parties.

§ 3560.567 Establishing the profit base on initial investment.

The requirements established under § 3560.67 apply to applicants eligible under § 3560.555(a)(2) and operating as a limited partnership with a nonprofit general partner.

§ 3560.568 Supplemental requirements for seasonal off-farm labor housing.

For off-farm labor housing operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, off-farm labor housing may be used as defined in subpart A of this part under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

§ 3560.569 Supplemental requirements for manufactured housing.

The requirements established in § 3560.70 apply to all applications for off-farm labor housing loans and grants.

§ 3560.570 Construction financing.

The requirements established in § 3560.71 apply to all applications involving off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) If the Agency is providing grant only assistance, the Agency will provide grant funds as part of the take out of construction financing.

(b) If construction is financed with a Labor Housing grant, it is subject to the provisions of the Davis-Bacon Act (published in the Department of Labor regulations (29 CFR parts 1, 3, and 5)).

(c) If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds from the Agency.

§ 3560.571 Loan and grant closing.

The requirements established in § 3560.72 apply to all applications for off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) For loans, a nonprofit organization will have its Board of Directors adopt an Agency-approved loan resolution and furnish a certified copy for the loan docket before loan approval. All other loan applicants will execute an Agency-approved loan agreement.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing. Also, a nonprofit organization will have its Board of Directors adopt a resolution containing provisions authorizing the Agency to prescribe requirements regarding housing and related facilities' operations and other provisions including the following provisions.

(1) The rents charged domestic farm labor must not exceed the rents approved by the Agency after considering the income of the occupants, Agency and non-Agency rental assistance available and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(2) The housing must be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by state and local law, and Agency requirements.

(3) When making occupancy decisions, domestic farm labor applicants will always receive priority.

(c) The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the off-farm labor housing grant agreement.

(d) All off-farm labor housing loans and grants are subject to the restrictive use provisions established by subpart N of this part. Such restrictions must be included in the mortgage, deed of trust or grant agreement. The term of the restricted use provision for the off-farm labor housing grants is 50 years with or without a loan.

§ 3560.572 Subsequent loans.

The requirements established in § 3560.73 will apply to all applications for subsequent off-farm labor housing loans.

§ 3560.573 Rental assistance.

(a) Rental assistance may be provided to income eligible tenants living in off-farm labor housing in accordance with subpart F of this part. The requirements established in § 3560.252 apply to all tenants receiving rental assistance.

(b) For dormitory style facilities operating on a per bed basis, rental assistance will be made available to the housing on a per unit basis, but may be pro-rated to tenants on a per bed basis. However, total rent charged for a unit must not exceed conventional rent for comparable units in the area or a similar area and per bed rents must be comparable to per bed rents in the market.

§ 3560.574 Rental structure and changes.

Off-farm labor housing is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E of this part, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the Agency.

§ 3560.575 Occupancy restrictions.

(a) *Restrictions on conditions of occupancy.*

(1) No nonprofit organizational borrower, other than an association of farmers or family farm corporation or partnership, will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

(2) Tenant selection should be in accordance with the loan agreement, subpart D of this part and § 3560.576.

(3) No borrower will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, handicap, marital or familial status, or national origin.

(b) *Eligible households.* To be eligible for occupancy in off-farm labor housing, households must meet the following requirements.

(1) *Occupational.* An eligible household must include a domestic tenant or co-tenant farm laborer, a retired domestic farm laborer, a domestic farm laborer with a farm labor-related disability, or must be a surviving household of a deceased domestic farm laborer.

(2) *Income.* The household must meet the definition of income eligible as established in § 3560.152 and the tenant or co-tenant must receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent.

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits published by the Agency. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of published annual income limits.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. In order to be considered as

substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

(iii) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income under paragraph (b)(2) of this section.

(iv) The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate income limit for the appropriate household size and appropriate geographical area.

(3) *Occupancy.* The household must remain in compliance with the borrower's occupancy policy as established in § 3560.155.

(c) *Ineligible tenants.* Tenants who, at any time, fail to meet all the requirements in paragraph (b) of this section will be deemed ineligible for occupancy in off-farm labor housing. Ineligible tenants in off farm labor housing will be addressed in accordance with the requirements of § 3560.158.

(d) *Non-farm laborer tenants.* When there are no persons or families in the above categories in need of housing, units in off-farm labor housing complexes may be made available to persons or families eligible for occupancy under § 3560.152. Eligible tenants under this section may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (b) of this section. The procedures specified in § 3560.158 shall be followed when tenants are required to vacate housing to allow for occupancy by persons eligible under paragraph (b) of this section.

§ 3560.576 Tenant priorities for labor housing.

Tenant occupancy in off-farm labor housing is based on eligible farm labor certified through the income certification process required by § 3560.152 and is prioritized in the following order.

(a) First priority is to be given to eligible active farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71–100 percent; 51–70 percent; 26–50 percent; and less than 25 percent.

(1) For off-farm labor housing units without rental assistance, occupancy priority within each ranking category is according to the household's income with first priority going to very low-income households, next priority to low-income households, and last priority to moderate-income households.

(2) For off-farm labor housing units with rental assistance, tenant occupancy priority is given to all eligible very low-income farm worker households by ranked category, then to low-income farm worker households by ranked category as listed in paragraph (a) of this section. Moderate-income farm workers may be served without rental assistance, when there are no very low- or low-income eligible farm workers on the waiting lists, again by ranked category.

(b) Second priority is given to retired domestic farm laborer households or to a household with a domestic farm laborer with a farm-labor related disability and the domestic farm laborer was in the local farm market area at the time of retirement or disability. Occupancy priority will be by paragraph (a)(1) or (2) of this section without the application of the ranking category.

