6–24–03 Tuesday
Vol. 68 No. 121 June 24, 2003

Pages 37387–37692

Federal Register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–26 of June 13, 2003

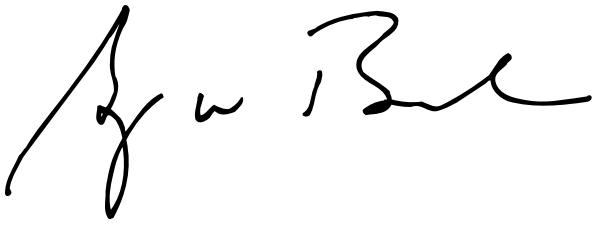
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, June 13, 2003.

[FR Doc. 03–16077
Filed 6–23–03; 8:45 am]
Billing code 4710–10

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Presidential Documents

Title 3—

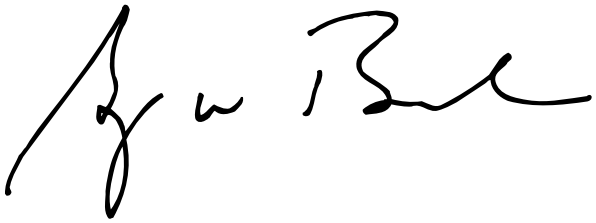
The President

Notice of June 20, 2003

Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, I declared a national emergency with respect to the Western Balkans pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting, (i) extremist violence in the former Yugoslav Republic of Macedonia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo. Subsequent to the declaration of the national emergency, the actions of persons obstructing implementation of the Ohrid Framework Agreement of 2001 in the former Yugoslav Republic of Macedonia have also become a pressing concern. I amended Executive Order 13219 on May 28, 2003, in Executive Order 13304 to address this concern and to take additional steps with respect to the national emergency. Because the actions of persons threatening the peace and international stabilization efforts in the Western Balkans continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 26, 2001, and the measures adopted on that date and thereafter to deal with that emergency must continue in effect beyond June 26, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Western Balkans.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 20, 2003.

[FR Doc. 03–16078
Filed 6–23–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03–993–1 IFR]

Dried Prunes Produced in California; Changes in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the reporting requirements specified under the administrative rules and regulations of the Federal marketing order for California dried prunes (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule allows California prune handlers to report their shipments less frequently and submit less detailed information than is currently required. Handlers will report shipments once every three months (quarterly), rather than monthly, and will no longer report export shipment destination countries. Also, the reporting of type of pack will be changed from ''carton, visipak, and other'' to ''bulk and consumer pack'' to reveal less marketing information. This action will reduce the information collection burden upon handlers, while still enabling the Committee to collect information necessary for program administration.

DATES: Effective June 25, 2003. Comments must be received by August 25, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies language in the order's administrative rules and regulations to allow California prune handlers to report their shipments quarterly, rather than monthly. Also, handlers will only be required to report their export market shipments to the Committee by region, rather than by country. The amount of information disseminated by the Committee is also reduced. The Committee will no longer report the export shipments to the industry by country, and the regions that handlers ship into will only be reported once a year, when the marketing policy is prepared. Also, the reporting of type of pack is changed from ''carton, visipak, and other'' to ''bulk and consumer pack''. These changes will reduce the information collection burden upon handlers and the Committee's administrative costs because of the switch to quarterly distribution. This action was unanimously recommended by the Committee at a meeting on April 3, 2003.

Marketing Order Authority

Section 993.72 of the order provides authority for the Committee to require handlers to file such reports of acquisitions, sales, uses, and shipments of prunes, as may be requested by the Committee. Also, pursuant to § 993.36(c), one the Committee's duties is to assemble data on the producing, handling, shipping, and marketing conditions relative to prunes in connection with the performance of its official duties. To prevent the release of proprietary business information, the

information from all of the handlers is totaled and then distributed.

Administrative Rules and Regulations

Section 993.172 requires handlers to report each month on their holdings, receipts, and shipments of prunes produced in California.

Paragraph (d) of § 993.172 requires handlers to report shipments of dried prunes produced in California. This information is reported on PMC Form 12.1, ''Report of Shipments,'' and an addendum to that form referred to as PMC Form 12.1A, ''Cumulative Prune Export Shipments.''

Prior to the implementation of this rule, each handler was required to file with the Committee for each month, not later than the 5th working day of the next succeeding month, Forms PMC 12.1 and 12.1A, reporting shipments (including cumulative exports by country) of prunes during the crop year through the last day of the immediately preceding month. PMC Form 12.1 was required to contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The pounds of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers as follows: (i) Domestic outlets segregated by uses (including Federal Government agencies); (ii) export markets segregated by countries; (iii) both domestic and export totals segregated by type of pack (carton, visipak, and other); and (iv) pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets;

(3) The total pounds shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total pounds of prunes not covered by, or excluded from, the definition of the term ''prunes'' (§ 993.5) shipped.

PMC Form 12.1A included a listing of the quantities of whole and pitted prunes exported together with the countries to which the exports were made.

Proposed Action

Based upon competition concerns, the Committee unanimously recommended changing the frequency and amount of information that is required to be reported by handlers. While this rule would still allow the Committee to obtain the information it needs for program purposes, this rule allows California prune handlers to file their Shipment Reports on a quarterly, rather than monthly basis, as currently required.

Handlers will no longer be reporting their export shipment destination countries to the Committee. Instead handlers will only report the regions into which they ship. The amount of information disseminated by the Committee will also be reduced. The Committee will no longer report the countries to which the industry exports, but only the total export shipments (except that total export shipments into regions would be reported annually for marketing policy purposes). The reporting of type of pack would be changed from ''carton, visipak, and other'' to ''bulk and consumer pack'' to reveal less marketing information.

By distributing the Shipment Report quarterly, instead of monthly, and revising the report's format to provide less detailed information, the Committee is reducing the amount of marketing information it is releasing. However, this information still satisfies the Committee's need for information to prepare the marketing policy, verify compliance, monitor the accuracy of handler reports, justify government purchases or supply control recommendations, and to help the industry develop their marketing programs and evaluate USDA Market Access Program applications. At least once a year, export shipments by region will be reported for the entire crop year. During the remainder of the year, the Committee may only report total export shipments.

These recommendations by the Committee will reduce the reporting burden on California prune handlers as well as help address some of the marketing concerns of the industry and Committee. These changes will also reduce some of the Committee's administrative costs in disseminating this information quarterly, rather than monthly. Accordingly, appropriate changes are made to paragraph (d) of § 993.172.

Initial Regulatory Flexibility Analysis and the Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Currently 8 of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Summary of Rule Change

This rule changes the reporting requirements specified in § 993.172(d) of the administrative rules and regulations regarding the reporting of dried prune shipments by handlers. This rule allows the California prune handlers to file their Shipment Reports quarterly, rather than monthly, as required currently. Also handlers will no longer report their export market shipments to the Committee by country, but by region. The amount of information disseminated by the Committee will also be reduced. The Committee will no longer be reporting export shipments by country, but only in total (except that total export shipments into regions would be reported annually to enable the Committee to prepare its marketing policy). The reporting of type of pack also would be changed from ''carton, visipak, and other'' to ''bulk and consumer pack''.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action would reduce the reporting and recordkeeping burden on California prune handlers and reduce the Committee's administrative costs. The Committee estimates that 21 California prune

handlers are required to file the Supply and Disposition reports each month. It is estimated that it will take each handler about 20 minutes to complete each revised PMC Form 12.1, and about 20 minutes to complete each revised PMC Form 12.1A. In comparison it is estimated that currently it takes each handler about 30 minutes to complete each PMC Form 12.1, and about 35 minutes to complete each PMC Form 12.1A. Thus, completion of the revised reports will take 10 minutes less, and 15 minutes less, respectively, than that required for each of the current reports. The total annual industry reporting burden for the current PMC Form 12.1 is 120 hours, and for the PMC Form 12.1A is 139 hours, for a combined total of 259 hours. The total burden hours for the revised PMC Forms 12.1 and 12.1A is 28 hours each, for a combined total of 55 hours. These changes will thereby reduce the annual industry information collection burden by 204 hours. Committee costs would be reduced because the report will be compiled and distributed quarterly, rather than monthly.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection burden reduction contained in this rule has been submitted to the Office of Management and Budget. This action reduces existing approved burden requirements which have been assigned OMB No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Alternatives Considered

The Committee considered alternatives to this action at meetings on March 11, April 2, and April 3, 2003. The Executive Subcommittee and Committee discussed the possibility of eliminating all reporting, but determined that this was not viable because it needs certain information to prepare its marketing policy and for other decision-making. Some industry leaders also felt that the statistics are important for grower, handler, and bargaining association decisions that need to be made each year. Finally, the Executive Subcommittee and Committee discussed disseminating the information only to members and alternates of the Committee, its subcommittees, and to California prune handlers. Ultimately, the Executive Subcommittee and Committee decided to proceed with the changes in shipment reporting requirements to reduce the frequency of the reports, and to reduce the amount of information reported to and disseminated by the Committee.

The Executive Subcommittee's March 11 and April 2, 2003, meetings and the Committee's April 3, 2003, meeting where this issue was deliberated were public and widely publicized throughout the prune industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these changes on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be implemented as soon as possible because the 2003–2004 crop year begins August 1, 2003; (2) this rule relaxes handler reporting requirements; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) a 60-day comment period is provided and all comments received will be considered in finalizing this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 993.172, the section heading and paragraph (d) are revised to read as follows:

§ 993.172 Reports of holdings, receipts, uses, and shipments.

* * * * *

(d) *Shipments by handlers.* Each handler shall file with the Committee for each quarter, not later than the 5th working day of the months of November, February, May and August, signed reports on Form PMC 12.1, ''Reports of Shipments,'' and Form 12.1A, ''Cumulative Prune Export Shipments'' reporting shipments of prunes during the crop year through the last day of the immediately preceding quarter. Such reports shall contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The pounds of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers as follows: Domestic outlets segregated by uses (including Federal Government agencies); export markets segregated by regions; both domestic and export totals segregated by type of pack (bulk and consumer pack); and pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets segregated by regions;

(3) The total pounds shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total pounds of prunes not covered by, or excluded from, the definition of the term ''prunes'' (§ 993.5) shipped.

* * * * *

Dated: June 18, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–15832 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–12–AD; Amendment 39–13204; AD 2003–13–04]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This AD requires you to inspect the integral fuel tank wing ribs for cracks and the top and bottom wing skins for distortion, repair any cracks or distortion before further flight, and accomplish a fuel tank ventilating system installation. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

DATES: This AD becomes effective on August 15, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 15, 2003.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–12-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

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports an incident where cracks have been found in the ribs of the inboard integral fuel tanks in the left and right wings of a Model PC–6 airplane. Investigation revealed that the cracks can occur when there are excessive pressure differentials between the ambient air pressure and that of the fuel tanks. The effect of this differential can be to compress the wing in the area of the fuel tank and cause distortion of the related structure. This distortion may result in fatigue cracks on ribs within the wing.

What Is the Potential Impact If FAA Took No Action?

These fatigue cracks on the ribs within the wing could lead to wing failure during flight.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Model PC–6 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 4, 2003 (68 FR 16458). The NPRM proposed to require you to inspect the integral fuel tank wing ribs for cracks and the top and bottom wing skins for distortion, repair any cracks or distortion before further flight, and accomplish a fuel tank ventilating system installation.

Was the Public Invited To Comment?

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

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

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

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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 35 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	Not applicable	$300	$300 × 35 = $10,500

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

Labor cost	Parts cost	Total cost per rib per airplane
3 workhours × $60 per hour = $180 per rib	$50 per rib	$230 per rib.

We estimate the following costs to install any inboard fuel tank vent system that will be required based on the results of this inspection. We have no way of determining the number of airplanes that may need such installation.

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$200	$920

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–04 Pilatus Aircraft LTD.: Amendment 39–13204; Docket No. 2003–CE–12–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, 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 detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

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

Actions	Compliance	Procedures
(1) Inspect: (i) the ribs in the inboard integral fuel tanks and related structure in the left and right wings for crack damage; (ii) the upper and lower wing skins for damage; and (iii) to determine if the inboard fuel tank vent system is installed.	Within the next 100 hours time-in-service (TIS) after August 15, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(2) If crack damage is found: (i) Correct the crack damage designated as repairable in the service bulletin (ii) For other crack damage, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(3) If wing distortion is found, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.	Prior to further flight after the inspections required in paragarph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(4) If the inboard fuel tank vent system is not installed, install the inboard fuel tank vent system.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 118, dated December 1972, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use 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.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 118, dated December 1972. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in Swiss AD Number HB 2003–092, dated February 17, 2003.

(g) *When does this amendment become effective?* This amendment becomes effective on August 15, 2003.

Issued in Kansas City, Missouri, on June 16, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15723 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–11–AD; Amendment 39–13206; AD 2003–13–06]

RIN 2120–AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This AD requires you to modify the nose gear support bulkhead (STA600). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.

DATES: This AD becomes effective on August 11, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 11, 2003.

ADDRESSES: You may get the service information referenced in this AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–11-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

What Events Have Caused This AD?

The Ente Naźionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes show that cracks have been detected on the nose gear support bulkhead (STA600) of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Is the Potential Impact if FAA Took No Action?

If not corrected, the nose gear support bulkhead (STA600) could fail. Such failure could lead to loss of control of the airplane during landing or take-off.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 3, 2003 (68 FR 16220). The NPRM proposed to require you to modify the nose gear support bulkhead (STA600).

Was the Public Invited to Comment?

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

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

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

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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 10 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
19 workhours × $60 = $1,140	$100	$1,240	$12,400

The modification to the nose gear support bulkhead (STA600) requires 39 hours for cure and post cure time.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–06 Iniziative Industriali Italiane S.p.A.: Amendment 39–13206; Docket No. 2003–CE–11–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

Model	Serial No.
Sky Arrow 650 TC	C001 through C004, C006 through C008, and C011.
Sky Arrow 650 TCN ..	CN001 through CN006 and CN008.

(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 failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.

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

Actions	Compliance	Procedures
Modify the nose gear support bulkhead (STA600).	Within the next 100 hours time-in-service (TIS) after August 11, 2003 (the effective date of this AD).	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 02/02, dated October 15, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use 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.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 02/02, dated October 15, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The subject of this AD is addressed in Italian AD Number 2002–591, dated November 29, 2002.

(g) *When does this amendment become effective?* This amendment becomes effective on August 11, 2003.

Issued in Kansas City, Missouri, on June 17, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15725 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–10–AD; Amendment 39–13205; AD 2003–13–05]

RIN 2120–AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This AD requires you to repetitively inspect the engine mount for cracks and modify or replace the engine mount if cracks are

found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

DATES: This AD becomes effective on August 11, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 11, 2003.

ADDRESSES: You may get the service information referenced in this AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–10–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

What Events Have Caused This AD?

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. The ENAC reports that data collected on in-service airplanes shows that cracks have been detected on the engine mount of several airplanes with high operating time on grass airfields and at flight schools where activity of hard landings have occurred.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 3, 2003 (68 FR 16222). The NPRM proposed to require you to repetitively inspect the engine mount for cracks and modify or replace the engine mount if cracks are found.

Was the Public Invited To Comment?

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

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

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

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

The ENAC AD and the service information requires (on Italian-registered airplanes) inspection within the next 10 hours time-in-service (TIS) after the effective date of the AD. We require that you inspect within the next 50 hours TIS after the effective date of this AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners or operators of the affected airplanes enough time to have these actions accomplished without compromising the safety of the airplanes.

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.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 10 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 10 = $600

We estimate the following costs to accomplish the necessary modification:

Labor cost	Parts cost	Total cost per airplane
14 workhours × $60 = $840	$100	$940

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

Labor cost	Parts cost	Total cost per airplane
1 workhours × $60 = $660.	$500	$1,160

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–05 Iniziative Industriali Italiane S.p.A.: Amendment 39–13205; Docket No. 2003–CE–10–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models Sky Arrow 650 TC and 650 TCN 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 detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the engine mount for cracks	Initially inspect within the next 50 hours time-in-service (TIS) after August 11, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the modification or replacement specified in paragraph (d)(2) or (d)(3) of this AD is incorporated.	In accordance with the engine Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01/02, dated October 15, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD and the cracks are 20 millimeters (mm) or less in size, modify the engine mount.	Prior to further flight after the inspection in which the cracks are found. Incorporating the manufacturer's modification kit terminates the repetitive inspection requirements of this AD.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01/02, dated October 15, 2002.
(3) If cracks are found during the inspection required in paragraph (d)(1) of this AD and the cracks are more than 20 millimeters in length, the engine mount must be replaced with a new, already modified engine mount.	Prior to further flight after the inspection in which the cracks are found. Replacing the engine mount with a new, already modified engine mount terminates the repetitive inspection requirements of this AD.	In accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01/02, dated October 15, 2002.
(4) After any inspection required in paragraph (d)(1) of this AD, and no cracks are found, you may incorporate the modification or install a new, already modified engine mount as referenced in paragraph (d)(2) and (d)(3) of this AD. This modification terminates the repetitive inspection requirements of this AD.	N/A	In accordance with Iniziative Industriali Italiane S.p.A. 3i Bulletin SB–C No. 01/02, dated October 15, 2002.
(5) Do not install any engine mount unless it has been modified as specified in paragraph (d)(2) of this AD.	As of August 11, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use 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.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Iniziative Industriali Italiane S.p.A. 3i Service Bulletin SB–C No. 01/02, dated October 15, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The subject of this AD is addressed in Italian AD Number 2002–590, dated November 29, 2002.

(g) *When does this amendment become effective?* This amendment becomes effective on August 11, 2003.

Issued in Kansas City, Missouri, on June 17, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15724 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–187–AD; Amendment 39–13203; AD 2003–13–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and 767–300 series airplanes, that requires modification of the installation of the aft pressure bulkhead-to-floor insulation blankets. The actions specified by this AD are intended to prevent interference with venting during a rapid decompression in the bulk cargo compartment; such interference could cause damage to the floor structure and damage to certain control cables leading to the empennage, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and 767–300 series airplanes was published in the **Federal Register** on December 11, 2002 (67 FR 76120). That action proposed to require modification of the installation of the aft pressure bulkhead-to-floor insulation blankets.

Comments

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

Request To Change Compliance Time

Two commenters ask that the compliance time for the modification specified in the proposed AD be changed, as follows.

The first commenter asks that the compliance time be changed from 60 months to 84 months and states that the compliance times in the referenced service bulletin and the proposed AD are different. The commenter notes that the service bulletin specifies doing the modification during the next heavy maintenance check when the aft galleys are removed, and that such checks are done every 6 years. However, the proposed AD specifies doing the modification within 5 years after the effective date of the final rule. The commenter adds that the galleys on its airplanes are removed every 10 years for galley restoration and to facilitate structural inspections, per Maintenance Planning Document (MPD) Task #CP53–200–04I. This task requires an initial inspection of the floor support structure under the galleys at 10 years, and at 5-year intervals after the initial inspection. The commenter states that the galleys are not removed every 6 years as called out in the ''Clarification of Compliance Time'' paragraph in the proposed AD.

The second commenter asks that the compliance time be changed from 60 months to 72 months and states that it requires a 72-month compliance time for doing the modification. The commenter adds that the effectivity in the referenced service bulletin was specifically revised to read ''* * * the next heavy maintenance check when aft galleys are removed.'' The commenter notes that a 60-month compliance time will require it to schedule airplanes outside of regularly scheduled maintenance checks, or do the modification at an earlier check at considerable cost to the airline.

We agree with the commenters. We find that the commenters provided sufficient justification for extending the compliance time for modifying the installation of the aft pressure bulkhead-to-floor insulation blankets. The commenters also provided data to show that the majority of affected operators do the heavy maintenance check of the aft galleys at intervals that exceed the proposed 60-month compliance time. Thus, we have determined that the modification may be deferred until 7 years (84 months) after the effective date of this AD without jeopardizing the continued safety of the airplane fleet. The compliance time specified in paragraph (a) of this final rule has been changed accordingly.

Request To Change a Certain Section in Preamble

One commenter asks that the section in the preamble of the proposed AD titled ''Clarification of Compliance Time'' be changed to state that the heavy maintenance checks are done every 10 years, and that the modification should be done within 7 years after the effective date of the AD.