(c) Third priority is to be given to retired domestic farm laborer households or a household with a domestic farm laborer with a farm labor related disability that was not in the local area at the time of retirement or disability. Occupancy priority will be by paragraph (a)(1) or (2) of this section without the application of the ranking category.

(d) Fourth priority is to be given to surviving households of a deceased domestic farm laborer.

(1) The surviving member may continue to occupy the unit after the death of the original tenant and be eligible with respect to income and either the co-tenant or member of the household will have legal capacity to sign and assume the lease; or

(2) The surviving member occupied the unit at the time that the original tenant died, and will be able to meet tenant eligibility requirements of a domestic farm laborer.

§ 3560.577 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§ 3560.578 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§ 3560.579–3560.599 [Reserved]

§ 3560.600 OMB control number. [Reserved]

Subpart M—On-Farm Labor Housing

§ 3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, and O of this part will apply in addition to requirements given in this subpart.

§ 3560.602 Program objectives.

In addition to the objectives stated in § 3560.52, on-farm labor housing funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

§ 3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in § 3560.553. Grants are not available for on-farm labor housing.

§ 3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by § 3560.554 except § 3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons and daughters of the applicant and spouse.

§ 3560.605 Eligibility requirements.

(a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of § 3560.55(a) with the exception of § 3560.55(a)(5) and (6) and the following requirements.

(1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or

aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.

(2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.

(3) The applicant must, as determined by the Agency, be unable to provide the resources necessary to provide for on-farm labor housing from assets unrelated to the farming operation.

(b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and

(2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.

(c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

§ 3560.606 Application requirements and processing.

(a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.

(b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.

(c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

§ 3560.607 [Reserved]

§ 3560.608 Site and construction requirements.

(a) *General.* Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.

(b) *Permanent units.* On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.

(1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must provide access to road frontage, when feasible.

(c) *Seasonal units.* On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.

(1) Housing designed for seasonal occupancy may be either single family or multi-family.

(2) Housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(3) Seasonal housing will be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

§ 3560.609 [Reserved]

§ 3560.610 Security.

(a) Security instruments must meet the requirements established under § 3560.560.

(b) The on-farm labor housing must be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a first lien on the tract of land where the on-farm labor housing is located.

(c) The Agency will determine the value of the security for the loan if the entire farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.

(d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

(e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

§ 3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of § 3560.62. Regarding insurance coverage, the requirements of § 3560.62(d) apply to on-farm labor housing.

§ 3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§ 3560.603, 3560.604 and 3560.608.

§ 3560.613 [Reserved]

§ 3560.614 Reserve accounts.

When on-farm labor housing operations include five or more units, the Agency will require such properties to comply with the reserve account requirements in § 3560.65.

§ 3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of § 3560.66.

§ 3560.616 Rates and terms.

(a) The interest rate for on-farm labor housing loans will be 1 percent.

(b) The term of the on-farm labor housing loan will not exceed 33 years.

(c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

§ 3560.617 [Reserved]

§ 3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

§ 3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must

comply with § 3560.70. Manufactured housing located on-farm may consist of an individual unit.

§ 3560.620 Construction financing.

The requirements established in § 3560.71 apply to all applications involving on-farm labor housing loans.

§ 3560.621 Loan closing.

Applicants for on-farm labor housing loan funds must execute an Agency-approved loan agreement.

§ 3560.622 Subsequent loans.

The requirements established in § 3560.572 apply to all applications for on-farm labor housing subsequent loans.

§ 3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

(a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and

(b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

§ 3560.624 Occupancy restrictions.

(a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

(b) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

§ 3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

§ 3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of § 3560.104.

§ 3560.627 Response to resident complaints.

The management plan submitted in accordance with § 3560.623 (a) will include a provision for dealing with resident complaints.

§ 3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval by as specified in subpart E of this part.

§ 3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of § 3560.204.

§ 3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a non-profit manner.

§ 3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

(a) Tenant eligibility documentation;

(b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;

(c) Payment of taxes, insurance and hazard insurance;

(d) Compliance with the security deposit requirements;

(e) Compliance with the operating plan;

(f) Compliance with the loan agreement; and

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing.

§§ 3560.632–3560.649 [Reserved]

§ 3560.650 OMB control number. [Reserved]

Subpart N—Housing Preservation

§ 3560.651 General.

(a) This subpart contains the Rural Housing Service's housing preservation requirements as related to prepayment requests and restrictive-use provisions. The requirements of this subpart support the Rural Housing Service's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing for very-low, low, and moderate-income households.

(b) The Rural Housing Service will coordinate, direct, and monitor the Rural Housing Service's multi-family housing preservation activities from the National Office level.

§ 3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial loans made on or after December 15, 1989, and

(2) Subsequent loans made on or after December 15, 1989, for additional rental units.

(b) Loans without prepayment prohibitions but with restrictive-use provisions include:

(1) All loans made after December 21, 1979, but prior to December 15, 1989; or,

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units.

(3) Loans subsequently restricted by servicing actions including transfers and reamortizations.

(c) Loans without prepayment prohibitions or restrictive-use provisions include all loans made on or before December 21, 1979 or loans that had restrictive-use provisions that have expired. Such loans are subject to the preservation provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Rural Housing Service imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

§ 3560.653 Prepayment requests.

(a) Borrowers seeking to prepay a Rural Housing Service loan must submit a written prepayment request to the Rural Housing Service at least 180 days in advance of the anticipated prepayment date and must obtain Rural Housing Service approval before the Rural Housing Service will accept prepayment.