Although we acknowledge and agree with the commenter's remarks on the section in the preamble of the proposed

AD titled ''Clarification of Compliance Time,'' that section is not restated in this final rule. Therefore, no change to the final rule is necessary in this regard.

Request To Exclude Freighter Airplanes From Applicability

Two commenters ask that the applicability in the proposed AD be changed to exclude Model 767 freighter airplanes, as follows.

The first commenter states that the effectivity in the referenced service bulletin applies only to Model 767 passenger airplanes, and notes that freighter airplanes are not affected. The commenter adds that the word ''passenger'' should be added to the Discussion section of the proposed AD. The commenter also asks that the Cost Impact section be changed to remove the freighter airplanes from the total number of U.S.-registered aircraft, which would reduce the cost impact for U.S. operators.

The second commenter states that the information in the applicability section of the proposed AD contradicts the effectivity specified in the referenced service bulletin, and should be clarified. The commenter notes that the applicability in the proposed AD specifies Model 767–200 and –300 series airplanes, certificated in any category; however, the effectivity in the service bulletin specifies Model 767–200 and –300 passenger airplanes only.

Both commenters state that the Model 767 freighter airplane has different venting and decompression characteristics than the passenger airplane. The commenters add that the difference is in the location of the aft galley in the passenger airplane, which causes the airflow between the floor and the aft bulkhead to be different from that in freighter airplanes.

We agree with the commenters that the applicability section should be clarified; however, not in the manner proposed. Per the Model 767 Type Certificate Data Sheet, which specifies Model 767–200, –300, and –300F series airplanes, the proposed AD clearly does not include Model 767–300F (freighter) airplanes in the applicability.

However, as the line numbers are listed and have confused some operators, we have clarified the applicability in this final rule to specify ''Model 767–200 and –300 series airplanes as listed in Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002. * * *'' In addition, we have removed the freighter airplanes from the total number of U.S.-registered aircraft in the Cost Impact section. However, although we acknowledge and agree with the first commenter's remarks on the Discussion section of the proposed AD, that section is not restated in this final rule. Therefore, no change to the final rule is necessary in that regard.

New Part Numbers

One commenter states that the manufacturer has not created new part numbers for all of the affected insulation blankets and is still shipping parts in the old configuration that preceeded the new configuration specified in the referenced service bulletin.

Although we acknowledge the commenter's concern, we do not agree. Figure 1 (Insulation Blanket Modification) of Boeing Service Bulletin 767–25A0300, Revision 1, specifies that the insulation blankets are to be re-marked with new part numbers. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 739 airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $397 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $170,792, or $577 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–03 Boeing: Amendment 39–13203. Docket 2002-NM–187-AD.

Applicability: Model 767–200 and -300 series airplanes, as listed in Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 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 (b) of this AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent interference with venting during a rapid decompression in the bulk cargo compartment, which could cause damage to the floor structure as well as damage to certain control cables leading to the empennage, and could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 7 years after the effective date of this AD: Modify the installation of the aft pressure bulkhead-to-floor insulation blankets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002.

Alternative Methods of Compliance

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

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 29, 2003.

Issued in Renton, Washington, on June 16, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15596 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–143–AD; Amendment 39–13201; AD 2003–13–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires an inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap, and follow-on and corrective actions if necessary. For certain airplanes, this amendment also requires a one-time inspection to determine if a tool runout procedure has been performed in the area. The actions specified by this AD are intended to prevent the inboard aft flap from separating from the wing and potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on January 6, 2003 (68 FR 518). That action proposed to require an inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap, and follow-on and corrective actions if necessary. For certain airplanes, that action also proposed to require a one-time inspection to determine if a tool runout procedure has been performed in the area.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter concurs with the contents of the proposed AD.

Request To Change Applicability

One commenter, the manufacturer, asks that the applicability specified in the proposed AD be changed. The commenter states that line number 870 is for a Model 767–300 airplane, and is outside the line number effectivity listed in Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001 (which was referenced in the proposed AD and specified line numbers 1 through 825 inclusive).

The FAA agrees with the commenter. Line number 870 is for a Model 767–300ER airplane, and was inadvertently added to the applicability specified in the proposed AD. The applicability in this final rule has been changed accordingly.

Request To Extend Compliance Time

One commenter states that a compliance time grace period of 90 days for the inspections specified in paragraph (a)(1) of the proposed AD would be extremely difficult. The commenter asks that the grace period be extended to 270 days. The commenter adds that this will allow sufficient time for affected operators to schedule and accomplish the inspections, and will provide time for Boeing to produce adequate spares.

We do not agree with the commenter, as insufficient supporting data were provided to us to substantiate the request. Boeing Service Bulletin 767–57A0076, Revision 1, was issued on March 29, 2001, and recommended a grace period of 90 days after release of the service bulletin. In addition, Boeing parts are not necessary unless discrepant parts are found during the inspections. The terminating action provided by paragraph (f) of this final

rule would require installing the new parts, but is not mandatory. Therefore, no extension is necessary in order to obtain parts.

In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. However, under the provisions of paragraph (i) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Parts Availability

One commenter states a concern for the availability of improved fittings for replacement. The commenter notes that, due to warranty, it anticipates replacing any fittings that do not exhibit the tool runout option, regardless of the inspection results.

We have been assured by the parts manufacturer that a sufficient number of replacement parts is available. However, this may not cover all parts without the tool runout option, regardless of the condition of the parts. If the commenter expects to replace a large number of parts, ordering the parts in advance so the manufacturer has time to produce adequate replacement parts is recommended.

Request To Provide a Method To Identify Certain Fittings

One commenter states that the proposed AD specifies that certain part numbers may not be installed on any aircraft unless the requirements of the proposed AD have been accomplished. The commenter notes that neither the proposed AD nor the referenced service bulletins provide instructions on how to identify fittings that have met the requirements of the proposed AD.

Although the commenter does not make a specific request, we infer that the commenter wants the FAA to provide instructions in the final rule for identification of the fittings that meet the AD requirements. We do not agree that such additional instructions are necessary because it is the operator's responsibility to show documented compliance to the requirements of the AD. If a spare part is installed on an airplane, and the previous inspection history of the part is not documented, the applicable inspection must be done and must be repeated at the intervals required by this AD. Paragraph (h) of the proposed AD identifies the part numbers for fittings that cannot be installed unless the applicable requirements of the AD have been accomplished for that fitting. Those requirements are specified in paragraphs (a) through (f) of the AD. No change is made to the final rule in this regard.

Request To Change Cost Impact Section

One commenter estimates that the detailed visual and eddy current inspections specified in the proposed AD take 15 work hours per airplane to do, at a cost of $117,000 for the operator's fleet.

Although the commenter does not make a specific request, we infer that the commenter wants the work hours and cost for the detailed visual and eddy current inspections specified in the Cost Impact section to be changed. We do not agree to change the number of estimated work hours for the inspections. The number of work hours necessary to accomplish the inspections, specified as 5 in the cost impact information, is consistent with the service bulletin. This number represents the time necessary to perform only the inspections actually required by this AD. Therefore, no change is made to the final rule in this regard.

Request To Clarify Applicability

One commenter would like to obtain clarification of the applicability specified in the proposed AD relative to airplanes in the Model 767–400 fleet having fuselage numbers 875 (variable number VQ085) and 877 (variable number VQ086), which are not listed in the applicability section. The commenter states that, according to the effectivity in the original issue of Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002, only an airplane having fuselage number 877 is not affected by the proposed AD.

The terminology ''fuselage numbers'' actually refers to airplane line numbers, rather than the terminology used by the commenter for tracking its airplanes. Boeing Airplane Information Report dated October 2, 2002, shows Model 767 line number 875 as having variable number VS701, line number 876 having variable number VQ085, line number 877 having variable number VS721, and line number 878 having variable number VQ086; these figures do not match the variable numbers provided by the commenter. Regardless, the line numbers specified in the proposed AD and the referenced service bulletin are correct. No change is made to the final rule in this regard.

Request To Clarify Certain Wording in Paragraph (c)

One commenter asks that the last sentence in paragraph (c) of the proposed AD be changed for clarification from ''This AD requires that the terminating action, if required, be accomplished before further flight'' to ''This AD requires that the terminating action, if required because cracks have been found, be accomplished before further flight.'' The commenter states that it is not explicit in paragraph (c) that the terminating action is required only if cracks are found. The commenter adds that specifying the need to accomplish terminating action before further flight, without explicitly referencing cracks, may confuse the operator.

We do not agree with the commenter. Paragraph (c) of the proposed AD merely clarifies that, if the referenced service bulletins specify corrective action (i.e., if cracked or fractured fittings are found, do Part 3—Terminating Action), such action is required before further flight. No change is made to the final rule in this regard.

Conclusion

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

Cost Impact

There are approximately 783 airplanes of the affected design in the worldwide fleet. The FAA estimates that 354 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $42,480, or $120 per airplane, per inspection cycle.

It will take approximately 5 work hours per airplane to accomplish the detailed visual and eddy current inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions is estimated to be $106,200, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

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

The terminating action, if accomplished, will take approximately 24 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $1,440 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–13–01 Boeing: Amendment 39–13201. Docket 2002–NM–143–AD.

Applicability: Model 767 series airplanes, certificated in any category; line numbers 1 through 826 inclusive, 830, 842, 855, 856, 859, 862, 864 through 866 inclusive, 868, 869, 871 through 874 inclusive, and 876.

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 (i) 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 inboard aft flap from separating from the wing and potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury, accomplish the following:

Inspection

(a) Perform either a detailed inspection, or a detailed inspection plus an eddy current inspection, of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap to detect cracks and fractures and evidence of a tool runout procedure, as applicable.

(1) For Model 767–200, –300, and –300F series airplanes: Inspect before the airplane accumulates 2,700 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, in accordance with Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001.

(2) For Model 767–400ER series airplanes: Inspect before the airplane accumulates 12,000 total flight cycles, in accordance with Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002.

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

Follow-On/Corrective Actions

(b) Following the initial inspection(s) required by paragraph (a) of this AD: Perform applicable follow-on and corrective actions at the time(s) specified in Figure 1 of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001 (for Model 767–200, –300, and –300F series airplanes); or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002 (for Model 767–400ER series airplanes). Do the follow-on and corrective actions (including repetitive inspections and replacement of the fittings with new fittings) in accordance with Part 1 or Part 2 of the service bulletin, as applicable, except as required by paragraph (d) of this AD. For Model 767–200, –300, and –300F series airplanes: If the fitting has the tool runout, and no cracking or fracture is found during the inspection, this AD requires no further action for that hinge fitting.

Exceptions to Service Bulletin Procedures

(c) Where the terminating action in Part 3 of the service bulletin is specified as corrective action in Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001; and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002: This AD requires that the terminating action, if required, be accomplished before further flight.

(d) Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, specifies to contact Boeing before the terminating action is done as corrective action for any cracking or fracture found on a Model 767–200, –300, or –300F series airplane with the tool runout. This AD requires that any such crack or fracture on those airplanes be reported to the FAA in accordance with paragraph (e) of this AD and repaired in accordance with Part 3 of the service bulletin.

Reporting Requirement

(e) For any Model 767–200, –300, or –300F series airplane with the tool runout, on which any cracking or fracture is found during the inspection(s) required by paragraph (a) of this AD: Submit a report of the inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection is done after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the initial inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Terminating Action

(f) Unless required to do so by paragraph (b) of this AD: Operators may choose to accomplish the terminating action (including replacement of the fittings with new fittings,

and reinstallation of existing upper skin access panels and fairing midsections on the trailing edge of the main flap) in accordance with Part 3 of the Work Instructions of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001; or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002; as applicable. Accomplishment of the terminating action terminates the repetitive inspection requirements of paragraph (b) of this AD.

Credit for Prior Accomplishment Per Earlier Service Information

(g) Accomplishment before the effective date of this AD of an inspection, associated follow-on and corrective actions, and terminating action in accordance with Boeing Alert Service Bulletin 767–57A0076, dated October 26, 2000, is acceptable for compliance with the corresponding requirements of this AD for applicable airplanes.

Part Installation

(h) As of the effective date of this AD, no person may install on any airplane a hinge fitting assembly that has any part number listed in Table 1 of this AD, unless the applicable requirements of this AD have been accomplished for that fitting. Table 1 follows:

TABLE 1.—HINGE FITTING ASSEMBLY PART NUMBERS

113T2271–13	113T2271–14
113T2271–23	113T2271–24
113T2271–29	113T2271–30
113T2271–33	113T2271–34
113T2271–401	113T2271–402

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001; and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on July 29, 2003.

Issued in Renton, Washington, on June 16, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15594 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, 1305 and 1306

[Docket No. DEA–208F]

RIN 1117–AA58

Allowing Central Fill Pharmacies and Retail Pharmacies To Fill Prescriptions for Controlled Substances on Behalf of Retail Pharmacies

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is finalizing a Notice of Proposed Rulemaking (NPRM) defining central fill pharmacy activities and permitting central fill pharmacies to prepare controlled substances prescriptions on behalf of retail pharmacies with which the central fill pharmacies have a contractual agreement to provide such services or with which the pharmacies share a common owner. When one retail pharmacy receives a prescription and a second pharmacy prepares and subsequently delivers the controlled substance medication to the first retail pharmacy for dispensing to the patient, the second pharmacy is engaging in a ''central fill activity''. Records must be maintained by both the central fill pharmacy and the retail pharmacy that completely and accurately reflect the disposition of all controlled substance prescriptions dispensed. With respect to security, central fill pharmacies would be required to comply with the same security requirements applicable to retail pharmacies including the general requirement to maintain effective controls and procedures to guard against theft and diversion of controlled substances. DEA is creating an allowance for retail pharmacies that also perform central fill activities to do so without separate DEA registration, separate inventories, or separate records. This rulemaking is sought by the regulated industry and will allow for more efficient delivery of controlled substance prescriptions to patients.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2001, DEA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (66 FR 46567) proposing to allow central fill pharmacies to fill prescriptions for controlled substances on behalf of retail pharmacies. The NPRM was published in response to significant changes taking place in the pharmacy industry. Increased demands are being placed on traditional pharmacy systems by the rapid growth in the number of prescriptions written and dispensed.

At present, there is no provision in DEA's regulations for central fill pharmacy operations. Retail pharmacies, including those which utilize the mail service and the Internet, are registered by DEA to dispense prescriptions for controlled substances directly to the patient. ''Dispensing'' is defined in the Controlled Substances Act as delivering a controlled substance ''to an ultimate user'' (21 U.S.C. 802(10)). DEA regulations do not currently provide for central fill pharmacy operations which fill prescriptions for delivery to a traditional retail pharmacy. Current DEA regulations do not permit a prescription for controlled substances to be brought to one pharmacy, filled at a second pharmacy, and then returned to the first pharmacy for dispensing to the patient. Allowing central fill pharmacies to fill prescriptions on behalf of retail pharmacies for subsequent dispensing to the ultimate user is a legitimate extension of current practice.

Therefore, the regulations are being amended to allow for central fill pharmacies to fill prescriptions on behalf of retail pharmacies and to allow retail pharmacies to perform central fill activities without separate DEA registration and separate inventories.

Benefits of This Rulemaking

Regulations finalized in this rulemaking have been developed in conjunction with the regulated industry. Industry indicates that central fill pharmacy activities focus on removing the most time intensive, and, therefore, most costly administrative tasks, from a retail setting and centralizing them in an automated non-retail setting. Currently, many states permit central fill activities for noncontrolled substances, so long as they are otherwise permitted. This final rule is not requiring states to promulgate new regulations to permit central fill activities for controlled substances. The regulated industry has noted that it has realized cost savings from these activities, as the filling of prescriptions is a very labor intensive activity. Further, industry believes that permitting central fill pharmacy activities provides the following benefits:

- Reduces the potential for dispensing errors, resulting in improved patient safety and effective drug utilization.
- Improves pharmacist accessibility, pharmacists will have more time to spend on patient care.
- Patients encounter less ''wait'' time at pharmacy.

Requirements Proposed in the NPRM

The NPRM proposed to allow central fill pharmacies to become registered as pharmacies under 21 CFR 1301.13(e)(1)(iii) so long as and to the extent that their activities are authorized by the state in which they are located. Central fill pharmacies would prepare prescriptions for controlled substances in Schedules II–V for dispensing to a patient by a registered retail pharmacy pursuant to a prescription issued by an authorized practitioner and communicated to the central fill pharmacy by the retail pharmacy. Central fill pharmacies would be permitted to prepare both initial and refill prescriptions, subject to all applicable state and federal regulations. The central fill pharmacy would be allowed to fill prescriptions on behalf of retail pharmacies with which it has a contractual agreement to provide such services or with which it shares a common owner. The NPRM proposed requiring central fill pharmacies to keep current copies of the DEA Certificates of Registration for each retail pharmacy for which it is authorized to fill prescriptions. Similarly, it was proposed that retail pharmacies would be required to keep a list of those central fill pharmacies, along with current copies of their DEA Certificates of Registration, permitted to prepare prescriptions on their behalf.

The NPRM did not allow for a retail pharmacy and a central fill pharmacy to be operated under the same DEA registration, therefore requiring separate inventories and separate records.

The NPRM proposed to permit retail pharmacies to transmit a written prescription via facsimile or communicate prescription information electronically to a central fill pharmacy. The prescription information would be required to be maintained by the retail pharmacy and the central fill pharmacy in a readily retrievable manner and comply with all applicable federal and state recordkeeping requirements.

The NPRM also recognized that pharmacists at central fill pharmacies would be preparing prescriptions for controlled substances and, therefore, must bear a corresponding responsibility, along with the pharmacist at the retail pharmacy, for the proper dispensing of the prescription.

Comments Received in Response to the NPRM

Six comments were received in response to the NPRM: four from trade associations representing the affected industries, one from a DEA registrant and one from a pharmacy software provider. While the comments expressed general support for the changes, concerns were raised regarding specific facets of the proposed rule. Where possible, DEA has adopted changes suggested by the commenters to make the rule more flexible and less burdensome for DEA registrants.

1. Retail Pharmacies Performing Central Fill Functions Without Separate Registration

Three commenters discussed DEA's provisions in the proposed rule that would require separate registration for each facility that performs central fill activities. Commenters stated that registered retail pharmacies should be allowed to perform central fill activities without separate registration. Commenters indicated that retail pharmacies currently perform all activities associated with dispensing controlled substances directly to the patient. Commenters argued that it is not necessary for a retail pharmacy to maintain a separate registration, separate inventory and separate recordkeeping when the same retail pharmacy engages in central fill activities on behalf of another retail pharmacy. By allowing retail pharmacies to perform central fill activities without separate registration, commenters argued, a single stock/inventory of controlled substances can be maintained.

DEA agrees that retail pharmacies may also act in the capacity of a central fill pharmacy as long as complete and accurate records are maintained to indicate which registrant prepared the prescription and which registrant dispensed the prescription. The records must include the name, address, and DEA number of the pharmacies involved. Shipping and receiving records regarding the ''centrally filled'' prescription must be maintained by each pharmacy involved in the transaction.

The original prescription record must be maintained at the pharmacy which dispenses the medication to the patient (end user). If records are maintained electronically, they must be readily retrievable and identifiable as to which records pertain to the retail pharmacy activities and which pertain to the central fill pharmacy activities.

When one retail pharmacy receives a prescription and a second pharmacy prepares and subsequently delivers the controlled substance medication to the first retail pharmacy for dispensing to the patient, the second pharmacy is engaging in a ''central fill activity''. Pharmacies engaging in central fill activities must have a contractual agreement with the retail pharmacy to provide such services, or share a common owner.

2. Transferring Prescriptions for Controlled Substances

One commenter suggested that not allowing a central fill pharmacy to deliver prescription medication directly to the patient would require that the prescription record be transferred. The commenter further stated that this potentially would disrupt patients' continuity of care and could prohibit patients from obtaining proper pharmaceutical care from the pharmacist of their choice. DEA acknowledges that if one retail pharmacy receives and dispenses an initial prescription and a second retail pharmacy prepares and subsequently dispenses/delivers any remaining refills of the controlled substance medication to the patient, this is a ''transfer'' of the prescription. The second retail pharmacy's records must indicate that the prescription record was obtained by transfer. It is not the intent of this rulemaking to change current regulations regarding the ''transfer'' of controlled substance prescriptions records. However, controlled substance prescriptions that are prepared by a

central fill pharmacy are not considered ''transferred'' prescriptions.

3. Requirement To Maintain Copies of Each Pharmacy's DEA Registration Certificate

Three commenters stated that pharmacies participating in central fill activities should not be required to maintain copies of each pharmacy's DEA registration certificate. Commenters indicated that such a requirement would be burdensome, requiring them to maintain large quantities of paper. Commenters suggested that DEA permit registrants to verify the registration of the affiliated retail pharmacies, noting that such a requirement would be similar to what is required of suppliers when registrants are purchasing controlled substances.

Upon further review, DEA agrees that requiring retail pharmacies and central fill pharmacies to maintain copies of the DEA registration certificates for their partner pharmacies is unnecessary. However, DEA is requiring that the participating registrants verify that they are doing business with DEA registrants prior to sending and receiving controlled substances prescriptions. Therefore, DEA is amending this final rule to require that central fill pharmacies verify the registration of each affiliated retail pharmacy. Further, retail pharmacies contracting with other pharmacies performing central fill activities must verify the registration of each affiliated registrant. Such a requirement is less burdensome than the one initially proposed by DEA, but will still permit DEA, and registered pharmacies, to ensure that the persons they are conducting business with are, indeed, DEA registrants permitted to handle controlled substances.

4. Miscellaneous Comments

One commenter requested that DEA allow controlled substance prescriptions that are prepared and packaged at a central fill pharmacy to be delivered through DEA registered distribution facilities. The filled prescriptions, placed in a sealed container, would be delivered from the central fill pharmacy to a DEA registered distribution facility. At the distribution facility the sealed containers would be sorted for subsequent delivery to the retail pharmacy. The commenter further stated that registered distribution facilities have much better security than common or contract carrier locations and the employees at the registered distribution facilities have experience in handling controlled substances. There are no provisions in the current regulations to allow for patient specific controlled substances prescriptions to be delivered from one registered pharmacy location, through a registered distribution facility, to another registered pharmacy location for dispensing to the patient. Therefore, no change is being made from the language of the proposed rule.

One commenter suggested that DEA allow for hospitals to engage in central fill activities. While DEA does not disagree that hospitals may benefit from ''central fill activities,'' the pharmacy activities of a hospital are significantly different than those of a retail pharmacy. Hospitals generally maintain stocks of non-patient specific controlled substances in a variety of locations throughout the hospital. The controlled substances are often dispensed and administered on an urgent and frequently changing basis. Controlled substances that are prepared by a central fill pharmacy, as defined in this rulemaking, are issued pursuant to a patient specific prescription and generally requested and subsequently delivered within 24 hours. When non-patient specific controlled substances are transferred from one DEA registrant to another DEA registrant, this constitutes distribution and not dispensing. With this rulemaking, DEA is allowing only retail pharmacies to utilize the services of a central fill pharmacy.

One commenter suggested that DEA's proposed requirement that both the retail pharmacist and central fill pharmacist have a corresponding liability regarding the manner of issuance of a prescription is considered a dual verification and, therefore, unnecessary. DEA is not suggesting that each centrally filled controlled substance prescription be independently verified by a retail pharmacist and a central fill pharmacist. Rather, the intent is to confirm that if either the retail pharmacist or the central fill pharmacist believes that the prescription is not issued in a manner that is in compliance with federal regulations, then the prescription should not be dispensed.

One commenter suggested that DEA indicate what course of action should be taken if a patient does not pick up a controlled substance prescription that has been ''centrally filled.'' The retail pharmacy's records should indicate that the prescription was ''filled'' at the central fill pharmacy and subsequently delivered to the retail pharmacy. Therefore, the retail pharmacy in possession of the controlled substance prescription is responsible for the proper disposition of the controlled substance if the patient fails to pick up the prescription, as would be the case with any prescription dispensed by the pharmacy.

One commenter suggested that DEA clarify section 1306.05(a), which was not proposed to be changed in the NPRM and states that written prescriptions must be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. While this amendment is not within the scope of this regulation, DEA wishes to clarify and reiterate that a prescription that is generated by a computer software application and subsequently printed is acceptable so long as it is manually signed by the practitioner and contains all required elements of a prescription.

One commenter suggested that DEA require pharmacies engaged in central fill activities to establish a mechanism to ensure that printed literature developed by the pharmaceutical manufacturer accompanies every prescription. While DEA does not have any objection to central fill pharmacies or retail pharmacies providing printed drug information to patients, requiring pharmacies to provide such information is not within the purview of the DEA's regulatory authority regarding controlled substance prescriptions.

Further Clarifications

In this final rule DEA has changed the titles of Sections 1306.15 and 1306.27 due to the perceived confusion with using the word ''transfer'' to describe the action of a retail pharmacy providing prescription information to a central fill pharmacy.

Conclusion

This final rule permits central fill pharmacies to become registered as pharmacies under 21 CFR 1301.13(e)(1)(iii) so long as and to the extent that their activities are authorized by the state in which they are located. At present, the business activities under 21 CFR 1301.13(e)(1)(iii) include practitioners, hospitals/clinics, retail pharmacies, and teaching institutions. DEA is creating a new business activity to be known as ''central fill pharmacy.'' This allows the central fill pharmacy to prepare prescriptions for controlled substances in Schedules II–V for dispensing to a patient by a registered traditional retail pharmacy pursuant to a prescription issued by an authorized practitioner and communicated to the central fill pharmacy by the retail pharmacy.

DEA has determined that central fill pharmacy activities are better characterized as ''dispensing'' activities as opposed to ''distributing'' activities.

Therefore, central fill pharmacies will not be limited by the restrictions on ''distributions'' from one practitioner to another set forth in 21 CFR 1307.11, in particular the 5% limitation which limits the amount of controlled substances that can be distributed by one practitioner to another. Similarly, no official order forms (DEA Form 222) will be required for transfer of Schedule II controlled substances from a central fill pharmacy to a retail pharmacy since DEA has deemed this activity to be a form of dispensing, not a distribution. Title 21, CFR 1305.03 is amended to clarify that the order form requirement does not apply to such transfers.

Central fill pharmacies are permitted to prepare both initial and refill prescriptions, subject to all applicable state and federal regulations. Only a licensed pharmacist may fill such prescriptions (21 CFR 1306.06). By definition, the filled prescriptions must be transported to the retail pharmacy from which the prescription information was received for delivery to the patient. Both the pharmacist employed by the central fill pharmacy and the pharmacist who dispenses the prescription to the patient have a corresponding responsibility to ensure that the prescription was issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice and otherwise in the manner specified by DEA regulations (21 CFR 1306.04(a), 1306.05(a)).

DEA is creating an allowance for a central fill pharmacy to prepare prescriptions on behalf of retail pharmacies with which it has a contractual agreement to provide such services or with which it shares a common owner. The central fill pharmacy is required to keep a list of retail pharmacies for which it has agreed to provide such services. The central fill pharmacy is also required to verify the DEA registration of any retail pharmacy they are doing business with prior to sending or receiving controlled substance prescriptions. Similarly, retail pharmacies are required to keep a list of those central fill pharmacies permitted to prepare prescriptions on their behalf and verify that they are DEA registrants. This information must be made available for inspection upon request by DEA.

A central fill pharmacy will not be permitted to prepare prescriptions provided directly by a patient or individual practitioner or to mail or otherwise deliver a filled prescription directly to a patient or individual practitioner.

DEA regulations do not prohibit central fill pharmacies in one state which have a contractual relationship or common ownership with a retail pharmacy located in another state from filling prescriptions transmitted by the retail pharmacy to the central fill pharmacy. However, each state involved in the transaction must permit this cross-state activity.

If authorized by the state in which they are located, a retail pharmacy may engage in central fill pharmacy activities as a coincidental activity associated with their retail pharmacy DEA registration. Therefore, a retail pharmacy may operate as both a retail pharmacy and a central fill pharmacy at the same location without maintaining separate registration, inventories, or records.

Retail pharmacies are permitted to transmit prescription information to a central fill pharmacy in two ways. First, a facsimile of a prescription for a controlled substance in Schedule II, III, IV or V may be provided by the retail pharmacy to the central fill pharmacy. The retail pharmacy must maintain the original hard copy of the prescription and the central fill pharmacy must maintain the facsimile of the prescription. Alternatively, DEA is allowing for the prescription information to be communicated electronically by the retail pharmacy to the central fill pharmacy. Since there appears to be little risk that an outside party will divert such prescription information, DEA is not requiring specific security standards with respect to electronic transmission in this particular situation. When setting up the transmission system, the participating pharmacies must be mindful of all federal and state requirements regarding patient confidentiality, network security, and use of shared databases. Both pharmacies must maintain the prescription information in a readily retrievable manner and comply with all applicable federal and state recordkeeping requirements.

With respect to security, central fill pharmacies are required to comply with the same security requirements applicable to other pharmacies (21 CFR 1301.71, 1301.75, 1301.76). While not specifically required by DEA regulations, central fill pharmacies may choose to implement additional security measures based on the volume of controlled substances handled, number of employees in the facility, or other unique factors. Such additional security measures may be needed in order to comply with the general requirement to maintain effective controls and procedures to guard against theft and diversion of controlled substances (21 CFR 1301.71). As indicated above, since pharmacists at central fill pharmacies are preparing prescriptions for controlled substances, they shall bear a corresponding responsibility, along with the pharmacist at the retail pharmacy, for the proper dispensing of the prescription (21 CFR 1306.04(a)). Additionally, central fill pharmacies must be vigilant in their choice of carriers to transport filled prescriptions to retail pharmacies and be aware of their responsibilities for reporting in-transit losses (21 CFR 1301.74(e)).

Application for Registration for Central Fill Pharmacies

As have been previously noted in this rulemaking, persons wishing to conduct central fill pharmacy activities must register with DEA to do so. To apply for registration, persons must complete a DEA Form 224, Application for Registration. As DEA has not yet issued updated forms specifically referencing the central file pharmacy business activity, persons wishing to register as central fill pharmacies must choose the retail pharmacy business activity on the form and then must attach a written statement signed by the person signing the registration application acknowledging that the pharmacy wishes to register as a central fill pharmacy.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. In fact, it is anticipated that this rule, by affording additional flexibility to pharmacies in the dispensing of prescriptions, will help lower total health care costs.

As has been discussed elsewhere in this rulemaking, permitting controlled substance prescriptions to be processed through the use of central fill pharmacies will provide benefits to the regulated industry. The filling of prescriptions is a labor intensive process. There are significant cost reductions associated with the cost of filling a prescription through the use of central fill pharmacies. The regulated industry has indicated that labor costs are significantly reduced. For example, industry has indicated that, depending on the number of prescriptions

dispensed per day, the cost savings can be between $1.00 and $5.00 per prescription dispensed.

Executive Order 12866

The Deputy Assistant Administrator, Office of Diversion Control, further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget. As previously noted, this rule will provide a number of benefits to the regulated industry as efficiencies are gained in the processing of controlled substance prescriptions.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting requirements.

21 CFR Part 1305

Drug traffic control, Reporting requirements.

21 CFR Part 1306

Drug traffic control, prescription drugs.

■ For the reasons set out above, title 21, Code of Federal Regulations, parts 1300, 1301, 1304, 1305, and 1306 are amended to read as follows:

PART 1300—[AMENDED]

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.01 is amended by adding a new paragraph (b)(43) to read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

(b) * * *

(43) The term *central fill pharmacy* means a pharmacy which is permitted by the state in which it is located to prepare controlled substances orders for dispensing pursuant to a valid prescription transmitted to it by a registered retail pharmacy and to return the labeled and filled prescriptions to the retail pharmacy for delivery to the ultimate user. Such central fill pharmacy shall be deemed ''authorized'' to fill prescriptions on behalf of a retail pharmacy only if the retail pharmacy and central fill pharmacy have a contractual relationship providing for such activities or share a common owner.

PART 1301—[AMENDED]

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

■ 2. Section 1301.13 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 1301.13 Application for registration; time for application, expiration date, registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1) * * *

(iii) Dispensing or Instructing (Includes Practitioner, Hospital/Clinic, Retail Pharmacy, Central Fill Pharmacy, Teaching Institution).	Schedules II–V	New—224 ..... Renewal—224a	210 210	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities.

* * * * *

■ 3. Section 1301.76 is amended by adding new paragraph (d) to read as follows:

§ 1301.76 Other security measures for practitioners.

* * * * *

(d) Central fill pharmacies must comply with § 1301.74(e) when selecting private, common or contract carriers to transport filled prescriptions to a retail pharmacy for delivery to the ultimate user. When central fill pharmacies contract with private, common or contract carriers to transport filled prescriptions to a retail pharmacy, the central fill pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106. Retail pharmacies must comply with § 1301.74(e) when selecting private, common or contract carriers to retrieve filled prescriptions from a central fill pharmacy. When retail pharmacies contract with private,

common or contract carriers to retrieve filled prescriptions from a central fill pharmacy, the retail pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106.

PART 1304—[AMENDED]

■ 1. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965, unless otherwise noted.

■ 2. Section 1304.05 is added to read as follows:

§ 1304.05 Records of authorized central fill pharmacies and retail pharmacies.

(a) Every retail pharmacy that utilizes the services of a central fill pharmacy must keep a record of all central fill pharmacies, including name, address and DEA number, that are authorized to fill prescriptions on its behalf. The retail pharmacy must also verify the registration for each central fill pharmacy authorized to fill prescriptions on its behalf. These records must be made available upon request for inspection by DEA.

(b) Every central fill pharmacy must keep a record of all retail pharmacies, including name, address and DEA number, for which it is authorized to fill prescriptions. The central fill pharmacy must also verify the registration for all retail pharmacies for which it is authorized to fill prescriptions. These records must be made available upon request for inspection by DEA.

PART 1305—[AMENDED]

■ 1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

■ 2. Section 1305.03 is revised to read as follows:

§ 1305.03 Distributions requiring order forms.

An order form (DEA Form 222) is required for each distribution of a Schedule I or II controlled substance except to persons exempted from registration under part 1301 of this chapter; which are exported from the United States in conformity with the Act; for delivery to a registered analytical laboratory, or its agent approved by DEA; or for delivery from a central fill pharmacy, as defined in § 1300.01(b)(43), to a retail pharmacy.

PART 1306—[AMENDED]

■ 1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

■ 2. Section 1306.05 is amended by revising paragraph (a) to read as follows:

§ 1306.05 Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (*e.g.*, J.H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist, including a pharmacist employed by a central fill pharmacy, who fills a prescription not prepared in the form prescribed by these regulations.

* * * * *

■ 3. Section 1306.06 is revised to read as follows:

§ 1306.06 Persons entitled to fill prescriptions.

A prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy, a registered central fill pharmacy, or registered institutional practitioner.

■ 4. Section 1306.11 is amended by adding a new paragraph (d)(5)to read as follows:

§ 1306.11 Requirement of prescription.

* * * * *

(d) * * *

(5) Central fill pharmacies shall not be authorized under this paragraph to prepare prescriptions for a controlled substance listed in Schedule II upon receiving an oral authorization from a retail pharmacist or an individual practitioner.

* * * * *

■ 5. Section 1306.14 is amended by redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), and by adding a new paragraph (b) to read as follows:

§ 1306.14 Labeling of substances and filling of prescriptions.

* * * * *

(b) If the prescription is filled at a central fill pharmacy, the central fill pharmacy shall affix to the package a label showing the retail pharmacy name and address and a unique identifier, (*i.e.* the central fill pharmacy's DEA registration number) indicating that the prescription was filled at the central fill pharmacy, in addition to the information required under paragraph (a) of this section.

* * * * *

■ 6. Section 1306.15 is added to read as follows:

§ 1306.15 Provision of prescription information between retail pharmacies and central fill pharmacies for prescriptions of Schedule II controlled substances.

Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall also apply:

(a) Prescriptions for controlled substances listed in Schedule II may be transmitted electronically from a retail pharmacy to a central fill pharmacy including via facsimile. The retail pharmacy transmitting the prescription information must:

(1) Write the word ''CENTRAL FILL'' on the face of the original prescription and record the name, address, and DEA registration number of the central fill pharmacy to which the prescription has been transmitted and, the name of the retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

(2) Ensure that all information required to be on a prescription pursuant to Section 1306.05 of this part is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

(3) Maintain the original prescription for a period of two years from the date the prescription was filled;

(4) Keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

(b) The central fill pharmacy receiving the transmitted prescription must:

(1) Keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address, and DEA registration

number of the retail pharmacy transmitting the prescription;

(2) Keep a record of the date of receipt of the transmitted prescription, the name of the pharmacist filling the prescription, and the date of filling of the prescription;

(3) Keep a record of the date the filled prescription was delivered to the retail pharmacy and the method of delivery (*i.e.* private, common or contract carrier).

■ 7. Section 1306.24 is amended by redesignating the existing paragraphs (b) and (c) as paragraphs (c) and (d), and by adding a new paragraph (b) to read as follows:

§ 1306.24 Labeling of substances and filling of prescriptions.

* * * * *

(b) If the prescription is filled at a central fill pharmacy, the central fill pharmacy shall affix to the package a label showing the retail pharmacy name and address and a unique identifier, (*i.e.* the central fill pharmacy's DEA registration number) indicating that the prescription was filled at the central fill pharmacy, in addition to the information required under paragraph (a) of this section.

* * * * *

■ 8. Section 1306.26 is amended by adding a new paragraph (g) to read as follows:

§ 1306.26 Dispensing without prescription.

* * * * *

(g) Central fill pharmacies may not dispense controlled substances to a purchaser at retail pursuant to this section.

■ 9. Section 1306.27 is added to read as follows:

§ 1306.27 Provision of prescription information between retail pharmacies and central fill pharmacies for initial and refill prescriptions of Schedule III, IV, or V controlled substances.

Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall also apply:

(a) Prescriptions for controlled substances listed in Schedule III, IV or V may be transmitted electronically from a retail pharmacy to a central fill pharmacy including via facsimile. The retail pharmacy transmitting the prescription information must:

(1) Write the word ''CENTRAL FILL'' on the face of the original prescription and record the name, address, and DEA registration number of the central fill pharmacy to which the prescription has been transmitted and the name of the retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

(2) Ensure that all information required to be on a prescription pursuant to § 1306.05 of this part is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

(3) Indicate in the information transmitted the number of refills already dispensed and the number of refills remaining;

(4) Maintain the original prescription for a period of two years from the date the prescription was last refilled;

(5) Keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

(b) The central fill pharmacy receiving the transmitted prescription must:

(1) Keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address, and DEA registration number of the retail pharmacy transmitting the prescription;

(2) Keep a record of the date of receipt of the transmitted prescription, the name of the licensed pharmacist filling the prescription, and dates of filling or refilling of the prescription;

(3) Keep a record of the date the filled prescription was delivered to the retail pharmacy and the method of delivery (*i.e.* private, common or contract carrier).

Dated: June 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–15912 Filed 6–23–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[Docket No. DEA–198F2]

RIN 1117–AA57

Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and Its Salts) as List I Chemicals; Exclusions and Waivers

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: On October 17, 2001, DEA published a Final Rulemaking (66 FR 52670) in which DEA added red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals. This action was taken because of the use and importance of these chemicals in the illicit manufacture of methamphetamine (a Schedule II controlled substance).

As List I chemicals, handlers of these materials became subject to Controlled Substances Act (CSA) chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. DEA had determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

In order to provide flexibility for legitimate businesses, the October 17, 2001 rule established, on an interim basis, specific exclusions and waivers for chemical handlers engaged in certain activities. DEA has completed its review of comments pertaining to these interim provisions. This rulemaking finalizes these exclusions and waivers related to the handling of the listed chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts).

EFFECTIVE DATE: This final rule is effective June 24, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

On September 25, 2000, DEA published a Notice of Proposed Rulemaking proposing that red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) be made List I chemicals (65 FR 57577). On October 17, 2001, DEA published a Final Rulemaking (66 FR 52670) in which DEA added red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals. This action was taken because of the use and importance of these chemicals in the illicit manufacture of methamphetamine (a Schedule II controlled substance).