(b) Prior to submitting a prepayment request, borrowers must take whatever actions are necessary to provide the following items:

(1) A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.

(2) A statement documenting the borrower's ability to prepay under the terms specified.

(3) A certification that the borrower will comply with any federal, state, or local laws or regulations (*e.g.*, Department of Housing and Urban Development (HUD) prepayment procedures or requirements, HUD or state housing authorities that provide rental subsidy) which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of the housing project's waiting list and a current signed multi-family housing balance sheet.

(5) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the housing project has submitted a prepayment request to the Rural Housing Service and explaining the potential affect of the request on the lease.

(6) A certification that the borrower has notified all governmental entities and all nonprofit and public bodies other than the Rural Housing Service involved in providing affordable

housing and financial assistance to tenants in the project, of the prepayment request and a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A certification that the housing project covered by the loan being prepaid will continue to be administered in accordance with the Fair Housing Act.

(8) A description of the proposed use of the property after prepayment with documentation supporting the feasibility of the proposed use and a budget showing anticipated costs and resources available to cover costs of transition to and operation of the property as proposed for 3 years.

(9) A market study that addresses assisted and conventional housing, community demographics, and economic activity in the market area where the housing project covered by the loan being prepaid is located and the feasibility of the proposed use of the housing project in the market.

(c) If a prepayment request lacks full and complete information on any item, the Rural Housing Service will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Rural Housing Service will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Rural Housing Service for the return of the prepayment request and will allow the borrower to submit a revised prepayment request.

(d) The Rural Housing Service will review complete requests to determine if:

(1) The loan is eligible for prepayment;

(2) The borrower has the ability to prepay;

(3) The borrower has complied or has the ability to comply with applicable federal, state, and local laws related to the prepayment request;

(4) The borrower's proposed use of the property after prepayment is likely to be achieved; and,

(5) The proposed use of the property after prepayment will allow for compliance with any restrictive-use provisions, which may apply to the property after prepayment.

(e) If the Rural Housing Service determines that the prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Rural Housing Service will process the prepayment request and make a reasonable effort to enter into a new restrictive-use agreement with the borrower in accordance with § 3560.662. If the Rural Housing Service determines that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, to convert the housing to the proposed use, or to comply with any applicable restrictive-use provisions, the Rural Housing Service will return the prepayment request to the borrower with a written explanation of the Rural Housing Service's determinations.

§ 3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Rural Housing Service will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Rural Housing Service's prepayment request notice in public areas throughout the housing project from the date of the notice until the final resolution of the prepayment request. The prepayment request notice will establish a date and place where tenants may meet with the Rural Housing Service to discuss the prepayment request and will advise tenants that:

(1) They may review all information submitted with the prepayment request except financial information regarding the borrower entity, which the Rural Housing Service will withhold from tenant review unless given written permission for the release of the information from the borrower; and,

(2) They have 30 days from the date of the prepayment request notice to give the Rural Housing Service comments on the prepayment request.

(b) Borrowers may provide a prepayment request notice of their own directly to tenants and may establish a date and place where tenants may meet with the borrower to discuss the prepayment request. The Rural Housing Service and other providers of housing assistance for very-low, low, and moderate-income households may attend a borrower's prepayment request meeting with tenants.

(c) If the Rural Housing Service agrees to accept prepayment on a loan, the Rural Housing Service will send a prepayment acceptance notice to each tenant in the housing project at least 60 days prior to the prepayment date. Borrowers must post copies of the Rural Housing Service's prepayment acceptance notice in public areas throughout the housing project until prepayment is made. If the prepayment acceptance was based on a borrower's agreement to comply with restrictive-use provisions, the notice will describe the restrictive-use provisions that will apply to the housing project after prepayment and the tenant's rights to enforcement of the provisions.

(d) If the Rural Housing Service does not agree to accept a prepayment request or the borrower withdraws the prepayment request, the Rural Housing Service will provide a prepayment request cancellation notice to each tenant in the housing project. Borrowers must post copies of the prepayment request cancellation notice in the public areas throughout the housing project for a period of 60 days following the date of the prepayment request cancellation notice.

(e) If the borrower agrees to accept incentives and restrictive-use provisions, the Rural Housing Service will notify each tenant, in writing, of the agreement and a description of the restrictive-use provision.

(f) If a borrower agrees to sell a housing project involved in a prepayment request to a nonprofit organization or public body, the Rural Housing Service will notify each tenant, in writing, of the proposed sale to a nonprofit organization or public body and will explain the timeframes involved with the proposed sale, any potential impact on tenants, and the actions tenants may take to alleviate adverse impact if any. Borrowers must post copies of the Rural Housing Service's proposed sale notice in public areas throughout the housing project until the housing project is sold or the offer to sell is withdrawn.

(g) If a borrower is unable to sell a housing project involved in a prepayment request to a nonprofit organization or public body within 180 days as specified in § 3560.659, the Rural Housing Service will send a notice to each tenant in the housing project explaining the potential impact of the borrower's inability to sell the housing project on tenants and the actions tenants may take to alleviate any adverse impact. Borrowers must post the Rural Housing Service's notice in public areas throughout the housing project for a period of 60 days following the date of the notice. If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Rural Housing Service or the borrower prior to the tenant's occupancy in the housing project.

§ 3560.655 Rural Housing Service requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Rural Housing Service must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the

borrower would make a binding commitment to extend the low-income use of the housing and related facilities for not less than 15 years for loans without interest credit and 20 years for loans with interest credit, beginning on the date on which the new agreement is executed. If the borrower is unwilling to enter into a new restrictive-use provision and restrictive-use agreement, the Rural Housing Service should document this fact in writing and proceed to take the actions described in § 3560.658.

§ 3560.656 Incentive offers.

(a) The Rural Housing Service will offer a borrower, who submits a prepayment request meeting the conditions of § 3560.653(d), incentives to agree to the restrictive-use period in § 3560.662 if the following conditions are met:

(1) The Rural Housing Service determines that the prepayment will result in an adverse impact on the availability and affordability of housing for program-eligible households.

(2) For loan agreements approved after December 21, 1979, but prior to December 15, 1989, the restrictive-use period has expired.

(b) Specific incentives offered will be based on the Rural Housing Service's assessment of:

(1) The value of the housing project as determined by Rural Housing Service obtained ''as-is'' market value appraisal conducted in accordance with subpart P of this part.

(2) An incentive amount that will provide a fair return to the borrower;

(3) An incentive amount that will not cause basic rents at the housing project to exceed conventional rents for comparable units; and

(4) An incentive amount that will be the least costly alternative for the Federal Government while being consistent with the Rural Housing Service's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Rural Housing Service may offer the following incentives.

(1) The Rural Housing Service may increase the borrower's annual return on investment by one of the following two methods. The actual withdrawal of the return remains subject to conditions specified in subpart G of this part.

(i) The Rural Housing Service may recognize the borrower's current equity in the housing project. The equity will be determined using a Rural Housing Service accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) The Rural Housing Service may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 30-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Rural Housing Service accepted appraisal, which will include a determination of long-term repair or deferred maintenance, of the housing project prior to receiving the prepayment request.

(2) The Rural Housing Service may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

(3) The Rural Housing Service may offer additional rental assistance, or an increase in assistance provided under existing contracts under sections 521(a)(2), 521(a)(5) or section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(4) The Rural Housing Service may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Rural Housing Service loans held by the borrower and must be made in conformance with the following requirements.

(i) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an ''as-is'' market value appraisal conducted in accordance with subpart P of this part.

(ii) Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.

(iii) If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.

(iv) Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.

(v) Equity loans may not be offered unless the Rural Housing Service determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(5) The Rural Housing Service will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

(6) In housing projects with project-based Section 8 assistance, the Rural Housing Service may permit the borrower to receive rents in excess of the amounts determined necessary by the Rural Housing Service to defray the cost of long-term repair or maintenance of such a project.

(d) The Rural Housing Service will determine that the combination of assistance provided is necessary to provide a fair return on the investment of the borrower and is the least costly alternative for the Federal Government.

(e) At the time the incentive is developed, the Rural Housing Service must take into consideration the costs of any deferred maintenance items in the housing project's operating budget and any expected long-term repair or replacement costs based on a capital needs assessment developed in accordance with § 3560.103(c). The amount required for the reserve account to be considered fully funded will be adjusted accordingly. To determine if basic rents exceed conventional rents for comparable units in the area, monthly contributions necessary to obtain the adjusted fully funded reserve account will be included in the calculation of basic rents. Deferred maintenance or any deficiencies identified in project compliance with section 504 of the Rehabilitation Act of 1973 must be addressed prior to the receipt of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Rural Housing Service's lien position, and reamortized in accordance with subparts I and J of this part, unless consolidation is not necessary to maintain feasibility of the housing for the tenants or to reduce the debt service or the level of monthly rental assistance.

(g) The borrower must accept or reject the incentive offer within 30 days. If no answer to the offer is received within 30 days, the Rural Housing Service may void the prepayment request.

(h) If the borrower accepts the incentive offer, procedures outlined in § 3560.657 must be followed.

(i) If the borrower rejects the incentive offer, the borrower must comply with requirements listed in § 3560.658.

§ 3560.657 Processing and closing incentive offers.

(a) *Borrower responsibilities.* If a borrower accepts the Rural Housing Service's offer of incentives, the borrower must complete the actions listed below. The Rural Housing Service will not negotiate an incentive offer once it has been accepted.

(1) The borrower must insert the restrictive-use language specified in

§ 3560.662 into the housing project's loan documents, deeds, and rental assistance agreements.

(2) If the incentive offer accepted includes an equity loan, the borrower must complete an application for the equity loan, and the borrower must continue to qualify as an eligible borrower or transferee in accordance with subpart B of this part.

(3) If the incentive offer accepted includes rent increases, the borrower must follow the rent increase requirements established in subpart E of this part.

(b) *Notification.* The Rural Housing Service will notify each tenant, in writing, of the restrictive-use agreement in accordance with § 3560.654(e).

(c) *Waiting lists.* If funds for components of incentive offers are limited, the Rural Housing Service will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(d) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Rural Housing Service is unable to fund the incentive within 15 months, the borrower may choose one of the following actions.

(1) The borrower may offer to sell the housing project in accordance with § 3650.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Rural Housing Service will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and continue operating the housing project for program purposes and in accordance with Rural Housing Service requirements. If the borrower chooses this option, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance within this subpart.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Rural Housing Service or a Rural Housing Service request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be prepaid if the borrower agrees to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Rural Housing Service, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(3) If restrictive-use provisions are not in place prior to prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659, or

(b) The Rural Housing Service will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. If the Rural Housing Service determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Rural Housing Service, to protect tenants at the time of prepayment.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Rural Housing Service, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Rural Housing Service and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Rural Housing Service, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659.

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required to sell a housing project to a nonprofit organization or public body, two independent ''as is'' market value appraisals will be completed, in accordance with subpart P of this part.