As List I chemicals, handlers of these materials became subject to CSA chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. DEA had determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

In order to provide flexibility for legitimate businesses, the October 17, 2001 rule also established, on an interim basis, specific exclusions and waivers for chemical handlers engaged in certain activities. DEA has completed its review of comments pertaining to these interim provisions. This rulemaking finalizes these exclusions and waivers related to the handling of the listed chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts).

What Interim Exclusions and Waivers Did the October 17, 2001 Rule Put Into Effect?

The October 17, 2001 rule established, on an interim basis, an exclusion from the definition of regulated transaction for domestic transactions involving red phosphorus and white phosphorus which are return shipments of residual quantities (from customer to producer) in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container). The rule also established, on an interim basis, a waiver from the registration requirement for such activity. Additionally, this final rule established, on an interim basis, a waiver from the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste treatment or disposal.

Why Did the October 17, 2001 Rule Place These Provisions Into Effect on an Interim Basis and Solicit Comments Pertaining to These Provisions?

DEA became aware of the potential need for these provisions via comments received in response to the September 25, 2000 Notice of Proposed Rulemaking (65 FR 57577) which initially proposed the control of red phosphorus, white phosphorus and hypophosphorous acid as List I chemicals. Since that original NPRM did not propose the exclusion and waivers, the public did not have an opportunity to comment on these issues.

In addition to deciding that exclusion/waivers were warranted, the DEA determined that good cause existed under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*)(APA) to forgo a Notice of Proposed Rulemaking for the exclusion and waivers. The APA states that an agency may forgo a NPRM if it is impracticable, unnecessary, or contrary to the public interest. To avoid unnecessary or temporary burdens on affected companies during the pendency of proceedings in this matter, DEA included as part of the October 17, 2001 rulemaking, an interim rule with request for comments regarding these issues.

The October 17, 2001 rule, therefore solicited comments only on those portions of the rule pertaining to the exclusion/waiver issues. DEA allowed 60 days for persons to comment on the exclusion and waivers. The rulemaking further indicated that after the close of this comment period, DEA would publish a final rule in the **Federal Register** to inform interested parties if changes were needed or if the exclusion and waivers would be adopted as originally stated.

What Comments, Submitted in Response to the September 25, 2000 NPRM, Led DEA To Create the Interim Exclusions and Waivers?

In response to the September 25, 2000 NPRM, two commentors requested clarification regarding the potential applicability of the regulation to end-users that utilize red phosphorus in their production processes. These commentors expressed concerns that an end-user may become subject to regulatory requirements because of distribution of excess material off-site for disposal purposes or because of the transfer of stock from one company location to another.

Under the proposed regulations, distributions of red phosphorus, white phosphorus and/or hypophosphorous acid (and its salts) for the purpose of disposal would be considered regulated transactions subject to all CSA chemical regulatory requirements including registration, recordkeeping and reporting. Additionally, the transfer of stock from one company location to another would require the registration of each location.

The CSA, pursuant to 21 U.S.C. 822(d), provides that the Attorney General may, by regulation, waive the requirement of registration of certain manufacturers, distributors or dispensers, if consistent with the public health and safety. Therefore, in order to reduce any burden on end-users of these chemicals, DEA agreed to waive the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste treatment or disposal.

This waiver of registration as it pertains to distributions for waste treatment or disposal applies only to the registration requirement, and all other CSA chemical regulatory controls such as recordkeeping and reporting will still apply.

Additionally, in response to the September 25, 2000 NPRM, two producers of elemental phosphorus requested that large transactions be exempted when shipped in reusable containers with capacities of 2500 or 2800 gallons. These commentors stated that these bulk containers are exclusively rail cars or large intermodal tank containers specially designed to enable safe transport. After unloading, the bulk containers are shipped back to the producers (filled with water for safety reasons due to the remaining phosphorus in the container) for reuse. Therefore, the commentors expressed concerns that their other sites and customers would possibly be subject to recordkeeping and registration requirements due to the return shipments. The commentors further stated that ''safeguards already include recordkeeping, incident reporting, tamper-detection, sealed valves, and use of bulk reusable containers''. The commentors believe that ''registering and tracking these types of shipments back and forth with DEA would provide no additional benefit and would impose an undue burden on DEA, our operations and our customers.''

DEA agreed that return shipments of residual quantities should not be impacted by this regulation. DEA also recognized the difficulty in quantifying the residual amounts of red and white phosphorus contained in these rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container). The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of regulated transaction. Therefore DEA issued an interim rule excluding from the definition of regulated transaction (21 CFR 1310.08(j)), domestic transactions involving red phosphorus and white phosphorus which are return shipments of residual quantities (from customer to producer) in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container). As such, these return shipment transactions will not require recordkeeping. Additionally, DEA issued an interim rule waiving the

registration requirement pursuant to 21 CFR 1309.24(g) for any person whose distribution of red phosphorus or white phosphorus is limited to residual quantities of chemical returned to the producer in reusable rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container).

The October 17, 2001 rulemaking made it clear that the exclusion and waiver pertain only to these return shipments. Manufacturers shall still be subject to registration, recordkeeping, reporting and other CSA chemical regulatory requirements pertaining to the production and distribution of listed chemicals to their customers. The customers will not be subject to registration or recordkeeping requirements for the return of residual quantities in reusable containers to the producer. However, should these customers re-distribute any of the received material (other than the return of reusable containers to the producer), they shall be subject to all CSA chemical regulatory requirements.

What Comments Pertaining to the Interim Exclusion and Waivers Were Received in Response to the October 17, 2001 Rule? What Final Action Is DEA Taking Regarding the Exclusion and Waivers?

Two comments were received in response to the exclusion from the definition of regulated transaction of domestic transactions involving red phosphorus and white phosphorus which are return shipments of residual quantities (from customer to producer) in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container). These two comments requested that the exclusion and waiver from registration be expanded to include domestic and international shipments.

DEA does not believe that such international shipments pose a more substantial risk of diversion than domestic transactions. Therefore, in response to these comments, DEA is expanding the exclusion and waiver in 21 CFR 1309.24(g) and 21 CFR 1310.08(j) to include domestic and international transactions involving red phosphorus and white phosphorus which are return shipments of residual quantities (from customer to producer) in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2500 gallons in a single container). The registration requirement for persons engaged in such activity will also be waived.

The proposed regulatory language in 21 CFR 1309.24(g) and 21 CFR 1310.08(j) utilized the term ''isotainer.'' It is DEA's understanding that an isotainer is an intermodal tank container which conforms to International Standards Organization specifications. Therefore DEA has chosen to modify 21 CFR 1309.24(g) and 21 CFR 1310.08(j) to clarify that the provisions pertain to ''intermodal tank containers which conform to International Standards Organization specifications.'' This change does not modify the intended meaning of these paragraphs.

Each of these two comments also requested clarification regarding the term ''residual quantities.'' In response to these comments, DEA understands that when a customer purchases rail cars and intermodal tank containers of red phosphorus and white phosphorus, it is not possible to remove 100 percent of the material during the unloading operation. Therefore, these ''emptied'' containers, in fact, contain residual quantities of phosphorus. The term ''residual quantities'' refers to those quantities of phosphorus routinely remaining in ''emptied'' rail cars and intermodal tank containers under normal industry unloading procedures and consistent with normal industry practice.

One commentor wanted to ensure that DEA understands that return shipments of ''emptied'' rail cars and intermodal tank containers holding ''residual quantities'' of phosphorus, also contain widely varying amounts of water and/or nitrogen which are added to these rail cars and intermodal tank containers as a safety precaution since the phosphorus is spontaneously combustible when exposed to air. In response to this comment, DEA acknowledges that it understands that this is normal industry practice.

One commentor also stated that the phrase ''whose distribution of red and white phosphorus is limited solely to residual quantities of chemicals returned to the producer'' could be misinterpreted to mean that the waiver does not apply if the person meets all the conditions but also is involved in other types of distributions which qualify for a waiver of registration (*i.e.* disposal or intra-company transfers).

As clarification, DEA wishes to make it clear that if the registration requirement has been waived for each and every activity in which a person is engaged, then that person is not required to register. 21 CFR 1309.24(f) waives the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste treatment or disposal. 21 CFR 1309.24(g) waives the registration requirement for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container). In providing these waivers, DEA intended to waive the registration requirement for persons engaged in any of these waived activities, as long as they do not engage in other regulated activities which require registration. 21 CFR 1309.24(i) clarifies that ''If any person exempted under paragraph (b), (c), (d), (e), (f) or (g) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by Section 1309.21 of this part.''

One commentor also requested that DEA omit the term ''residual quantities'' completely and therefore provide an exclusion/waiver in the case that ''a partial shipment be returned from the customer back to the producer.'' DEA wishes to be clear on this point. The exclusion and waiver are not intended to exempt any partial shipments from customer back to producer. The undocumented transfer of such material poses a diversion risk. These transactions shall therefore be subject to all chemical regulatory control provisions of the CSA.

DEA did not receive any comments relating specifically to the interim waiver from the registration requirement (as specified in 21 CFR 1309.24(f)) for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste treatment or disposal. Since no comments regarding this waiver were received, this waiver is being adopted as originally

stated in the October 17, 2001 rulemaking.

DEA is therefore finalizing 21 CFR 1309.24(f) to provide that ''The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste treatment or disposal''.

Certifications

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed it, and by approving it certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This final rule finalizes an interim exclusion from the definition of regulated transaction for return shipments of residual quantities of red phosphorus and white phosphorus in rail cars and intermodal tank containers, as well as three waivers of the requirement of registration for certain persons handling the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts). Finalization of the interim exclusion and waivers reduces the regulatory burden for those persons.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(d)(1)), an agency may make a rulemaking effective before the required 30 days if the rule ''grants or recognizes an exemption or relieves a restriction.'' DEA finds good cause to make this rule effective immediately upon publication. This rule provides an exclusion from the definition of regulated transaction and waives the requirement of registration for certain persons, thereby reducing the regulatory burden for those persons.

Executive Order 12866

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

■ For reasons set out above, 21 CFR parts 1309 and 1310 are amended as follows:

PART 1309—[AMENDED]

■ 1. The authority citation for Part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

■ 2. In §1309.24, paragraph (g) is revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

* * * * *

(g) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container).

* * * * *

PART 1310—[AMENDED]

■ 1. The authority citation for Part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

■ 2. Section 1310.08 is amended by revising paragraph (j) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(j) Domestic and international return shipments of reusable containers from customer to producer containing residual quantities of red phosphorus or white phosphorus in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container).

Dated: May 28, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–15788 Filed 6–23–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9062]

RIN 1545–BB83

Assumption of Partner Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding a partnership's assumption of a partner's liabilities in a transaction occurring after October 18, 1999, and before June 24, 2003. These temporary regulations affect partners and partnerships and clarify the tax treatment of an assumption by a partnership of a partner's liability. The text of these

temporary regulations also serves as the text of the proposed regulations set forth in a notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 24, 2003.

Applicability Date: For date of applicability, *see* § 1.752–6T(d).

FOR FURTHER INFORMATION CONTACT: Horace Howells (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

With certain exceptions, no gain or loss is recognized if property is transferred to a corporation solely in exchange for stock of the corporation, and, immediately after the exchange, the transferors control the corporation. If, however, the transferee corporation assumes a liability of the transferor, then, under section 358(d), the transferor's basis in the stock received in the exchange is reduced by the amount of that liability. If the amount of the liability exceeds the transferor's basis in the property transferred to the corporation, then the transferor recognizes gain under section 357(c)(1). Under section 357(c)(3), a liability the payment of which would give rise to a deduction or that would be described in section 736(a) (regarding payments to a retiring partner) is not taken into account in applying section 357(c)(1), unless the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

Under section 752(a) and (b), similar rules apply where a partnership assumes a liability from a partner or a partner contributes property to a partnership subject to a liability. The difference between the amount of the liability and the partner's share of that liability after the partnership's assumption is treated as a distribution of money, which reduces the partner's basis in the partnership interest and may cause the partner to recognize gain. There is no statutory or regulatory definition of liabilities for purposes of section 752. Case law and revenue rulings, however, have established that, as under section 357(c)(3), the term *liabilities* for this purpose does not include liabilities the payment of which would give rise to a deduction, unless the incurrence of the liability resulted in the creation of, or an increase in, the basis of property. Rev. Rul. 88–77 (1988–2 C.B. 128); *Salina Partnership LP, FPL Group, Inc.* v. *Commissioner,* T.C. Memo 2000–352.

On December 21, 2000, as part of the Community Renewal Tax Relief Act of 2000 (Appendix G of H.R. 4577, Consolidated Appropriations Act, 2001) Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001) (the Act), Congress enacted section 358(h) to address certain situations where property was transferred to a corporation in exchange for both stock and the corporation's assumption of certain obligations of the transferor. In these situations, transferors took the position that the obligations were not liabilities within the meaning of section 357(c) or that they were described in section 357(c)(3), and, therefore, the obligations did not reduce the basis of the transferor's stock. These assumed obligations, however, did reduce the value of the stock. The transferors then sold the stock and claimed a loss. In this way, taxpayers attempted to duplicate a loss in corporate stock and to accelerate deductions that typically are allowed only on the economic performance of these types of obligations.

Section 358(h) addresses these transactions by requiring that, after application of section 358(d), the basis in stock received in an exchange to which section 351, 354, 355, 356, or 361 applies be reduced (but not below the fair market value of the stock) by the amount of any liability assumed in the exchange. Exceptions to section 358(h) are provided where: (1) The trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange; or (2) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange. The term *liability* for purposes of section 358(h) includes any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Internal Revenue Code (Code).

Congress recognized that taxpayers were attempting to use partnerships to carry out the same types of abuses that section 358(h) was designed to deter. Therefore, in section 309(c) and (d)(2) of the Act, Congress directed the Secretary to prescribe rules to provide ''appropriate adjustments under subchapter K of chapter 1 of the Code to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) * * * in transactions involving partnerships.'' This statutory provision does not specify whether the exceptions in section 358(h)(2) should apply. The only cross-reference to section 358(h) in this statutory provision is to section 358(h)(3), which defines the term *liability.* Under the statute, these rules are to ''apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.''

In response to this directive, these temporary regulations provide rules to prevent the duplication and acceleration of loss through the assumption by a partnership of a liability of a partner in a nonrecognition transaction. Section 1.752–6T adopts the approach of section 358(h), with some modifications, for transactions involving partnership assumptions of partners' liabilities occurring after October 18, 1999, and before June 24, 2003. The modifications made to the approach of section 358(h) were to provide rules to conform the application of section 358(h) to partnerships and, as discussed below, to prevent abuse.

Prior to the enactment of Code section 358(h) and section 309(c) and (d)(2) of the Act, the lack of specific rules addressing the treatment of liabilities upon the transfer of property to a corporation or a partnership led to interpretations of then existing law that failed to reflect the true economics of certain transactions. In some cases, taxpayers continued to assert these interpretations even after the enactment of these statutory provisions. For example, in a transaction addressed in Notice 2000–44 (2000–2 C.B. 255), a taxpayer purchases and writes economically offsetting options and then purports to create substantial positive basis by transferring those option positions to a partnership. On the disposition of the partnership interest, the liquidation of the partner's interest in the partnership, or the taxpayer's sale or depreciation of distributed partnership assets, the taxpayer claims a tax loss, even though the taxpayer has incurred no corresponding economic loss.

Treasury and the IRS believe that it is appropriate to prohibit partners and partnerships engaging in transactions described in, or transactions that are substantially similar to the transactions described in, Notice 2000–44 from relying on the exception in section 358(h)(2)(B). The exceptions to section 358(h) were intended to exclude from the application of section 358(h) ordinary business transactions. They were not intended to allow taxpayers to engage in transactions that create noneconomic tax losses.

The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in

the Proposed Rules section of this issue of the **Federal Register** (§ 1.752–6 of the proposed Income Tax Regulations). As part of that notice of proposed rulemaking, § 1.752–7 of the proposed Income Tax Regulations is being issued to carry out the directive of section 309(c) of the Act with respect to assumptions of liabilities occurring on or after June 24, 2003. The proposed regulations conform the application of section 358(h) to partnerships by providing a basis reduction upon an event that separates the partner from the liability rather than on assumption of the liability by the partnership and by adopting certain exceptions. Section 1.752–7(j) of the proposed Income Tax Regulations allows a partnership to elect to apply § 1.752–7 of the proposed Income Tax Regulations and related proposed provisions to assumptions of liabilities occurring after October 18, 1999, and before June 24, 2003 in lieu of applying § 1.752–6T of the temporary Income Tax Regulations to this period.

Explanation of Provisions

Under these temporary regulations, if a partnership assumes a liability of a partner (other than a liability to which section 752(a) and (b) apply) in a transaction described in section 721(a), then, after application of section 752(a) and (b), the partner's basis in the partnership is reduced (but not below the adjusted value of such interest) by the amount (determined as of the date of the exchange) of the liability. For this purpose, the term *liability* includes any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for Federal tax purposes. The adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under §§ 1.752–1 through 1.752–5.

The exceptions under section 358(h) applicable to corporate assumptions of shareholder liabilities generally apply for purposes of these temporary regulations. Therefore, a reduction in a partner's basis generally is not required, under these regulations, after an assumption of a liability by a partnership from that partner if: (1) The trade or business with which the liability is associated is transferred to the partnership assuming the liability as part of the transaction, or (2) substantially all of the assets with which the liability is associated are contributed to the partnership assuming the liability.

However, in the case of a partnership transaction described in, or a partnership transaction that is substantially similar to the transactions described in, Notice 2000–44, the exception for contributions of ''substantially all of the assets with which the liability is associated'' does not apply.

Effective Date

In accordance with the directive in section 309(c) and (d)(2) of the Act, these temporary regulations apply to assumptions of liabilities occurring after October 18, 1999, and before June 24, 2003. Under section 7805(b)(6), the Secretary may provide that any regulation may take effect in accordance with a legislative grant from Congress authorizing the Secretary to prescribe the effective date for such regulation. In addition, under section 7805(b)(3), the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. The Secretary has determined that a later effective date is inappropriate. Therefore, these regulations are being applied retroactively in accordance with the directive from Congress in section 309(d)(2) of the Act and to prevent abuse.

Special Analyses

These temporary regulations are necessary to prevent abusive transactions of the type described in the Notice 2000–44. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3).

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Horace Howells, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.752–6T also issued under Pub. L. 106–554, 114 Stat. 2763, 2763A–638 (2001) * * *

■ 2. Section 1.752–6T is added to read as follows:

1.752–6T Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003 (temporary).

(a) *In general.* If, in a transaction described in section 721(a), a partnership assumes a liability (defined in section 358(h)(3)) of a partner (other than a liability to which section 752(a) and (b) apply), then, after application of section 752(a) and (b), the partner's basis in the partnership is reduced (but not below the adjusted value of such interest) by the amount (determined as of the date of the exchange) of the liability. For purposes of this section, the adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under §§ 1.752–1 through 1.752–5.

(b) *Exceptions*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the exceptions contained in section 358(h)(2)(A) and (B) apply to this section.

(2) *Transactions described in Notice 2000–44.* The exception contained in section 358(h)(2)(B) does not apply to an assumption of a liability (defined in section 358(h)(3)) by a partnership as part of a transaction described in, or a transaction that is substantially similar to the transactions described in, Notice 2000–44 (2000–2 C.B. 255). See § 601.601(d)(2) of this chapter.

(c) *Example.* The following example illustrates the principles of paragraph (a) of this section:

Example. In 1999, A and B form partnership PRS. A contributes property with a value and basis of $200, subject to a nonrecourse debt obligation of $50 and a fixed or contingent obligation of $100 that is not a liability to which section 752(a) and (b) applies, in exchange for a 50% interest in PRS. Assume that, after the contribution, A's share of partnership liabilities under §§ 1.752–1 through 1.752–5 is $25. Also assume that the $100 liability is not

associated with a trade or business contributed by A to PRS or with assets contributed by A to PRS. After the contribution, A's basis in PRS is $175 (A's basis in the contributed land ($200) reduced by the nonrecourse debt assumed by PRS ($50), increased by A's share of partnership liabilities under §§ 1.752–1 through 1.752–5 ($25)). Because A's basis in the PRS interest is greater than the adjusted value of A's interest, $75 (the fair market value of A's interest ($50) increased by A's share of partnership liabilities ($25)), paragraph (a) of this section operates to reduce A's basis in the PRS interest (but not below the adjusted value of that interest) by the amount of liabilities described in section 358(h)(3) (other than liabilities to which section 752(a) and (b) apply) assumed by PRS. Therefore, A's basis in PRS is reduced to $75.