(1) The Rural Housing Service will also prepare the appropriate level of environmental review under the National Environmental Policy Act to be completed in accordance with 7 CFR part 1940, subpart G prior to Rural Housing Service approval of a sale or transfer.

(2) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(3) If the two appraisers fail to agree on the fair market value, the Rural Housing Service and the borrower will jointly select an appraiser whose appraisal will be binding on the Rural Housing Service and the borrower. The Rural Housing Service and the borrower shall jointly fund the cost of the appraisal.

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale.

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The borrower must contact all nonprofit organizations and public bodies on a list maintained by the Rural Housing Service and may contact other nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The borrower may not accept an offer from other than local nonprofit organizations or public bodies during the first 60 days that the property is advertised. If no offer from a local nonprofit organization or public body is received in the first 60 days, the

borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid or have requested prepayment. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements.

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Rural Housing Service determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in § 3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Rural Housing Service that no identity-of-interest relationships exist in accordance with § 3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of a Rural Housing Service MFH loan.

(5) The purchaser must complete a Rural Housing Service approved application and obtain Rural Housing Service approval in accordance with subpart B of this part.

(6) The purchaser must make a bona fide offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) *Selection priorities.* If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria:

The borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

(g) *Loans made by the Rural Housing Service or other sources to nonprofit organizations and public bodies.* Rural Housing Service loans to nonprofit organizations or public bodies may be made for the purposes described in paragraphs (g)(1) and (2) of this section. Rural Housing Service loans will be processed in accordance with subpart B of this part. Loans from other sources will be approved by the Rural Housing Service in accordance with subpart I of this part.

(1) Rural Housing Service loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, a Rural Housing Service loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. A Rural Housing Service loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) *Advances for nonprofit organizations and public bodies.* The Rural Housing Service may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of $20,000 to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

§ 3560.660 Acceptance of prepayments.

(a) The Rural Housing Service may accept prepayment if any of the following circumstances exist:

(1) Prepayment will be accepted if the Rural Housing Service determines that prepayment will not have an adverse impact on minorities; adequate, safe, decent and affordable housing is available; and tenants in the housing project will not experience a negative impact such as a change in rent or use, which results in increased net tenant contributions, displacements, or involuntary relocations.

(2) Prepayment may be accepted if the Rural Housing Service determines that prepayment will have an adverse impact on the tenants in the housing project, but;

(i) The borrower agreed to comply with restrictive-use provisions, as determined by the Rural Housing Service, after prepayment; or,

(ii) The borrower agreed to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no bona fide offer was received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a bona fide offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date.

(b) When the Rural Housing Service agrees to accept prepayment, the Rural Housing Service will notify borrowers, in writing, of the conditions under which the Rural Housing Service will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Rural Housing Service's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Rural Housing Service has not agreed to an alternative date based on a written request from the borrower, the Rural Housing Service may cancel the prepayment acceptance agreement.

(c) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c).

(d) If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in

accordance with § 3560.159(c). Tenants must request a LOPE within 30 days of the prepayment acceptance notice date.

§ 3560.661 Sale or transfers.

(a) If a sale or transfer is to take place simultaneously with the Rural Housing Service incentive offer, the sale or transfer must comply with the provisions of subpart I of this part.

(b) If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to find another transferee.

(c) In cases where the existing owner is in program non-compliance or default, the Rural Housing Service may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Rural Housing Service may offer a smaller incentive or no incentive if the borrower does not agree to transfer the project to an acceptable purchaser, or if the transfer does not take place.

§ 3560.662 Restrictive-use provisions and agreements.

(a) *Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing actions.* The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 20 years. All loans or servicing actions meeting the criteria described in paragraphs (a)(1), (2), and (3) of this section, must include the following clause in loan documents.

The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 20-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.

(1) All loans approved after December 21, 1979, but prior to December 15, 1989.

(2) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.

(3) Any loan approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with in subparts I and J of this part, or an incentive to accept restrictive-use provisions in accordance with in this subpart.

(b) *Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing actions when the loan is transferred to a limited partnership.* The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 30 years. All loans or servicing actions meeting the criteria described in paragraphs (b)(1), (2), and (3) of this section, must include the following clause in loan documents.

The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 30-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.

(1) All loans approved after December 21, 1979, but prior to December 15, 1989.

(2) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.

(3) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with in subparts I and J of this part, or an incentive to accept restrictive-use provisions in accordance with in this subpart.

(c) *Clauses required for housing projects made subject to restrictive-use provisions when a loan is transferred to a nonprofit organization or public body.* (1) For housing projects being made subject to restrictive-use provisions because of a transfer to a nonprofit or public body, in accordance with in § 3560.659, the following clause must be inserted in the deed, conveyance instrument, loan resolution and assumption agreement, as applicable.

The borrower and any successors in interest agree to use the housing project for the purpose of housing very low- and low-income people eligible for occupancy as provided in Rural Housing Service regulations then in existence during the remaining useful life of the housing project. A tenant or person wishing to occupy the housing project, as well as the Rural Housing Service, may seek enforcement of this provision. Throughout the remaining useful life of this housing project, no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Rural Housing Service determines that there is no longer a need for such housing. Further, the borrower will be released if other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

(2) The restrictions are intended to protect only very low- and low-income people for the remaining useful life of the project, unless the Rural Housing Service subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

(d) *Clauses and agreement required for prepaid projects, which were subject to restrictive-use provisions prior to the prepayment.* (1) Housing projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The following Multi-Family Housing projects are subject to restrictive-use provisions herein contained:

(i) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989.