(d) *Effective dates*—(1) *In general.* This section applies to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003.

(2) *Election to apply § 1.752–7.* The partnership may elect, under provisions of REG–106736–00 in 2003–28 I.R.B. (*see* § 601.601(d)(2) of this chapter) to apply those provisions and related Income Tax Regulations to all assumptions of liabilities by the partnership occurring after October 18, 1999, and before June 24, 2003. Provisions of REG–106736–00 in 2003–28 I.R.B. (*see* § 601.601(d)(2) of this chapter) describe the manner in which the election is made.

Approved: May 7, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–15281 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–03–059]

RIN 1625–AA–09

Drawbridge Operation Regulations; Albemarle and Chesapeake Canal, AICW, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the existing S168 (Great Bridge) swing-span bridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway (AICW) mile 12.0, at Chesapeake, Virginia to allow the bridge owner to conduct needed construction of the new S168 (Great Bridge) lift-span bridge. The work will be performed on four three-day closure periods to navigation.

DATES: This deviation is effective from 8 a.m. on July 22, 2003, to 8 a.m. on August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: Tidewater Skanska Corporation (TSC), on behalf of the bridge owner (U.S. Army Corps of Engineers), has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.997(g) which requires the drawbridge to open on signal, except that, from 6 a.m. to 7 p.m., the draw need be opened only on the hour. If any vessel is approaching the bridge and cannot reach the draw exactly on the hour, the draw tender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Vessels in an emergency condition, which presents danger to life or property, shall be passed at any time. TSC has requested the temporary deviation to close the existing S168 (Great Bridge) swing-span bridge to navigation to erect the new S168 (Great Bridge) lift-span bridge.

The work involves the installation of bascule spans, formation of gearing and operation of electrical controls for the new S168 (Great Bridge) lift-span bridge. To facilitate this construction, the existing S168 (Great Bridge) swing-span bridge will be locked in the closed position to vessels on four three-day closure periods from 8 a.m. to 8 a.m., from July 22–25 (closure 1); from August 5–8 (closure 2); from August 12–15 (closure 3); and from August 19–22, 2003 (closure 4). During this period, the work requires completely immobilizing the operation of the swing span in the closed position to vessels. At all other times, the bridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.997(g). In the event of inclement weather, the alternate start dates are: July 28 (closure 1); August 11 (closure 2); August 14 (closure 3); and August 21, 2003 (closure 4). Calling the project superintendent at (757) 672–4829 will provide for emergency opening requests.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. The temporary deviation allows the S168 (Great Bridge) swing-span bridge across the Albemarle and Chesapeake Canal, AICW, mile 12.0, at Chesapeake, Virginia, to remain closed to navigation on four three-day closure periods: from July 22–25 (closure 1); from August 5–8 (closure 2); August 12–15 (closure 3); and from August 19–22, 2003 (closure 4), from 8 a.m. to 8 a.m. In the event of inclement weather, the alternate start dates are: July 28 (closure 1); August 11 (closure 2); August 14 (closure 3); and August 21, 2003 (closure 4).

Dated: June 12, 2003.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Section, Fifth Coast Guard District.

[FR Doc. 03–15926 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–01–002]

Safety Zone; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during July 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 12:01 a.m. (eastern time) on July 1, 2003, to 11:59 p.m. (eastern time) on July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, MI at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port

Detroit Zone during July 2003. The following safety zones are in effect for fireworks displays occurring in the month of July 2003:

• *City of Wyandotte Fireworks, Wyandotte, MI.*

Location. The waters off the breakwall between Oak & Van Alstyne St., Detroit River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°12′ N, 083°09′ W.

Enforcement period. July 2, 2003, from 7 p.m. until 11 p.m.

• *Caseville Fireworks, Caseville, MI.*

Location. The waters off the Caseville breakwall, Saginaw River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°55′ N, 083°17′ W.

Enforcement period. July 5, 2003, from 7 p.m. until 11 p.m.

• *Lake Erie Metro Park Fireworks.*

Location. The waters off the Brownstown Wave Pool area, Lake Erie bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°03′ N, 083°11′ W.

Enforcement period. July 5, 2003, from 8 p.m. until 11 p.m.

• *Trenton Fireworks Display, Trenton, MI.*

Location. All waters of the Trenton Channel within a 300-yard radius of the fireworks barge in approximate position 42°09′ N, 083°10′ W, about 200 yards east of Trenton, in the Trenton Channel.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Port Sanilac Fireworks, Port Sanilac, MI.*

Location. The waters off the South Harbor breakwall, Lake Huron bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°25′ N, 082°31′ W.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *City of Ecorse Water Festival Fireworks, Ecorse, MI.*

Location. All waters of the Ecorse Channel within a 300-yard radius of the fireworks barge in approximate position 42°14′ N, 083°09′ W, at the northern end of Mud Island, Ecorse.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Port Austin Fireworks.*

Location. The waters off the Port Austin breakwall on Lake Huron, bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°03′ N, 082°40′ W.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Tawas City 4th of July Fireworks, Tawas, MI.*

Location. The waters off the Tawas City Pier, Lake Huron bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°13′ N, 083°30′ W.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.*

Location. All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°36′ N, 082°47′ W, about 400 yards east of Belle Maer Harbor, Lake St. Clair—Anchor Bay.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Grosse Ile Yacht Club Fireworks, Grosse Ile, MI.*

Location. The waters off the Grosse Ile Yacht Club deck, Detroit River bounded by the arc of a circle with a 300-yard radius with its center approximately located at 42°05′ N, 083°09′ W.

Enforcement period. July 4, 2003, from 8 p.m. to 11 p.m.

• *Oscoda Township Fireworks.*

Location. The waters off the DNR Boat Launch at the mouth of the Ausable River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°19′ N, 083°25′ W.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.*

Location. All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°25′ N, 082°52′ W, about 400 yards east of the Grosse Pointe Yacht Club seawall, Lake St. Clair.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *City of St. Clair Fireworks.*

Location. The waters off St. Clair City Park, St. Clair River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°49′ N, 082°29′ W.

Enforcement period. July 4, 2003, from 8 p.m. until 12 a.m.

• *Algonac Pickerel Tournament Fireworks, Algonac, MI.*

Location. All waters of the St. Clair River within a 300-yard radius of the fireworks barge in approximate position 42°37′ N, 082°32′ W, between Algonac and Russell Island, St. Clair River—North Channel.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Lexington Independence Festival Fireworks, Lexington, MI.*

Location. All waters of Lake Huron within a 300-yard radius of the fireworks barge in approximate position 43°13′ N, 082°30′ W, about 300 yards east of the Lexington breakwall, Lake Huron.

Enforcement period. July 4, 2003, from 8 p.m. until 11 p.m.

• *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.*

Location. All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°23′ N, 082°52′ W, about 300 yards east of Grosse Pointe Farms.

Enforcement period. July 5, 2003, from 8 p.m. to 11 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: June 10, 2003.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–15896 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–142, 144–200330, FRL–7516–1]

Approval and Promulgation of Implementation Plans: Revisions to the Kentucky Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky on February 28, 2003. This submittal revises the new source set-aside program by altering the methodology for distributing nitrogen oxides allowances. Rather than grant allowances, the Commonwealth of Kentucky will sell them. This revision also includes clarification language and changes to definitions.

EFFECTIVE DATE: This final rule is effective on July 24, 2003.

ADDRESSES: Copies of Kentucky's submittals and other information relevant to this action are available for

inspection during normal business hours at the following addresses:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601–1403.

Persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–142.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 28, 2003, the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet submitted revisions to EPA that revises definitions and the new source set-aside program by altering the methodology for distributing nitrogen oxides (NO_X) allowances. The Commonwealth of Kentucky has revised their new source set-aside program and will sell the allowances that were previously reserved to allocate to new electric generating units (EGUs). The Commonwealth will continue to reserve an established percentage of the non-EGU budget for new non-EGU units. This is a clarification from the proposal notice in which we previously indicated that the new source set-asides for both EGUs and non-EGUs would be sold.

I. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. A detailed description of this SIP revision and EPA's rationale for approving it was provided in the proposed notice and will not be restated here. No significant or adverse comments were received on EPA's proposal.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 6, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(c) is amended by revising entries for ''401 KAR 51:001'' and ''401–KAR–51:160'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *.

EPA–APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
Chapter 51 New Source Requirements; Non-Attainment Areas				
401 KAR 51:001	Definitions	12/18/02	6/24/03	[*Insert Federal Register cite for this* publication].
*	*	*	*	*
401 KAR 51:160	NO_X Requirements for Large Utility and Industrial Boilers.	12/18/02	6/24/03	[*Insert Federal Register cite for this publication*].

* * * * *

[FR Doc. 03–15660 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA286–0404B; FRL–7517–9]

Interim Final Determination That the State of California Has Corrected Deficiencies and Stay and Deferral of Sanctions; San Joaquin Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination that the State of California has corrected deficiencies for which a sanctions clock began on December 10, 2001, based on a proposed approval of revisions to the San Joaquin Valley ozone nonattainment area portion of the California State Implementation Plan (SIP) and an associated proposed finding published elsewhere in today's **Federal Register**. The revisions concern commitments for adoption of control measures for attaining the 1-hour ozone national ambient air quality standard. This action will stay the 2:1 offset sanctions that was imposed in the area on June 10, 2003 and defer the imposition of the highway sanctions.

DATES: This interim final determination is effective on June 24, 2003. However, comments will be accepted until July 24, 2003.

ADDRESSES: Mail comments to Doris Lo at *lo.doris@epa.gov* or at U.S. Environmental Protection Agency (Air–2), 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted SIP revision at the following locations by appointment:

Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA

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

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972–3959.

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

I. Background

On January 8, 1997 (62 FR 1149), EPA published a final approval of the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the 1994 California ozone SIP. This SIP included, among other things, a commitment to adopt and implement 19 local control measures. On November 8, 2001 (66 FR 56476), EPA found that the SJVUAPCD had failed to implement six of the 19 control measure commitments. This finding began a sanctions clock for imposition of 2:1 offset sanctions 18 months after December 11, 2001, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA). The offset sanction was imposed on June 11, 2003.

On December 6, 2001, SJVUAPCD adopted a revised set of control measure commitments that was intended in part to address EPA's previous finding regarding non-implementation of the SIP. On June 11, 2002, the State submitted these revised commitments to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal and have proposed to find that adoption and implementation of specified rules in the submittal and 14 CCR 1774 and 13 CCR 2450–2466 correct the deficiencies that resulted in the previous finding regarding non-implementation.

II. EPA Action

Based on today's proposed approval and finding, we believe that it is more likely than not that the State has corrected the deficiencies that resulted in the non-implementation finding that started the offset and highway sanctions clocks. We are therefore taking final rulemaking action, effective on publication, to stay the offset sanctions and defer imposition of the highway sanctions that were triggered by our November 8, 2001 finding.

EPA is providing the public with an opportunity to comment on this final action. If comments are submitted that change our assessment described in this final determination and the proposed approval of the revised commitments and associated finding, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval and finding.

Because EPA has preliminarily determined that the State has corrected the deficiencies that resulted in EPA's finding of non-implementation, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action and associated finding, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to keep applied sanctions in place or to impose additional sanctions when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal and associated finding. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2003.

Jack P. Broadbent,

Acting Regional Administrator, Region IX.

[FR Doc. 03–15898 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA124–4079a; FRL–7517–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the municipal solid waste (MSW) landfill section 111(d) plan (the plan) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The plan establishes nonmethane organic compounds (NMOC) emissions limits for existing landfills in the Commonwealth of Pennsylvania, excluding the geographic areas of Allegheny County and the City of Philadelphia. The plan was submitted to fulfill requirements of the Clean Air Act (the Act).

DATES: This final rule is effective August 25, 2003 without further notice, unless EPA receives adverse written comment by July 24, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania

19103. Electronic comments should be sent either to *wilkie.walter@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to section 111(d) of the Act. Section 111(d) requires that the State submit its plan no later than nine months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the MSW landfill EG at 40 CFR part 60, subpart Cc, and the related new source performance standard (NSPS), subpart WWW.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. A designated pollutant means any air pollutant, emissions of which are subject to a standard of performance for new sources but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a NSPS that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (*i.e.*, the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B (40 CFR 60.23 through 60.26), as applicable.

States were required to submit their MSW landfill 111(d) plans or negative declarations to EPA on December 12, 1996, pursuant to the provisions of section 111(d) of the Act and 40 CFR part 60, subpart B, and the March 12, 1996 promulgated MSW landfill EG, subpart Cc. Since that time, EPA has promulgated three separate landfill rule amendments, and has proposed a fourth. The promulgated amendments were published in the **Federal Register** on June 16, 1998, February 24, 1999, and April 10, 2000. A fourth set of amendments was published and proposed in the **Federal Register** on May 23, 2002. Also, EPA has promulgated a Federal plan , 40 CFR part 62, subpart GGG, (November 8, 1999) for existing landfills located in states, such as Pennsylvania, without an approved plan. The Federal plan acts as a place holder until the state plan is approved and becomes effective.

The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOC), other organic compounds, methane, and hazardous air pollutants. To determine whether emissions control is required, the nonmethane organic compounds (NMOC) emission's rate is determined as a surrogate for the MSW landfill emissions rate. Thus, NMOC are considered collectively as the designated pollutant. The designated facility, which is subject to the EG, is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991. For any landfill with a design capacity and emission rate that exceeds the EG applicability thresholds, the landfill owner/operator is required to install a landfill gas collection and control system. The system must be designed and operated to reduce collected NMOC concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million or less, as determined using the test methods specified under § 60.754(d).

On July 1, 1997, the Commonwealth of Pennsylvania submitted its 111(d) plan for MSW landfills for implementing the EG requirements. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of the PADEP submittal with respect to those requirements. More detailed information on the requirements for an approvable plan and the Commonwealth's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

II. Review of the Pennsylvania MSW Landfill Plan

EPA has reviewed the Pennsylvania section 111(d) plan for existing MSW landfills in the context of applicable requirements of 40 CFR part 60, subparts B, Cc, and WWW; and 40 CFR part 62, subpart GGG, as follows:

A. Identification of Enforceable State Mechanisms Selected by the State for Implementing the EG

The plan identifies a total of sixteen (16) designated landfills. In order to implement the requirements of the plan, the PADEP issued a Federally enforceable state operating permit (FESOP) to each of the sixteen landfills. Each FESOP permit incorporates by reference (IBR) all applicable EG and related NSPS requirements under the 111(d) plan. In addition, all designated landfills are required to complete a compliance test no later than 180 days of the final compliance date. Each submitted FESOP meets the requirements of 40 CFR 60.24(a) for an enforceable mechanism.

B. Demonstration of Legal Authority

PADEP's Chief Counsel submitted an opinion that PADEP has the statutory and regulatory authority under its State operating permits programs to implement applicable requirements under section 111(d) of the Act. A copy of the Commonwealth's Air Pollution Control Act (35 P.S. 4001, *et seq.*) and applicable operating permits regulations, under 25 Pa. Code Chapter 127, were submitted. This meets the requirements of 40 CFR 60.26(a), (b), and (c).

C. Inventory of MSW Landfills in the Pennsylvania, Excluding Allegheny County and the City of Philadelphia

The PADEP inventory identifies twenty-four (24) existing landfills, excluding those in the geographical areas of Allegheny County and the City of Philadelphia. Of the twenty-four noted landfills, sixteen (16) are identified as designated landfills and eight (8) are identified as having a capacity of less than 2.5 million megagrams of design capacity. The submitted PADEP landfill inventory of sources meets the requirement of 40 CFR 60.25(a).

D. Inventory of Emissions From MSW Landfills in Pennsylvania, Excluding Allegheny County

The Pennsylvania 111(d) plan contains information on estimated NMOC emission rates in tons per year (TPY) for each existing landfill. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitation for MSW Landfills

Each submitted FESOP contains the emission limitations established in the EG. Existing landfills having design capacities equal to or greater than 2.5 million megagrams (Mg) by mass and 2.5 million cubic meters (m3) by volume, and a NMOC emissions rate of 50 Mg/year or greater, must install a gas collection and control system. This and other FESOP provisions meet the requirement of 40 CFR 60.24(c) that the State plan include emission standards that are no less stringent than the EG.

F. A State Process of Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The submitted Pennsylvania 111(d) plan describes a process for the review and approval of site-specific design plans for gas collection and control systems. The process is described in detail in the plan narrative, section VI, Process for Review of Design Plans. The described process meets the requirements of 40 CFR 60.33c(b).

G. Compliance Schedules

The final compliance dates and enforceable increments of progress of the plan are linked to the date when both the facility capacity and NMOC emission rate equal or exceed the EG applicability thresholds. A State section 111(d) plan must include an expeditious compliance schedule that owners and operators of designated MSW landfills must meet in order to comply with the requirements of the plan. The EG at 40 CFR 60.36c provide that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 30 months after triggering the 50 Mg/yr NMOC emissions rate applicability threshold. Subpart B, 40 CFR 60.24(e)(1), provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance. Twelve (12) of the designated landfill FESOPs contain compliance schedules, including increments of progress, that requires final compliance within 30 months after permit issuance, or 30 months after the calculated annual NMOC emissions rate equals or exceeds 50 Mg/yr. The FESOPs for three (3) other designated landfills, with already installed gas collection and control systems, require final compliance on the date when the initial or first annual capacity and NMOC emissions rate reports both show an exceedance of the EG applicability thresholds. These three landfills are identified as: (1) Arden-East Valley, permit No. 63–322–001; (2) Valley, permit No. 65–322–001A; and (3) Arnoni, permit No. 63–322–003A. For a fourth landfill, Lycoming County, permit No. 41–322–01, with reported exceedances of both EG applicablility thresholds for capacity and NMOC emissions rate, final compliance is required on or before March 10, 1998. Each submitted FESOP establishes expeditious interim and/or final compliance dates, and meets the requirements of 40 CFR 60.24(e)(1), and 60.36c, and the Federal landfill plan.

H. Testing, Monitoring, Recordkeeping, and Reporting Requirements

Each FESOP contains provisions for testing, monitoring, reporting, and recordkeeping. Each FESOP meets the requirements of 40 CFR 60.34c, testing and monitoring, and 60.35c, reporting and recordkeeping requirements.

I. Submittal of Title V Applications

Owners/operators of affected landfills are subject to PADEP's Title V rule, section 127.505, Initial application submittal of Title V facilities. These requirements are consistent with the EG and the Federal landfill plan (64 FR 60689).

J. A Record of Public Hearing on the State Plan

Public hearings for the Pennsylvania plan were held on June 6, 9, and 10, 1997 in Harrisburg, Conshohocken, and Pittsburgh, respectively. Each FESOP was subject to public notice and then an opportunity for a public hearing. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d) plan has been met by the PADEP.

K. Provision for Annual State Progress Reports to EPA

The PADEP will submit to EPA on an annual basis a report which details its progress in the enforcement of the 111(d) plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of the plan by EPA.

III. Final Action

PADEP has submitted a 111(d) plan that conforms to the June 16, 1998 EG, as amended and the Federal plan. 25 Pa. Code section 127.463 requires designated landfill owners/operators with FESOPs to comply with promulgated requirements, including meeting the applicable Clean Air Act standards or regulations within the time frame required by those standards or regulations, regardless of whether the permit is revised. The PADEP confirmed this in a June 30, 1997 opinion from its Chief Counsel, and a subsequent September 5, 2002 letter to EPA.

When considering the plan's due date for submittal of the initial landfill design capacity and emissions rate reports and the related final compliance date, it is important to note that 40 CFR part 60, subpart B, § 60.24(g)(2) allows states to impose compliance schedules requiring final compliance at earlier times than those specified in the EG. Accordingly, the PADEP has the authority to impose earlier compliance times, and thus reporting requirements than those stipulated in the EG and Federal plan. Also, each FESOP contains a provision that states for purposes of meeting the section 111(d) Clean Air Act requirements, the terms and conditions of the permit, relating to 40 CFR part 60, subpart Cc, are nonexpiring with respect to the requirements of the EG and the section 111(d) plan. Therefore, expired FESOPs, which are part of the plan and include applicable section 111(d) requirements, including compliance schedules and reporting dates, are still valid and enforceable for purposes of the plan.

EPA is taking no action to approve permit terms and conditions that imply that a facility is actually in compliance with section 111(d) plan requirements, such as conditions 30 and 34 under the Lycoming County landfill permit, No. 41–322–01. Such terms and conditions are outside the scope of EPA's section 111(d) plan approval authority.

Based on the rationale discussed above, EPA is approving the Pennsylvania 111(d) plan for the control of MSW landfill gas emissions (*i.e.*, NMOC) from designated facilities. Accordingly, the Federal landfill plan,

subpart GGG, is no longer applicable to designated landfills under this approval action. However, if an unknown designated landfill is not covered by the scope of this plan and is discovered after EPA plan approval, that landfill will be subject to the promulgated Federal plan requirements until the PADEP amends its plan to include the previously unknown designated landfill. As provided by 40 CFR 60.28(c), any revisions to the Pennsylvania section 111(d) plan or associated FESOPs will not be considered part of the applicable plan until submitted by the PADEP in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing MSW landfills that are subject to the provisions of 40 CFR part 60, subparts B, Cc, WWW, as applicable; and 40 CFR part 62, subpart GGG. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective August 25, 2003 without further notice unless EPA receives adverse comments by July 24, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA124–4079 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to wilkie.walter@epa.gov, attention PA124–4079. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov , EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to http://www.regulations.gov, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing 111(d) plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d) plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d) plan submission, to use VCS in place of a 111(d) plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for sixteen (16) specific sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Pennsylvania section 111(d) landfill plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: June 16, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ Therefore, for the reasons discussed in the preamble 40 CFR part 62, subpart NN, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. Sections 62.9635, 62.9636, and 62.9637 are added to read as follows:

§ 62.9635 Identification of plan.

Section 111(d) plan for municipal solid waste landfills, as submitted on July 1, 1997, and as amended through April 9, 2003 by the Pennsylvania Department of Environmental Protection. The plan excludes the geographical areas of Allegheny County and the City of Philadelphia.

§ 62.9636 Identification of sources.

The plan applies to existing Pennsylvania landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.9637 Effective date.

The effective date of the plan for municipal solid waste landfills is August 25, 2003.

[FR Doc. 03–15759 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 121
Tuesday, June 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 02–001–1]

RIN 0579–AB53

Procedures for Reestablishing a Region as Free of a Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish procedures that we will follow when a region that we recognize as free of a disease experiences an outbreak of that disease. The procedures include steps we would take to prevent the introduction of disease from that region and steps we would take to further assess the region's animal health status. The procedures would allow for timely reinstatement of the region's disease-free status if supported by the reassessment.

DATES: We will consider all comments that we receive on or before August 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–001–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–001–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–001–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Assistant Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, ''Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions'' (referred to below as the regulations), set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States from a region based on the disease risk associated with animals or animal products from that region. As provided in § 92.2, each request must include information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher disease risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity.

Recognition by the Animal and Plant Health Inspection Service (APHIS) of a region's animal health status makes exports of animals and animal products from that region subject to a certain set of import conditions, depending on that region's animal health status. These import conditions are intended to ensure that animals and animal products imported from the region will not introduce animal diseases into the United States.

Recently, we have been asked if the requirements in § 92.2 apply to regions that wish to have their previous disease-free status restored after they have experienced and eradicated an outbreak of the disease. As explained in a final rule published on November 5, 2001, regarding the status of France and Ireland for foot-and-mouth disease (66 FR 55872–55876, Docket No. 01–031–2), we do not intend for the regulations in § 92.2 to apply in these circumstances.

In this document, we propose to add to part 92 procedures that we will follow when a region recognized as free of a disease experiences an outbreak. The procedures include steps we will take to protect the United States from disease, as well as steps we will take to reassess the animal health status of the region and, when appropriate, to restore the region's previous disease-free status.

If a region that we recognize as free of a specified animal disease experiences an outbreak of that disease, we will take immediate action to prohibit or restrict imports of animals and animal products from that region to protect U.S. livestock. Such action may include publishing an interim rule prescribing the prohibitions or restrictions that may initially be announced administratively. The interim rule may be given an effective date earlier than the date of signature or publication to affirm our authority for issuing previous administrative orders. We believe such immediate actions are necessary to prevent the introduction of foreign animal diseases into the United States.

If the outbreak is confined to a limited area of the region we previously recognized as free of a disease, the interim rule we publish may impose prohibitions or restrictions on only a portion of the region. This is because we will already have information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movements of animals and animal products are controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure

for animal disease control, *i.e.*, the region's emergency response capacity. This information would have provided the basis for our previous recognition of the disease-free status of the region. Our obligations under international trade agreements compel us to take only actions necessary to prevent the introduction of disease; therefore, unless we determine that this information is no longer reliable, it provides a rational basis for our determination that a region can effectively control an outbreak within a smaller region. In these cases, we will provide information to the public as soon as possible regarding the basis for our decision to prohibit or restrict imports from the smaller area of a region previously recognized as free.

Following publication of an interim rule, we will reassess the disease status of the region in the context of the standards of the Office International des Epizooties (OIE) to determine whether it is necessary to continue the interim prohibitions or restrictions. As part of the reassessment process, we will consider all public comments we receive on the interim rule, as well as any additional information relevant to a decision to change the disease status of the region, including information collected by or submitted to us. Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, we will make information regarding our reassessment of the region's disease status available to the public for comment. We will announce the availability of this information by publishing a notice in the **Federal Register**. Based on the reassessment, including the comments we receive in response to the notice we publish, we will publish one of the following:

- A final rule that reinstates the disease-free status of the region, or a portion of the region covered by the interim rule;
- An affirmation of the interim rule that imposed prohibitions or restrictions on imports of animals and animal products from that region;
- Another document in the **Federal Register** for comment, if neither a final rule or interim rule is considered appropriate at that time (*e.g.*, we could publish a notice providing additional information for comment).

The initial interim rule is intended solely to serve as a temporary measure to provide the United States immediate protection from the introduction of foreign animal diseases. Also, the interim rule gives us an opportunity to evaluate the effectiveness of the region's emergency response measures and to determine whether the outbreak is indeed a temporary situation or indicates a fundamental change in the region's disease status. If a region takes immediate and effective steps to control and stamp out the disease, we believe the region's disease-free status should be restored as quickly as possible once the region has met OIE requirements.

Previously, the procedures we followed to restore the disease-free status of a region were lengthier. We typically did not receive adverse comments regarding the interim rule that revoked a region's status, so following the close of the comment period, we would publish an affirmation of the interim rule. Then, in order to restore the region's previous disease-free status, we would begin a new rulemaking with the publication of a proposed rule. After considering any comments we received during the comment period for the proposed rule, we would publish a final rule.

We believe that we can improve the regulatory process for restoring a region's disease free status by using the procedures described above, while still providing opportunity for public participation. For example, we removed France, Northern Ireland, the Netherlands, and Ireland from the list of regions considered to be free of rinderpest and foot-and-mouth disease (FMD) in two interim rules published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), and June 1, 2001 (66 FR 29686–29689, Docket No. 01–031–1). In those interim rules we stated that we intended to reassess the disease situations in these countries at a future date in accordance with OIE standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rules. Additionally, we stated that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of specific regulated articles, or whether we could restore the disease-free status of some or all of those regions, or part of those regions. We subsequently reassessed the disease status of those regions, taking into consideration information provided to us by those regions, and our own site visits. We restored the disease-free status of France, Ireland, the Netherlands, and Northern Ireland in two final rules published in the **Federal Register** on November 5, 2001 (66 FR 55872–55876, Docket No. 01–031–2), and January 9, 2002 (67 FR 1072–1074, Docket No. 01–031–3). Our findings, including site visit reports, were made available to the public at the time the final rules were published.

Based on comments we received regarding those rulemakings, we decided in the future to make our findings available to the public for comment prior to taking any final action. Recently, following our reassessment of the FMD-status of Great Britain, we published a notice of availability of our findings in the **Federal Register** for comment (67 FR 54164, Docket 01–018–3, published August 21, 2002). Following the close of the comment period on that notice, and after considering the information provided by commenters, we published a final rule to restore the FMD-free status of Great Britain on December 17, 2002 (67 FR 77148–77152, Docket 01–018–4).

This proposed rule would codify in the regulations the procedures that we will follow to reassess the animal health status of regions that we recognize as free of disease, and that experience an outbreak of that disease. It would establish a transparent and more effective process for restoring the disease-free status of a region, or portion of that region, while acting to protect against the introduction of foreign animal diseases into the United States. It would also improve our current procedures by making information regarding our reassessment available for comment before taking final action.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for this proposal. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document or may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

We are proposing to establish procedures that we will follow when a region that we recognize as free of a disease experiences an outbreak of that disease. The procedures include steps we would take to prevent the introduction of disease from that region and steps we would take to further

assess the region's animal health status. The procedures would allow for timely reinstatement of the disease-free status of a region, or portion of a region, if supported by the reassessment.

As in the past, if a region that we recognize as free of a specified animal disease experiences an outbreak of that disease, we will take immediate action to prohibit or restrict imports of animals and animal products from that region to protect U.S. livestock. Restrictions and/or prohibitions may at first be announced administratively but are generally followed by an interim rule.

Previously, following the close of the comment period on the interim rule, we would publish an affirmation of the interim rule. Then, in order to restore the region's previous disease-free status, we would begin a new rulemaking with the publication of a proposed rule. After considering any comments we received during the comment period for the proposed rule, we would publish a final rule.

Under our new procedures, we will not proceed directly to an affirmation of the interim rule following the close of the comment period. Rather, we will reassess the disease status of the region in the context of the standards of the Office International des Epizooties (OIE) to determine whether it is necessary to continue the interim prohibitions or restrictions. As part of the reassessment process, we will consider all public comments we receive on the interim rule, as well as any additional information relevant to a decision to change the disease status of the region, including information collected by or submitted to us. Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, we will make information regarding our reassessment of the region's disease status available to the public for comment. We will announce the availability of this information by publishing a notice in the **Federal Register**. Based on the reassessment, including the comments we receive in response to the notice we publish, we will publish one of the following:

- A final rule that reinstates the disease-free status of the region, or a portion of the region covered by the interim rule;
- An affirmation of the interim rule that imposed prohibitions or restrictions on imports of animals and animal products from that region;
- Another document in the **Federal Register** for comment, if neither a final rule or interim rule is considered appropriate at that time (*e.g.*, we could publish a notice providing additional information for comment).

The new procedures will improve the process for reinstating a region's disease-free status while still providing an effective opportunity for public participation.

U.S. entities potentially affected by these changes in procedures include importers, domestic producers, and consumers. In particular, importers and consumers could benefit because imports affected by the change in disease status could resume earlier than under previous procedures. Domestic producers of close substitutes, who may have benefitted during the period when imports were restricted or prohibited, could incur losses associated with a resumption of imports that could occur sooner than under past procedures. Because import levels of potentially regulated commodities from the majority of disease-free foreign regions are low relative to total imports and domestic availability of those commodities, the new procedures will likely not lead to significant benefits or losses. This projection is based on a review of economic analyses we prepared for recent rulemakings revoking and reinstating the disease-free status of foreign regions, as well as an analysis of the types and volumes of commodities currently imported from regions we currently recognize as free of specified diseases. We believe that the main benefits associated with the change in procedures will be improved trade relations between the U.S. and foreign governments.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 13988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. A new section 92.4 would be added to read as follows:

§ 92.4 Reestablishment of a region's disease-free status.

This section applies to regions that are designated in subchapter D of this chapter as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region recognized as free of a specified animal disease in subchapter D of this chapter experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from that region. Such action may include publishing an interim rule that imposes prohibitions or restrictions that may be announced initially administratively. The interim rule may be given an effective date earlier than the date of signature or publication to affirm our authority for issuing previous administrative orders. The interim rule may impose prohibitions or restrictions on only a portion of the region previously recognized as free of a disease. In these cases, APHIS will provide information to the public as soon as possible regarding the basis for its decision to prohibit or restrict imports from the smaller area of that region previously recognized as free.

(b) *Reassessment of the disease situation.* (1) Following publication of an interim rule as described in paragraph (a) of this section, APHIS will reassess the disease situation in that region in accordance with standards of the Office International des Epizooties to determine whether it is necessary to continue the interim prohibitions or restrictions. As part of the reassessment process, APHIS will consider all public comments received on the interim rule, as well as any other information collected by or submitted to APHIS.

(2) Prior to taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, APHIS will make information regarding its reassessment of the region's disease

status available to the public for comment. APHIS will announce the availability of this information by publishing a notice in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section, including comments regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a final rule that reinstates the disease-free status of the region, or a portion of the region, covered by the interim rule;

(2) Publish an affirmation of the interim rule that imposed prohibitions or restrictions on the imports of animals and animal products from that region; or

(3) Publish another document in the **Federal Register** for comment.

Done in Washington, DC, this 19th day of June, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–15907 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

[Docket No. PRM–63–1]

State of Nevada; Denial of a Petition for Rulemaking; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial; correction.

SUMMARY: On February 27, 2003 (68 FR 9023), the U.S. Nuclear Regulatory Commission (NRC) published a notice of denial of a petition for rulemaking. The petition for rulemaking, dated July 12, 2002, had been filed with the Commission by the State of Nevada, and assigned Docket No. PRM–63–1. The petitioner had requested that the NRC amend its regulations governing the disposal of high-level radioactive waste in a proposed geologic repository at Yucca Mountain, Nevada. This action corrects a sentence in the notice of denial by restoring a word that was mistakenly omitted from the published document. This action also corrects an erroneous citation and a typographical error in the body of the notice.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7285 or Toll Free: 1–800–368–5642, e-mail: *tjm3@nrc.gov;* or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7163 or Toll Free: 1–800–368–5642, e-mail: *MTL@nrc.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–4625, published on February 27, 2003 (68 FR 9023), the following corrections are made.

1. On page 9025, in the third column, the second heading is corrected to read as follows:

a. 10 CFR part 63 Is in Accord With NWPA Requirements.

2. On page 9026, in the third column, the third sentence from the bottom of the column is corrected to read as follows:

The Commission decided to reexamine its implementation of a multiple barrier approach and propose a regulation which required a system of multiple barriers, but which did not set numerical goals for the performance of individual barriers.

3. On page 9032, in the fifth line, the words ''Swedish Nuclear Power Inspectorate'' are replaced by the words ''Swedish Nuclear Fuel and Waste Management Company''.

Dated at Rockville, Maryland, this 18th day of June, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–15861 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1306

[Docket No. DEA–202P]

RIN 1117–AA68

Authority for Practitioners To Dispense or Prescribe Approved Narcotic (Opioid) Controlled Substances for Maintenance or Detoxification Treatment

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA proposes to amend its regulations to allow qualified practitioners to dispense and prescribe to narcotic (opioid) dependent persons Schedule III, IV, and V narcotic (opioid) controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment. These practitioners would not need to obtain a separate DEA registration as a narcotic treatment program to legally dispense or prescribe these drugs. Such practitioners, however, must be deemed ''qualifying physicians'' by the Secretary, Department of Health and Human Services. This notice of proposed rulemaking is in response to the recent amendments to the Controlled Substances Act by the Drug Addiction Treatment Act of 2000 (DATA), title XXXV of the Children's Health Act of 2000 (Pub. L. 106–310), that are designed to expand and improve treatment of opioid addiction. The proposed regulations are intended to accomplish the goals of DATA while preventing the diversion of Schedule III, IV, and V narcotic (opioid) controlled drugs approved by the Food and Drug Administration specifically for maintenance/detoxification treatment.

DATES: Written comments must be postmarked on or before September 22, 2003.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Change in the Current Regulations Is This Notice Proposing?

With passage of the Drug Addiction Treatment Act of 2000 (DATA), title XXXV of the Children's Health Act of 2000 (Pub. L. 106–310; 116 Stat. 1222), this notice of proposed rulemaking proposes to amend the regulations affecting maintenance and detoxification treatment for narcotic (opioid) addiction. The Controlled Substances Act (CSA) and current regulations require that practitioners who want to conduct maintenance or detoxification treatment using narcotic (opioid) controlled drugs be registered with DEA as narcotic treatment programs (NTPs) in addition to the practitioners' personal registrations. The separate NTP registrations authorize the practitioners to dispense or administer, but not prescribe, narcotic (opioid) controlled drugs.

Proposed § 1301.27 would establish an exemption from the separate registration requirement for qualified

practitioners dispensing or prescribing Schedule III, IV, and V narcotic (opioid) controlled drugs approved by the Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment (see also proposed amendments to §§ 1306.04(c) and 1306.07). This NPRM would allow ''qualifying physicians,'' whether they are already registered as NTPs or not, to dispense and prescribe Schedule III, IV, and V narcotic (opioid) controlled drugs or combinations of controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment. (On October 8, 2002, FDA approved two products containing buprenorphine, subutex and suboxone, Schedule III controlled drugs, for use in maintenance and detoxification treatment.) Under this proposed rule, practitioners permitted to dispense and prescribe Schedule III, IV, and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment would not be required to have separate DEA registrations as NTPs. DEA is taking this proposed action in conjunction with the Department of Health and Human Services' (HHS) adoption of the concept of Office-Based Opioid Treatment. Proponents believe that the changes proposed here would provide greater access to narcotic (opioid) addiction treatment, and permit expanded treatment services. This action also responds to the recent amendment to the Controlled Substances Act by the Drug Addiction Treatment Act of 2000. This proposed rule would not affect the existing prohibition against prescribing any Schedule II narcotic (opioid) controlled drugs for maintenance or detoxification treatment.

The proposed rule would:

(1) Permit qualifying physicians to dispense and prescribe Schedule III, IV, and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment;

(2) Permit opioid dependent patients to have one-on-one consultations with a practitioner in a private practice setting;

(3) Permit pharmacies to fill prescriptions for Schedule III, IV, and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment; and

(4) Permit practitioners to offer maintenance and detoxification treatment in their private practices without having a second registration as a NTP.

This proposed rule would apply to individual practitioners working in traditional NTPs or any other practice setting.

What Is the Legal Basis for Providing Maintenance or Detoxification Treatment?

Congress passed the Harrison Narcotic Act of 1914 to fulfill U.S. obligations to uphold the international Opium Convention signed at the Hague in 1912. The Act was the first comprehensive federal legislation to place controls on licit pharmaceuticals and allowed practitioners to prescribe narcotics (opioids) only for legitimate medical purposes in the course of their professional practice. It did not permit the prescribing of narcotics (opioids) simply to support or maintain an addiction.

During the late 1960s and the early 1970s, drug substitution therapy for addiction treatment using methadone was introduced as a medical modality and was considered ''research,'' that is, still outside the scope of ''medical treatment.'' At that time, medical and legal standards governing the use of methadone in addiction treatment programs did not exist. In effect, there were no clear means for differentiating legitimate treatment efforts using the drug as part of a comprehensive program of treatment services from bogus clinics or unethical practitioners distributing methadone to addicts under the guise of treatment. As a result the diversion of methadone was occurring on a large-scale basis.

In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act (Pub. L. 91–513), which consolidated existing Federal drug control statutes, and created new laws regarding activities pertaining to controlled drugs. Title II of this legislation, also known as the Controlled Substances Act, regulates the manufacture and distribution of controlled drugs. However, the issues of maintenance treatment and detoxification treatment were not addressed.

In the mid-1970s, methadone maintenance treatment became the subject of intense policy debate, and Congress passed the Narcotic Addict Treatment Act of 1974. This amendment to the Controlled Substances Act required practitioners who wished to conduct maintenance/detoxification treatment to obtain separate registration as NTPs. To be registered as NTPs, practitioners must comply with DEA requirements for secure drug storage and record keeping; must be qualified under the treatment standards established by the Department of Health and Human Services (HHS); and must comply with standards established by HHS (after consultation with DEA) regarding quantities of narcotic (opioid) drugs for unsupervised take-home use by persons undergoing addiction treatment (21 U.S.C. 823(g)). Since the mid-1970s, products containing methadone and, by the 1990's products containing levo-alpha-acetyl-methadol (LAAM), which are Schedule II controlled substances, have been approved by FDA specifically for use in maintenance or detoxification treatment. (On October 8, 2002, FDA approved buprenorphine products, Schedule III controlled drugs, for use in maintenance and detoxification treatment.)