(ii) Any loan made subject to restrictive-use provisions as a result of a transfer or reamortization as contained in this subpart.

(iii) Any loan made subject to restrictive-use provisions as a result of accepting an incentive to not prepay as contained in this subpart.

The provisions provide protections to the same categories of tenants who were protected while the loan was in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

(Borrower Name), herein referred to as owner, and any successors in interest agree that the *(Project Name),* herein referred to as housing, will be used only as authorized under sections 514 and 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence until *(insert date shown on existing restrictive-use provisions)* for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The owner also agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the project for *(insert ''low- and moderate-income'' or ''very low- and low-income'' as shown on existing restrictive-use provisions)* tenants for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of Rural Housing Service regulations specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification, and occupancy charges, and termination and eviction remain consistent with the 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until *(Date restrictive-use period ends):*

(Name of Owner) certifies that *(Name of Project)* is being operated in compliance with the restrictive-use provisions contained in *(Applicable release document)* and the Restrictive Use Agreement, herewith, which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. *(Name of Owner)* understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Rural Housing Service to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

(e) *Clauses and Agreement required for prepaid housing projects, which became subject to restrictive-use provisions at the time of prepayment.* Multi-Family Housing projects that were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979 that were not subsequently made subject to restrictive-use provision as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions, provided the project is to remain in the section 514 or section 515 program. The conditions for which restrictive-use provisions are not required are contained in § 3560.658. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(Owner Name), herein referred to as owner, and any successors in interest agree to use the *(Project Name),* herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 20 year period beginning *(date of last loan or servicing action)* for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service may seek enforcement of this provision. Prior to *(date period ends)* no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the Government program. The owner also agrees to keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending *(date),* the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (insert date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (Name of Owner) understands that failure to operate the project

in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title)

(f) *Clauses and Agreement required for housing projects subject to restrictive-use provisions at the borrower's election to allow prepayment.* These provisions are used after the owner rejects incentives or declines an additional restrictive-use period, or when the owner agrees to restrictive-use provisions for a minimum of a 10-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 10-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(Owner Name), herein referred to as owner, and any successors in interest agree to use the *(Project Name),* herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 10 year period beginning *(date of last loan or servicing action)* for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. Prior to *(date period ends)* no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the Rural Housing Service program. The owner also agrees to keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with section 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending *(date),* the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (insert date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title)

(g) *Loans with current restrictive-use provisions (all loans were obligated and applicable servicing actions took place for the project over 20 years prior to prepayment).* These provisions are used when the loan is currently under restrictive-use provisions and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public Rural Housing Service in accordance with § 3560.659. The borrower will also be required to execute the Restrictive-Use Agreement herein contained. The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public Rural Housing Service, as determined by the Rural Housing Service.

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public Rural Housing Service, as determined by the Rural Housing Service, in accordance with the provisions of 7 CFR part 3560, subpart N. The owner agrees to use the housing as required in 7 CFR, part 3560, subpart N, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public Rural Housing Service, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been had the project remained in the RHS program. The owner also agrees to keep a notice posted at the housing project in a place available for tenant inspection, for the remainder of the sales period, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates for tenants as of the date of the prepayment will be consistent with those necessary to maintain the housing project for low- and moderate-income tenants. A tenant, as well as the Rural Housing Service, may seek enforcement of this provision.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 3560, subpart N, and specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable RHS Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to nonprofit organization or public Rural Housing Service takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the

Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

(Title)

(h) *Current Tenants Restrictive-Use Provisions.* These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of prepayment, for as long as the current tenants wish to remain at the project. The provisions may only be used if it is determined by the Rural Housing Service that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required in 7 CFR part 3560, subpart N, and other applicable Rural Housing Service regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for these tenants such the effect will not differ from what would have been, had the project remained in the Rural Housing Service program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The notice will state that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision, as well as the United States.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates the project. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rents or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR part 1930, subpart C, and to adhere to applicable local, state, and Federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents are established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates the project:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions and the Restrictive-Use Agreement (herein contained) which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

§ 3560.663 Post-payment responsibilities for loans subject to continued restrictive-use provisions.

(a) If a borrower prepays a loan and the housing project remains subject to restrictive-use provisions, the requirements of this section apply after prepayment.

(b) Owners of prepaid housing projects will be responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed.

(c) Owners must maintain appropriate documentation to demonstrate compliance with the restrictive-use provisions and must make the documentation and the housing project site available for Federal Government inspection upon request.

(1) Owners must document rent increases in accordance with subpart G of this part.

(2) Owners must document tenant eligibility in accordance with § 3560.152.

(3) In an Agency approved format, owners must provide the agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that the restrictive-use provisions are being met.

(d) Owners must observe Agency policies on tenant grievances as described in § 3560.160.

(e) The Agency may enforce restrictive-use provisions through administrative and legal actions.

§§ 3560.664–3560.699 [Reserved]

§ 3560.700 OMB control number. [Reserved]

Subpart O—Unauthorized Assistance

§ 3560.701 General.

(a) This subpart contains the policies for recapturing unauthorized assistance when the Agency determines that a borrower or tenant was ineligible for, or improperly used, assistance received from the Agency.

(b) The Agency may seek repayment of any unauthorized assistance provided to a borrower or tenant, plus the cost of collection, regardless of whether the unauthorized assistance was due to errors by the Agency, the borrower, or the tenant. Borrowers are expected to:

(1) Request explanations from tenants for any assistance considered to be unauthorized because of inaccurate information supplied by the tenant.