The Narcotic Addict Treatment Act allows practitioners to dispense narcotic (opioid) drugs for maintenance or detoxification treatment. Under this legislation the term dispense means to deliver a controlled drug to an ultimate user under a lawful order of a practitioner, including the prescribing and administering of a controlled drug. However, as drug replacement therapy was considered research at that time, and to ensure public health and safety, practitioners were restricted to administering and dispensing (other than by prescription) controlled drugs for maintenance or detoxification treatment. After passage of the Narcotic Addict Treatment Act, such drug replacement therapy was no longer considered research.

Today treatment experts view addiction as a medical condition, which should be treated as a chronic disease, and believe that drug replacement therapy is a viable form of medical treatment for opioid dependent individuals. On October 17, 2000, Congress passed DATA, amending the Controlled Substances Act to establish ''waiver authority for physicians who dispense or prescribe certain narcotic (opioid) drugs for maintenance treatment or detoxification treatment'' (Pub. L. 106–310, title XXXV; 116 Stat. 1222). When the DATA bill was introduced in the United States Senate, it was described as follows:

> The goal of the DATA provisions is simple but it is important: The DATA bill attempts to make drug treatment more available and more effective to those who need it. This legislation focuses on increasing the availability and effectiveness of drug treatment. The purpose of the Drug Addiction Treatment Act is to allow qualified physicians, as determined by the Department of Health and Human Services, to prescribe schedule III, IV and V anti-addiction medications in physicians' offices without an additional Drug Enforcement Administration, DEA, registration if certain conditions are met.

146 Cong. Rec. S9262 (daily ed. Sept. 26, 2000).

What Are the Conditions for Qualifying for the Proposed § 1301.27 Exemption From Separate Registration for Practitioners Dispensing or Prescribing Schedule III, IV, and V Narcotic Drugs Approved by FDA Specifically for Use in Maintenance or Detoxification Treatment?

There are two main sets of conditions involved in the proposed exemption: Conditions with respect to the practitioner and conditions with respect to the Schedule III, IV, or V narcotic (opioid) drugs approved by FDA specifically for use in maintenance or detoxification treatment. To qualify for the proposed exemption, a practitioner would have to submit notification to HHS stating his or her intent to dispense or prescribe narcotic (opioid) controlled drugs to opiate-dependent patients and certifying that all of following are true:

(1) The practitioner is a ''qualifying physician.'' A practitioner is a ''qualifying physician'' if he or she is licensed under State law and has specific medical certification, training or experience in maintenance or detoxification treatment. The Secretary of HHS will establish criteria to be used for determining whether a practitioner is a ''qualifying physician.''

(2) The practitioner has the capacity to refer the patients, to whom the practitioner will provide specifically approved narcotic (opioid) drugs or combinations of narcotic (opioid) drugs, for appropriate counseling and other appropriate ancillary services.

(3) The total number of patients treated for opiate dependence by the practitioner who is not a member of a group practice will not exceed 30 at any one time, unless modified by regulation by the Secretary of HHS.

(4) If the practitioner is a member of a group practice, the total number of patients treated for opiate dependence by the group practice of which the practitioner is a member will not exceed 30 at any one time, unless modified by regulation by the Secretary of HHS.

Schedule III, IV and V narcotic (opioid) drugs to be dispensed or prescribed must meet the following two conditions:

(1) They must have been approved by FDA specifically for use in maintenance treatment or detoxification treatment.

(2) They cannot have been the subject of an adverse determination by HHS that their use requires additional standards respecting the qualifications of practitioners or the quantities of the drugs that may be provided for unsupervised use.

What Will Happen After the Practitioner Submits to HHS the Notification Under Proposed § 1301.27 of Intent To Dispense or Prescribe Narcotic Drugs?

When HHS receives a notification of intent to dispense or prescribe narcotic (opioid) controlled drugs for maintenance or detoxification treatment it will forward a copy of the notification to DEA. From the date HHS receives the notification it will have up to 45 days to review the practitioner's qualifications and make a determination whether the practitioner meets all of the requirements for the exemption. While HHS is conducting its determination, DEA will conduct its own review to determine if the practitioner has the appropriate DEA registration in accordance with 21 U.S.C. 823(a) and if there are any adverse determinations.

Once HHS has made its determination, it will send the findings to DEA. If DEA determines that the practitioner has the appropriate DEA registration in accordance with 21 U.S.C. 823(a) and if there are no adverse determinations, then DEA will issue the practitioner an identification number as soon as either of the following conditions occurs: (1) DEA receives the positive determination from HHS before the conclusion of the 45 day review period, or (2) the 45 day review period has concluded and no determination by HHS has been received. If HHS refuses to certify a practitioner or withdraws such certification once it is issued, then DEA will not issue the practitioner an identification number, or will withdraw the identification number if one has been issued. Under proposed § 1301.27(d) the practitioner would be required to include the identification number on all records when dispensing and on all prescriptions when prescribing Schedule III, IV or V narcotic (opioid) controlled drugs for use in maintenance or detoxification treatment.

Would Practitioners Have To Wait Until They Receive an Identification Number From DEA Before They Could Dispense or Prescribe Schedule III, IV or V Narcotic (Opioid) Drugs Approved by FDA Specifically for Use in Maintenance Treatment or Detoxification Treatment?

The practitioner would not have to wait if the practitioner was in compliance with proposed § 1301.27(e). As proposed, the practitioner could begin dispensing or prescribing during the 45-day review period if all of the following requirements are met:

(1) The practitioner has submitted, in good faith, a written notification under § 1301.27(b).

(2) The practitioner reasonably believes that the conditions specified in §§ 1301.27(b) and (c), regarding the practitioner and the narcotic (opioid) drugs, have been met.

(3) Prescribing or dispensing the narcotic (opioid) drugs would facilitate the treatment of an individual patient.

(4) The practitioner has notified both the Secretary of HHS and DEA of the intent to do so.

(5) The Secretary has not issued an order indicating that the registrant is not a qualified physician.

(6) The practitioner has the appropriate DEA registration under 21 CFR 1301.13.

The practitioner would be able to satisfy the fourth requirement by including within the notification required by proposed § 1301.27(b) a statement of his or her intent to immediately commence prescribing or dispensing. If HHS refuses to certify a practitioner or withdraws such certification once it is issued, then DEA will not issue the practitioner an identification number, or will withdraw the identification number if one has been issued.

What Happens if a Practitioner Dispenses or Prescribes Schedule III, IV, or V Narcotic (Opioid) Drugs in Violation of One of the Conditions in Proposed § 1301.27(b)?

If a practitioner dispenses or prescribes Schedule III, IV, or V narcotic (opioid) drugs in violation of any of the conditions specified in proposed § 1301.27(b), then DEA may revoke the practitioner's DEA registration in accordance with § 1301.36.

Due to the potential for diversion and in an effort to verify compliance with these regulations, DEA intends to conduct at least two regulatory investigations per field office per year of practitioners dispensing and prescribing to narcotic (opioid) dependent persons Schedule III, IV, and V narcotic (opioid) controlled drugs approved by the Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment.

Would the Proposed Requirements Be Applied Differently to Practitioners Working in Traditional NTPs as Opposed to Practitioners in Other Practice Settings?

The proposed regulation would affect practitioners working in traditional NTPs the same as any other practitioners. If a ''qualifying physician'' working in a NTP wants to dispense or

prescribe Schedule III, IV, and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment, then he or she would have to comply with the proposed regulations.

What Additional Requirements Would Apply When a ''Qualifying Physician'' Writes a Prescription for Schedule III, IV, and V Narcotic (Opioid) Drugs Approved by FDA Specifically for Maintenance or Detoxification Treatment?

Proposed changes to § 1306.05(a) require the practitioner to include on the prescription the identification number (issued under proposed § 1301.27(d)) or written notice that the practitioner is acting under the good faith exception of proposed § 1301.27(e). These prescriptions would be subject to all of the existing requirements of Part 1306 that apply to prescriptions for controlled drugs. To be valid, a prescription must be written for a legitimate medical purpose by a practitioner acting in the usual course of his or her professional practice (§ 1306.04(a)). The prescription must be dated and signed on the day issued, must contain the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address, and registration number of the practitioner (§ 1306.05(a)).

Under current law practitioners are not normally required to keep records of prescriptions issued. However, DEA regulations (§ 1304.03(c)) do require records to be kept by practitioners prescribing controlled drugs listed in any schedule for maintenance or detoxification treatment of an individual.

For conformity §§ 1306.04, Purpose of issue of prescription, and 1306.07, Administering or dispensing of narcotic (opioid) controlled drugs, would also be amended by this NPRM. Section 1306.04(c) currently prohibits the issuance of prescriptions for narcotic (opioid) drugs listed in any schedule for ''detoxification treatment'' or ''maintenance treatment.'' Under this NPRM, the prohibition against prescriptions in § 1306.04(c) would be amended to permit prescriptions for Schedule III, IV, and V narcotic (opioid) controlled drugs approved by FDA specifically for maintenance or detoxification treatment by practitioners who are in compliance with proposed § 1301.27.

Section 1306.07(a) currently permits the administering and dispensing (but not prescribing) of narcotic (opioid) drugs for detoxification or maintenance treatment only by practitioners who are separately registered as a Narcotic Treatment Program. This proposed rule would add paragraph (d) to § 1306.07 to permit a practitioner to administer or dispense (including prescribe) any Schedule III, IV, or V narcotic (opioid) controlled drug approved by FDA specifically for use in maintenance or detoxification treatment if the practitioner is in compliance with proposed § 1301.27. This NPRM would also revise § 1306.07(a) to improve the clarity of the language, but not to change the drug of the paragraph.

Could a Practitioner Authorize Refills of Prescriptions for Schedule III, IV, or V Narcotic (Opioid) Drugs Approved by FDA Specifically for Use in Maintenance or Detoxification Treatment?

DEA regulations allow practitioners to authorize refills for Schedule III, IV, or V controlled drug prescriptions. Prescriptions for Schedule III, IV and V controlled drugs are subject to the requirements in §§ 1306.22 and 1306.23, regarding the refilling and partial filling of prescriptions. In addition, practitioners prescribing Schedule III, IV, or V narcotic (opioid) drugs for use in maintenance or detoxification treatment would be subject to all relevant state and federal requirements that apply to prescriptions for controlled drugs.

Under Current Regulations, What Other Requirements Would Apply When a Practitioner Administers or Dispenses Schedule III, IV, or V Narcotic (Opioid) Drugs Approved by FDA Specifically for Maintenance or Detoxification Treatment?

Practitioners who administer or dispense (other than by prescription) Schedule III, IV, or V narcotic (opioid) drugs approved by FDA specifically for maintenance or detoxification treatment must maintain records and provide security for the controlled drugs in their possession. Records required to be maintained include inventories, records of receipt, reports of theft or loss, destruction of controlled drugs, and records of dispensation. These records must be maintained for two years.

The regulations also require practitioners to safeguard controlled drugs (§ 1301.75(b)). The Schedule III, IV, or V narcotic (opioid) controlled drugs approved by FDA specifically for maintenance or detoxification treatment must be stored in a securely locked, substantially constructed cabinet.

Current regulations on prescribing permit the use of a written prescription signed by a practitioner. Current regulations also permit a practitioner, or the practitioner's agent, to transmit a facsimile of a written signed prescription to a pharmacy (§ 1306.21). In addition, a practitioner may telephone the pharmacy with an oral prescription. The pharmacist must immediately reduce the oral prescription to writing, including all information required in § 1306.05, except for the signature of the practitioner (§ 1306.21(a)).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, has reviewed this proposed regulation and hereby certifies that it has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and that it will not have a significant economic impact on a substantial number of small entities. This proposed rulemaking would permit practitioners to prescribe Schedule III, IV and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment without being separately registered with DEA as a NTP. Although virtually all entities affected would be small, the cost of determining eligibility and applying for a waiver is negligible.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this proposed rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. As noted above, this proposed rulemaking would permit practitioners to prescribe Schedule III, IV and V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment without being separately registered with DEA as a NTP.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

For the reasons set out above, 21 CFR Parts 1301 and 1306 are proposed to be amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 956.

2. Part 1301 is proposed to be amended by adding §1301.27 to read as follows:

§ 1301.27 Exemption from separate registration for practitioners dispensing or prescribing Schedule III, IV, or V narcotic (opioid) controlled drugs approved by FDA specifically for use in maintenance or detoxification treatment.

(a) A practitioner may dispense or prescribe Schedule III, IV, or V narcotic (opioid) controlled drugs or combinations of narcotic (opioid) controlled drugs which have been approved by the Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment without obtaining the separate registration required by § 1301.13(e) so long as all of the following conditions are met:

(1) The practitioner meets the conditions specified in paragraph (b) of this section.

(2) The narcotic (opioid) drugs or combination of narcotic (opioid) drugs meet the conditions specified in paragraph (c) of this section.

(3) The practitioner is in compliance with either paragraph (d) or paragraph (e) of this section.

(b)(1) The practitioner must submit notification to the Secretary of Health and Human Services stating the practitioner's intent to dispense or prescribe narcotic (opioid) drugs under paragraph (a) of this section. The notice must contain all of the following certifications:

(i) The practitioner is registered under § 1301.13 and is a ''qualifying physician'' as defined in section 303(g)(2)(G) of the Act (21 U.S.C. 823(g)(2)(G)).

(ii) The practitioner has the capacity to refer the patients to whom the practitioner will provide narcotic (opioid) drugs or combinations of narcotic (opioid) drugs for appropriate counseling and other appropriate ancillary services.

(iii) Where the practitioner is not a member of a group practice, the total number of such patients of the practitioner will not exceed 30 at any one time, unless regulations promulgated by the Secretary of Health and Human Services are modified.

(iv) Where the practitioner is a member of a group practice, the total number of such patients of the group practice will not exceed 30 at any one time, unless regulations promulgated by the Secretary of Health and Human Services are modified.

(2) In addition, if a practitioner wishes to prescribe or dispense narcotic (opioid) drugs pursuant to paragraph (e) of this section, the practitioner must provide the following:

(i) Notification as required under subparagraph (1) of this paragraph must be provided in writing, and must state the name of the practitioner and the registration number of the practitioner issued under § 1301.13.

(ii) If the practitioner is a member of a group practice, the names of the other practitioners in the group and the registration numbers issued to the other practitioners under § 1301.13 shall be provided.

(c) The narcotic (opioid) drugs or combination of narcotic (opioid) drugs to be dispensed or prescribed under this section must meet all of the following conditions:

(1) The drugs or combination of drugs have been approved for use in ''detoxification treatment'' or ''maintenance treatment'' under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act.

(2) The drugs or combination of drugs have not been the subject of an adverse determination by the Secretary of Health and Human Services, after consultation with the Attorney General, that the use of the drugs or combination of drugs requires additional standards respecting the qualifications of practitioners or the quantities of the drugs that may be provided for unsupervised use.

(d) After receiving the notification submitted under paragraph (b) of this section, the Secretary of Health and Human Services will forward a copy of the notification to the Administrator. The Secretary of Health and Human Services will have 45 days from the date of receipt of the notification to make a determination of whether the practitioner involved meets all requirements for a waiver under § 823(g)(2)(B) of the Act (21 U.S.C. 823(g)(2)(B)). HHS will notify DEA of its determination regarding the practitioner. If the practitioner has the appropriate registration under § 1301.13 of this chapter, then the Administrator will issue the practitioner an identification number as soon as one of the following conditions occurs:

(1) The Administrator receives a positive determination from the Secretary of Health and Human Services before the conclusion of the 45-day review period, or

(2) The 45-day review period has concluded and no determination by the Secretary of Health and Human Services has been made. If HHS refuses to certify a practitioner or withdraws such certification once it is issued, then DEA will not issue the practitioner an identification number, or will withdraw the identification number if one has been issued. The practitioner must include the identification number on all records when dispensing and on all prescriptions when prescribing narcotic (opioid) drugs under this section.

(e) A practitioner may begin to prescribe or dispense narcotic (opioid) drugs under this section before receiving an identification number from the Administrator so long as the following conditions are met:

(1) The practitioner has submitted a notification under paragraph (b) of this section in good faith to the Secretary of Health and Human Services.

(2) The practitioner reasonably believes that the conditions specified in paragraphs (b) and (c) of this section have been met.

(3) The practitioner reasonably believes that prescribing or dispensing narcotic (opioid) drugs under this section before the sooner of:

(i) Receipt of an identification number from the Administrator, or

(ii) Expiration of the 45-day period would facilitate the treatment of an individual patient.

(4) The practitioner has notified both the Secretary of Health and Human Services and the Administrator of his or her intent to begin prescribing or dispensing the narcotic (opioid) drugs before expiration of the 45-day period.

(5) The Secretary has not issued an order indicating that the registrant is not qualified under paragraph (d) of this section.

(6) The practitioner has the appropriate registration under § 1301.13 of this chapter. If HHS refuses to certify a practitioner or withdraws such certification once it is issued, then DEA will not issue the practitioner an identification number, or will withdraw the identification number if one has been issued.

(f) If a practitioner dispenses or prescribes Schedule III, IV, or V narcotic (opioid) drugs approved by FDA specifically for maintenance or detoxification treatment in violation of any of the conditions specified in § 1301.27(b) or (c), the Administrator may revoke the practitioner's registration in accordance with § 1301.36.

PART 1306—PRESCRIPTIONS—[AMENDED]

3. The authority citation for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

4. Section 1306.04 is amended by revising paragraph (c) to read as follows:

§ 1306.04 Purpose of issue of prescription.

* * * * *

(c) A prescription may not be issued for ''detoxification treatment'' or ''maintenance treatment,'' unless the prescription is for a Schedule III, IV, or V narcotic (opioid) drug approved by FDA specifically for use in maintenance or detoxification treatment and the practitioner is in compliance with requirements in § 1301.27 of this chapter.

5. Section 1306.05 is amended by revising paragraph (a) to read as follows:

§ 1306.05 Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. In addition, a prescription for a Schedule III, IV, or V narcotic (opioid) drug approved by FDA specifically for ''detoxification treatment'' or ''maintenance treatment'' must include the identification number issued by the Administration under § 1301.27(d) of this chapter or a written notice stating that the practitioner is acting under the good faith exception of § 1301.27(e). A practitioner may sign a prescription in the same manner as he would sign a check or legal document (*e.g.,* J.H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations.

* * * * *

6. Section 1306.07 is amended by revising the section heading and paragraph (a) and adding paragraph (d) to read as follows:

§ 1306.07 Administering or dispensing of narcotic (opioid) drugs.

(a) A practitioner may administer or dispense directly (but not prescribe) a narcotic (opioid) drug listed in Schedule II if the practitioner meets both of the following conditions:

(1) The practitioner is separately registered with DEA as a narcotic treatment program.

(2) The practitioner is a qualifying physician under §1301.27 of this chapter and in compliance with DEA regulations regarding security, and records.

* * * * *

(d) A practitioner may administer or dispense (including prescribe) any Schedule III, IV or V narcotic (opioid) drug specifically approved by the Food and Drug Administration for use in maintenance or detoxification treatment to a narcotic (opioid) dependent person if the practitioner complies with the requirements of § 1301.27 of this chapter.

Dated: June 17, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–15787 Filed 6–23–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106736–00]

RIN 1545–AX93

Assumption of Partner Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the definition of liabilities under section 752 of the Internal Revenue Code. These regulations provide rules regarding a partnership's assumption of certain fixed and contingent obligations in exchange for a partnership interest and provide conforming changes to certain regulations. These regulations also provide rules under section 358(h) for assumptions of liabilities by corporations from partners and partnerships. In addition, this document provides notice that the IRS and Treasury intend to issue supplemental guidance that may apply certain of the rules outlined in these proposed regulations to transactions involving corporations. This document also provides notice of public hearing on the proposed regulations.