(2) Issue demand for repayment of an amount certain by a date certain for unauthorized assistance. The demand notice must include the right of a tenant to challenge the accuracy of the information relied upon. Such challenges will be conducted under the provisions of § 3560.160.

(3) Initiate and pursue eviction should tenants not timely exercising their right to challenge the accuracy of the information or should the borrower determine that the information provided warrants recapture of unauthorized assistance and the tenant is unwilling or unable to provide timely repayment. The Agency must be timely notified of all evictions initiated and the status of such actions.

(4) Notify the Agency of amounts of unauthorized assistance scheduled to be repaid, actually repaid, or refused to be repaid. The Agency must be notified of any unauthorized assistance which is not being timely repaid by tenants. The Agency reserves the right to pursue collection of amounts not timely paid by tenants.

§ 3560.702 Unauthorized assistance sources and situations.

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance.

(b) Unauthorized assistance may result from situations such as:

(1) Assistance being provided to an ineligible borrower or tenant;

(2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;

(3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or

(4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

§ 3560.703 Identification of unauthorized assistance.

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying and pursuing repayment of unauthorized assistance received by tenants.

§ 3560.704 Unauthorized assistance determination notice.

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower. Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency a copy of the written notice to the tenant. The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

(1) Specify the reasons the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (*i.e.*, the tenant or borrower) according to the provision of § 3560.708;

(3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information which might alter the determination that the assistance received was unauthorized.

(b) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

§ 3560.705 Recapture of unauthorized assistance.

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance will include offsets and the use of private or public collection agents. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by the Agency prior to implementation. Repayment may be made either with a lump sum payment or through payments made over a period of time. Agency approval of a repayment schedule will take into consideration the best interest of the borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue the tenant for recovery of unauthorized assistance when the borrower's efforts are unsuccessful or where tenants have been evicted.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant household.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance.

§ 3560.706 Offsets.

Offsets will be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the Agency's programs if they have the legal and financial capabilities to do so. Approval considerations for such forbearance are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower prior to the determination that the interest rate was incorrect will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency concurs in a borrower request for approval to pay the unauthorized assistance amounts due through a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that are not allowable under the provisions of subparts D, E, and F of this part; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants for or use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, whether due to borrower or tenant fraud or borrower or tenant error, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in § 3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency in the case of initial demands on a borrower, or by the borrower in the case of an initial demand by a borrower on a tenant, or by the Agency in the case of demands on a tenant made initially by the Agency or upon referral by a borrower for Agency collection servicing efforts.

§§ 3560.710–3560.749 [Reserved]

§ 3560.750 OMB control number. [Reserved]

Subpart P—Appraisals

§ 3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multi-family housing consisting of five or more rental units. Agency-financed housing project's with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, release, and review.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or to determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making may be no more than 12 months old unless the Agency and the applicant or borrower mutually agree to the use of an appraisal more than 12 months old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the intended use of the appraisal and the value basis on which the housing project and related facilities are to be appraised.

(1) The appraisal request must indicate whether the housing project and related facilities are to be appraised on a ''value-in-use'' basis or a ''market value'' basis.

(i) A request for a ''value-in-use'' appraisal means the appraisal will take into consideration any subsidies or use restrictions imposed on the property by a financing source. A value-in-use appraisal will take into consideration any interest credits, tax credits, tax rebates, rent subsidies, grant funds, or other forms of assistance related to the housing, including subsidies or use restrictions imposed by the Agency or any other government or non-government source.

(ii) A request for a ''market value'' appraisal means the appraisal will take into consideration the price which a property should sell for in a competitive and open market with no subsidies or use restrictions. The appraisal will assume a fair sale with the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus such as a foreclosure or other legal action that forced a sale of the property. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Both parties are well informed or well advised and acting in what they consider their best interest;

(B) A reasonable time is allowed for exposure in the open market;

(C) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and,

(D) The price represents consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) The appraisal request must indicate whether the ''as-is'' or the ''as-improved'' value of the housing is to be calculated.

(i) *As-is* value means the value of the housing and the related facilities in the condition in which the housing exists at the time the appraisal is conducted. If

the property is to be appraised as Agency financed housing, the ''as-is'' value should take into consideration anticipated expenses to bring the housing into compliance with Agency requirements, vacancy rate expectations, anticipated tenant turn over rates, and estimated operation and maintenance expenses taking into consideration the property's condition.

(ii) *As-improved* value means the value of the housing and the related facilities in the condition in which the housing will exist after specified improvements are made. If the property is to be appraised as Agency financed housing the ''as-improved'' value should take into consideration vacancy rates, tenant turn over rates, and operations and maintenance costs as expected after improvements.

(3) *Section 8 project-based assistance.* Depending on the purpose and use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the calculation of the housing's estimate of value. The remaining term of the section 8 contract and the probability of subsequent renewal terms being authorized will be taken into consideration when making this determination.

(4) *Low-Income Housing Tax Credit (LIHTC) and other financing sources.* Depending on the purpose and use of the appraisal, the Agency will specify whether or not LIHTC's and other financing sources involved in the housing will be considered in the calculation of the housing's estimate of value.

(c) *Release of appraisals.* Appraisals procured by the Agency for internal decision-making processes will not be released for purposes unrelated to the decision for which the appraisal was procured.

§ 3560.753 Agency appraisal standards and requirements.

(a) *General.* The Agency recognizes the Uniform Standards of Professional Appraisal Practice (USPAP) as the basic standards for appraisals. Appraisals completed by independent appraisers must comply with USPAP standards and this part.

(b) *Appraisers.* Appraisals prepared for the Agency will be conducted by Agency staff who have met the educational requirements of the State's appraisal licensing board in the state where the duty station of the Agency staff or independent fee appraisers who meet the licensing requirements of the state where the property is located.

(c) *Appraisal report.* Appraisal report format may be a form appraisal or a narrative appraisal. The Agency will specify the appraisal format that best addresses the circumstances of the housing project being appraised when the appraisal is requested.

(1) *Form appraisal reports.* The Agency will accept form appraisal reports that meet generally accepted industry standards and have been approved by the Agency.

(2) *Narrative appraisal reports.* Narrative appraisal reports must, at a minimum, contain the following items:

(i) Transmittal letter;

(ii) Factual information about the property;

(iii) Regional and neighborhood data;

(iv) Description of the subject property;

(v) Description of existing and planned improvements;

(vi) A highest and best use statement;

(vii) A statement about any environmental issues, including the issue of potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;

(viii) A cost approach analysis;

(ix) A sales or market approach analysis;

(x) An income approach to value analysis; and

(xi) A dated and signed final estimate of value with a reconciliation of the cost, sales or market, and income approaches.

(3) At the time an appraisal is requested, the Agency will specify one of the following types of appraisal reports based upon the complexity of the appraisal assignment.

(i) A self-contained report which provides comprehensive details of the estimate of value.

(ii) A summary report which provides a concise presentation of the findings that support the estimate of value.

(iii) A restricted report which provides a presentation of the estimate of value with minimal documentation.

(d) *Highest and best use statement and analysis.* The principle of highest and best use is to be addressed for each site to be used for multi-family housing as if the site was ready to be developed. If the highest and best use of a site is for something other than housing, the appraisal report must provide this information to the Agency for consideration in the loan process. The highest and best use statement for a multi-family housing site must address whether the proposed use of the site is:

(1) Legally permissible;

(2) Physically possible;

(3) Financially feasible; and

(4) Maximally profitable.

(e) *Valuation methods and variances.* The final estimate of value presented in an appraisal report must have considered a cost approach, a sales approach, and an income approach. If one of these standard approaches is not used, or if the variation between the three approaches exceeds 10 percent, the reconciliation narrative shall provide a full and complete explanation of the variances, or the reasons one approach was not used.

(f) *Real estate history.* Appraisals must contain a 5-year ownership history for the housing project being appraised.

(g) *Reserve accounts.* When conducting appraisals in conjunction with a prepayment request or a transfer request, funds in the housing project's reserve account in excess of repair costs to bring the housing into compliance with state and local codes and the physical standards established under § 3560.103(a)(3), shall be considered as part of the housing's value.

(h) *Escrow accounts.* Short-term prepaid escrow accounts for general operating expenses such as taxes and insurance, shall not be considered during appraisals.

(i) *Rental rates comparison.* The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than conventional rents for comparable conventional non-subsidized units in the area where the housing is located.

(j) *Description of housing.* The appraisal report must identify and describe both the real estate (legal rights) and the real property (tangible property) interest being appraised.

(k) *Exclusions of rental units from appraisals.* The Agency will provide appraisers with instructions on which rental units will not be valued in the appraisal report.

(l) *Non-contiguous sites.* When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

(m) *Value for energy-saving devices.* Appraisal for housing projects with energy-saving devices must document the device's estimated annual cost savings in present value dollars for each year during the manufacturer's useful life projection for the energy-saving device. If a device is found to produce a negative savings, then an adjustment for obsolescence is to be made to the value of the energy-saving measure.

§ 3560.754 Non-completion of appraisal assignment.

If an appraiser determines that the instructions provided are inappropriate or unclear, or the appraiser is unsure of the assignment after beginning the appraisal, the appraiser must provide

written notice to the Agency listing the reasons why the appraisal cannot be completed and requesting further instructions.

§§ 3560.755—3560.799 [Reserved]

§ 3560.800 OMB control number. [Reserved]

Dated: May 15, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–12761 Filed 5–30–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 330/P.L. 108–29

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S. 870/P.L. 108–30

To amend the Richard B. Russell National School Lunch Act to extend the availability of funds to carry out the fruit and vegetable pilot program. (May 29, 2003; 117 Stat. 774)

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0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 2	June 17	July 2	July 17	August 1	Sept 2
June 3	June 18	July 3	July 18	August 4	Sept 2
June 4	June 19	July 7	July 21	August 4	Sept 2
June 5	June 20	July 7	July 21	August 4	Sept 3
June 6	June 23	July 7	July 21	August 5	Sept 4
June 9	June 24	July 9	July 24	August 8	Sept 8
June 10	June 25	July 10	July 25	August 11	Sept 8
June 11	June 26	July 11	July 28	August 11	Sept 9
June 12	June 27	July 14	July 28	August 11	Sept 10
June 13	June 30	July 14	July 28	August 12	Sept 11
June 16	July 1	July 16	July 31	August 15	Sept 15
June 17	July 2	July 17	August 1	August 18	Sept 15
June 18	July 3	July 18	August 4	August 18	Sept 16
June 19	July 7	July 21	August 4	August 18	Sept 17
June 20	July 7	July 21	August 4	August 19	Sept 18
June 23	July 8	July 23	August 7	August 22	Sept 22
June 24	July 9	July 24	August 8	August 25	Sept 22
June 25	July 10	July 25	August 11	August 25	Sept 23
June 26	July 11	July 28	August 11	August 25	Sept 24
June 27	July 14	July 28	August 11	August 26	Sept 25
June 30	July 15	July 30	August 14	August 29	Sept 29