DATES: Written or electronic comments and requests to speak at the public hearing scheduled for Tuesday, October 14, 2003, must be received by September 22, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–106736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–106736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *www.irs.gov/regs.* The public hearing will be held in the auditorium, Internal

Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Horace Howells at (202) 622–3050; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received by August 25, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.752–7(e), (f), (g), and (h). This information is required for a former or current partner of a partnership to take deductions attributable to the economic performance of certain fixed or contingent obligations assumed from the partner by a partnership. This information will be used by the partner to permit the partner to take a deduction. An additional collection of information in this proposed regulation is in § 1.752–7(j)(2). This information is required to inform the IRS of partnerships making the designated election and to report income appropriately. The collection of information is required to obtain a benefit, *i.e.*, to elect to apply the provisions of § 1.752–7 of the proposed regulations in lieu of § 1.752–6T of the temporary regulations. The likely respondents are individuals, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 125 hours.

The estimated annual burden per respondent varies from 20 to 40 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

Estimated number of respondents: 250.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

With certain exceptions, no gain or loss is recognized if property is transferred to a corporation solely in exchange for stock of the corporation, and, immediately after the exchange, the transferors control the corporation. If, however, the transferee corporation assumes a liability of the transferor, then, under section 358(d), the transferor's basis in the stock received in the exchange is reduced by the amount of that liability. If the amount of the liability exceeds the transferor's basis in the property transferred to the corporation, then the transferor recognizes gain under section 357(c)(1). Under section 357(c)(3), a liability the payment of which would give rise to a deduction or that would be described in section 736(a) (regarding payments to a retiring partner) is not taken into account in applying section 357(c)(1), unless the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

Under section 752(a) and (b), similar rules apply where a partnership assumes a liability from a partner or a partner contributes property to a partnership subject to a liability. The difference between the amount of the liability and the partner's share of that liability after the partnership's assumption is treated as a distribution of money, which reduces the partner's basis in the partnership interest and may cause the partner to recognize gain. There is no statutory or regulatory definition of liabilities for purposes of section 752. Case law and revenue rulings, however, have established that, as under section 357(c)(3), the term *liabilities* for this purpose does not include liabilities the payment of which would give rise to a deduction, unless the incurrence of the liability resulted in the creation of, or an increase in, the basis of property. Rev. Rul. 88–77 (1988–2 C.B. 128); *Salina Partnership LP, FPL Group, Inc.* v. *Commissioner,* T.C. Memo 2000–352.

On December 21, 2000, as part of the Community Renewal Tax Relief Act of 2000 (Appendix G of H.R. 4577, Consolidated Appropriations Act, 2001) Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001) (the Act), Congress enacted section 358(h) to address certain situations where property was transferred to a corporation in exchange for both stock and the corporation's assumption of certain obligations of the transferor. In these situations, transferors took the position that the obligations were not liabilities within the meaning of section 357(c) or that they were described in section 357(c)(3), and, therefore, the obligations did not reduce the basis of the transferor's stock. These assumed obligations, however, did reduce the value of the stock. The transferors then sold the stock and claimed a loss. In this way, taxpayers attempted to duplicate a loss in corporate stock and to accelerate deductions that typically are allowed only on the economic performance of these types of obligations.

Section 358(h) addresses these transactions by requiring that, after application of section 358(d), the basis in stock received in an exchange to which section 351, 354, 355, 356, or 361 applies be reduced (but not below the fair market value of the stock) by the amount of any liability assumed in the exchange. Exceptions to section 358(h) are provided where: (1) The trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange; or (2) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange. The term *liability* for purposes of section 358(h) includes any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into

account for purposes of the Internal Revenue Code (Code).

Congress recognized that taxpayers were attempting to use partnerships and S corporations to carry out the same types of abuses that section 358(h) was designed to deter. Therefore, in section 309(c) and (d)(2) of the Act, Congress directed the Secretary to prescribe rules to provide ''appropriate adjustments under subchapter K of chapter 1 of the Code to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) * * * transactions involving partnerships'' and to prescribe similar rules for S corporations. Under the statute, these rules are to ''apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.''

In response to this directive, these proposed regulations provide rules to prevent the duplication and acceleration of loss through the assumption by a partnership of a § 1.752–7 liability from a partner. For this purpose, a partnership that takes property subject to a liability is generally treated as assuming the liability. A § 1.752–7 liability is any fixed or contingent obligation to make payment that is not described in § 1.752–1(a)(1), without regard to whether the obligation is otherwise taken into account for purposes of the Code.

The proposed regulations also provide that section 704(c) principles shall apply to a § 1.752–7 liability assumed by a partnership from a partner. Accordingly, the § 1.752–7 liability is treated under section 704(c) principles as having a built-in loss equal to the amount of such liability at the time of its assumption by the partnership. The amount of the § 1.752–7 liability is the amount that a willing assignor would pay to a willing assignee to assume the § 1.752–7 liability in an arm's-length transaction.

In addition, the proposed regulations make conforming amendments to §§ 1.704–1(b)(2)(iv)(*b*) (by providing that a partner's capital account be reduced by the § 1.752–7 liabilities that the partnership assumes from the partner), 1.704–2(b)(3) (by treating a § 1.752–7 liability as a nonrecourse liability for purposes of the partnership allocation rules), and 1.705–1 (by directing taxpayers to § 1.358–1(b) and § 1.752–7 for basis adjustments necessary to coordinate section 705 with section 358(h) and § 1.752–7).

Moreover, the proposed regulations provide rules under section 358(h) for assumptions of liabilities by corporations from partners and partnerships. In addition, in the Explanation of Provisions section of this preamble, the IRS and Treasury are alerting taxpayers that they are considering adopting the definition of liability proposed in these regulations as an appropriate interpretation of the term *liability* for purposes of subchapter C of chapter 1 of the Code. The IRS and Treasury are also considering issuing regulations to conform the exceptions to section 358(h) to the exceptions described in these regulations. These regulations will be retroactive to the extent necessary to prevent abuse.

Section 358(h) applies to S corporations. The Act states that the Secretary may prescribe comparable rules which provide appropriate adjustments under subchapter S. These proposed regulations do not address the assumption of liabilities by S corporations; however, any rules applicable to assumptions of liabilities by corporations would, in the absence of provisions to the contrary, apply equally to S corporations. Comments regarding the assumption of liabilities by S corporations are requested.

Explanation of Provisions

1. Addition of § 1.752–1(a)(1)—Definition of Liability

The question of what constitutes a liability for purposes of section 752 was addressed in Rev. Rul. 88–77 (1988–2 C.B. 128). Rev. Rul. 88–77 holds that partnership liabilities include an obligation only if, and to the extent that, incurring the obligation creates or increases the basis to the partnership of any of the partnership's assets (including cash attributable to borrowings), gives rise to an immediate deduction to the partnership, or, under section 705(a)(2)(B) (relating to noncapital, nondeductible expenditures of a partnership) currently decreases a partner's basis in the partner's partnership interest. Section 1.752–1T(g) (1989–1 C.B. 180), included a definition of a liability for purposes of section 752 that reaffirmed the position of the IRS in Rev. Rul. 88–77. This definition was removed from the final version of those regulations in response to comments that the definition was redundant and therefore unnecessary. The Service continues to follow the definition of liability set forth in Rev. Rul. 88–77. *See* Rev. Rul. 95–26 (1995–1 C.B. 131).

Because these proposed regulations define a § 1.752–7 liability as a fixed or contingent obligation to make payment to which section 752 does not apply, Treasury and the IRS believe that it is appropriate to describe in these regulations the liabilities to which section 752 does apply. Therefore, following the principles set forth in § 1.752–1T(g) and Rev. Rul. 88–77, the proposed regulations provide that an obligation is a liability if and to the extent that incurring the obligation: (A) Creates or increases the basis of any of the obligor's assets (including cash); (B) gives rise to an immediate deduction to the obligor; or (C) gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital. An obligation for this purpose is any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Code. Obligations include, but are not limited to, debt obligations, environmental obligations, tort obligations, contract obligations, pension obligations, obligations under a short sale, and obligations under derivative financial instruments such as options, forward contracts, and futures contracts. The definition of a liability contained in these proposed regulations does not follow *Helmer* v. *Commissioner,* T.C. Memo 1975–160. (The Tax Court, in *Helmer,* held that a partnership's issuance of an option to acquire property did not create a partnership liability for purposes of section 752.)

Treasury and the IRS are considering adopting the definition of liability proposed in these regulations as an appropriate interpretation of the term *liability* for purposes of subchapter C of chapter 1 of the Code. Treasury and the IRS request comments on the scope and substance of such regulations, which will be retroactive to the extent necessary to prevent abuse.

2. § 1.752–7—Partnership Assumption of Partner's § 1.752–7 Liability

In the corporate context, section 358(h) prevents the duplication and acceleration of loss with respect to obligations not encompassed by section 358(d) by reducing the transferor shareholder's basis in corporate stock received in the exchange. Treasury and the IRS do not believe that this is the best approach for partnerships given their passthrough nature. Ultimately, the partners' shares of a partnership's deductions are limited by the partners' bases in their partnership interests (their outside bases). If, at the time of an assumption of a § 1.752–7 liability by a partnership from a partner (the § 1.752–7 liability partner), the partner's outside basis were reduced by the amount of the § 1.752–7 liability, then the partner would not have sufficient outside basis

to absorb any deduction with respect to the § 1.752–7 liability that passed through the partnership.

For this reason, these proposed regulations do not reduce the outside basis of the § 1.752–7 liability partner upon the partnership's assumption of the § 1.752–7 liability. If the partnership satisfies the § 1.752–7 liability while the § 1.752–7 liability partner is a partner in the partnership, then the deduction with respect to the portion of the § 1.752–7 liability assumed by the partnership from the § 1.752–7 liability partner (the built-in loss associated with the § 1.752–7 liability) is allocated to the § 1.752–7 liability partner, reducing that partner's outside basis. If, instead, one of three events occur that separate the § 1.752–7 liability partner from the § 1.752–7 liability, then the § 1.752–7 liability partner's outside basis is reduced at that time. These events are: (1) A disposition (or partial disposition) of the partnership interest by the § 1.752–7 liability partner, (2) a liquidation of the § 1.752–7 liability partner's partnership interest, and (3) the assumption (or partial assumption) of the § 1.752–7 liability by a partner other than the § 1.752–7 liability partner. Immediately before the occurrence of one of these events, the § 1.752–7 liability partner's basis in the partnership interest generally is reduced by the lesser of: (1) The excess of the § 1.752–7 liability partner's basis in the partnership interest over the adjusted value of that interest, or (2) the remaining built-in loss associated with the § 1.752–7 liability (the § 1.752–7 liability reduction). For this purpose, the adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under §§ 1.752–1 through 1.752–5. In the case of a partial disposition of the § 1.752–7 liability partner's partnership interest or a partial assumption of the § 1.752–7 liability by another partner, the § 1.752–7 liability reduction is pro rated based on the portion of the interest sold or the portion of the § 1.752–7 liability assumed.

After the occurrence of such an event, the partnership (or the assuming partner) is not entitled to any deduction or capital expense on the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability. If, however, the partnership (or the assuming partner) notifies the § 1.752–7 liability partner of the partial or complete economic performance of the § 1.752–7 liability, then the § 1.752–7 liability partner is entitled to a deduction or loss. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount paid by the partnership in satisfaction of the § 1.752–7 liability (but not more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount paid in satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the § 1.752–7 liability. To the extent that the § 1.752–7 liability reduction exceeds the amount paid in satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

The proposed regulations further provide that, solely for purposes of section 705 (adjustments to the basis of a partnership interest) and § 1.704–1(b)(2)(iv)(*b*) (partnership capital accounting rules), the remaining built-in loss associated with the § 1.752–7 liability is not treated as a nondeductible, noncapital expense to the partnership. Therefore, the remaining partners' bases in their partnership interests and capital accounts are not reduced by the remaining built-in loss associated with the § 1.752–7 liability.

If the § 1.752–7 liability is assumed by a partner other than the § 1.752–7 liability partner, then, on economic performance of the § 1.752–7 liability, the assuming partner is treated as contributing cash to the partnership in the amount of the lesser of: (1) The amount paid to satisfy the § 1.752–7 liability; or (2) the remaining built-in loss associated with the § 1.752–7 liability as of the time of the assumption. Adjustments as a result of this deemed cash contribution may include adjusting the basis of the partnership interest, any assets (other than cash, accounts receivable, or inventory) distributed by the partnership to the partner, or gain or loss on the disposition of the partnership interest or of property distributed by the partnership, as the case may be. However, the assuming partner cannot take into account any adjustments to depreciable basis, reduction in gain, or increase in loss until economic performance of the § 1.752–7 liability. Any adjustment to the basis of an asset under this provision is taken into account over the recovery period of that asset.

3. Exceptions

Certain exceptions apply to these rules. In the corporate context, section 358(h) does not apply in the following two situations: (1) Where the trade or business with which the liability is associated is transferred to the corporation assuming the liability; and (2) where substantially all of the assets with which the liability is associated are transferred to the corporation assuming the liability. Section 358(h)(2) authorizes the Secretary to limit the application of these exceptions.

The statutory provision relating to partnerships does not specify whether the exceptions in section 358(h)(2) should apply. The only cross-reference to section 358(h) in this statutory provision is to section 358(h)(3), which defines the term *liability*. Treasury and IRS believe it is appropriate to provide for a variation on one of the two exceptions to section 358(h), as well as an additional exception that is not included in section 358(h), in these proposed regulations. Treasury and the IRS request comments on these exceptions and on whether additional exceptions should be included in the final regulations.

The first exception applies where the partnership assumes the § 1.752–7 liability as part of the contribution of the trade or business with which the liability is associated and the partnership continues to conduct that trade or business after the contribution. For this purpose, a trade or business is a specific group of activities carried on by a person for the purpose of earning income or profit if the activities included in that group include every operation that forms a part of, or a step in, the process of earning income or profit.

The proposed regulations provide that the activity of acquiring, holding, or disposing of financial instruments constitutes a trade or business for this purpose if and only if the activity is conducted by an entity registered with the Securities and Exchange Commission as a management company under the Investment Company Act of 1940, as amended. Treasury and the IRS are concerned that certain activities involving acquiring, holding, or disposing of financial instruments could be structured to accomplish the types of transactions that section 309(c) of the Act was designed to prevent. Nonetheless, Treasury and the IRS recognize that many persons contribute such activities to partnerships for substantial business purposes. For example, mutual funds often contribute substantially all of their assets to a master partnership to save administrative costs. Under some circumstances, such a mutual fund may transfer portfolio positions (including hedge positions that could be

considered § 1.752–7 liabilities under the proposed regulations) to the master partnership. Because a contribution by a mutual fund to a master partnership is not the type of abusive loss duplication transaction that section 309(c) of the Act was designed to address, the proposed regulations treat this type of contribution as a contribution of a trade or business. Treasury and the IRS request comments on additional types of activities that should be treated as trades or businesses for purposes of these regulations.

The proposed regulations do not include the section 358(h) exception for situations in which substantially all of the assets with which the liability is associated are transferred to the partnership assuming the liability. Treasury and the IRS are concerned that taxpayers would rely on that exception to facilitate transactions of the type that section 309(c) of the Act was designed to prevent.

An additional *de minimis* exception, not present in section 358(h), is included in the proposed regulations. Under this exception, the proposed regulations do not apply where, immediately before the disposition of the partnership interest by the § 1.752–7 liability partner, the liquidation of the § 1.752–7 liability partner's partnership interest, or the assumption of the § 1.752–7 liability by another partner, the amount of the remaining built-in loss with respect to all § 1.752–7 liabilities assumed by the partnership (other than § 1.752–7 liabilities that are assumed by the partnership with an associated trade or business) is less than the lesser of 10% of the gross value of the partnership's assets or $1,000,000. This exception was added in recognition of the fact that loss acceleration and duplication strategies typically are engaged in only if the accelerated or duplicated loss is substantial.

4. Advanced Notice of Proposed Rulemaking Under Section 358(h)(2)

Treasury and the IRS are considering exercising their regulatory authority under section 358(h)(2) to limit the exceptions to section 358(h)(1) to follow the exceptions set forth in these proposed regulations (other than the *de minimis* exception). Treasury and the IRS request comments on the scope and substance of such regulations, which will be retroactive to the extent necessary to prevent abuse.

5. Rules Applicable to Tiered Structures

Proposed § 1.752–7(e) and (i) provide rules to address a contribution of a partnership interest to another partnership. First, under § 1.752–7(e)(3), a transfer by a partner of an interest in a partnership (lower-tier partnership) to another partnership (upper-tier partnership) is not treated as a transfer of a partnership interest for purposes of applying these rules. Therefore, the partner does not have to reduce the basis of the partnership interest before such a transfer. However, look-through rules in § 1.752–7(i) apply to treat the transfer of the partnership interest as a transfer of the partner's share of the assets and § 1.752–7 liabilities of the partnership. Therefore, a transfer of a partnership interest to another partnership may be treated as an assumption of a § 1.752–7 liability by a partnership under these proposed regulations. Under proposed § 1.358–7(a), similar rules apply to a contribution of a partnership interest to a corporation.

Also, § 1.752–7(i)(2) provides a limitation on the trade or business exception where a partnership (upper-tier partnership) assumes a § 1.752–7 liability from a partner, and then another partnership (lower-tier partnership) assumes the § 1.752–7 liability from the upper-tier partnership. In such a case, the trade or business exception does not apply on the assumption of the § 1.752–7 liability by the lower-tier partnership from the upper-tier partnership unless it applied on the assumption of the § 1.752–7 liability by the upper-tier partnership from the § 1.752–7 liability partner. Section 1.358–7(c) of these proposed regulations provide for similar rules where a corporation assumes an obligation described in section 358(h)(3) from a partnership that the partnership had previously assumed from a partner. In addition, § 1.358–7(b) of these proposed regulations provide special rules for adjusting the partners' bases in a partnership when a corporation assumes a § 1.752–7 liability from the partnership.

Additional rules are provided for look-through treatment where a partnership is a § 1.752–7 liability partner in another partnership. The proposed regulations also provide special rules for situations in which the § 1.752–7 liability partner disposes of the partner's interest in the partnership and then another partnership (or a corporation) assumes the § 1.752–7 liability from the partnership.

Effective Date

The regulations described above are proposed to apply to assumptions of § 1.752–7 liabilities occurring on or after June 24, 2003. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations (§ 1.752–6T) that apply to liabilities assumed by a partnership after October 18, 1999, and before June 24, 2003. The text of those temporary regulations published in the Rules and Regulation section of this issue of the **Federal Register** serves as the text of § 1.752–6 of these regulations. In lieu of applying § 1.752–6T of the temporary Income Tax Regulations, partnerships may elect to be subject to the proposed rules of § 1.358–7 and 1.752–7 and the proposed revisions of § 1.704–1(b)(2)(iv)(*b*), 1.704–2(b)(3), 1.705–1(a)(7), and 1.752–1, published as part of this Notice of Proposed Rulemaking, with respect to all liabilities (including § 1.752–7 liabilities) assumed by the partnership after October 18, 1999 and before June 24, 2003. The election must be filed with the first Federal income tax return filed by the partnership on or after September 22, 2003. The election will be valid only if the partnership and its partners promptly amend any returns for open taxable years that would be affected by the election.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few partnerships engage in the type of transactions that are subject to these regulations (assumptions of liabilities not described in section 752(a) and (b) from a partner). In addition, available data indicates that most partnerships that engage in the type of transactions that are subject to these regulations are large partnerships. Certain broad exceptions to the application of these regulations (including a *de minimis* exception) further limit the economic impact of these regulations on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Comments are sought as to the number of legitimate business transactions that will be affected by the proposed regulations.

Drafting Information

The principal author of these regulations is Horace Howells, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 continues to read in part as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.752–1(a) also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001) * * *

Section 1.752–6 also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001) * * *

Section 1.752–7 also issued under Public Law 106–554, 114 Stat. 2763, 2763A–638 (2001) * * *

2. Section 1.358–7 is added to read as follows:

§ 1.358–7 Transfers by partners and partnerships to corporations.

(a) *Contributions of partnership interests.* For purposes of section 358(h), a transfer of a partnership interest to a corporation is treated as a transfer of the partner's share of each of the partnership's assets and an assumption by the corporation of the partner's share of partnership liabilities (including section 358(h) liabilities, as defined in paragraph (d) of this section). *See* paragraph (e), *Example 1* of this section.

(b) *Contributions by partnerships.* If a corporation assumes a section 358(h) liability from a partnership in an exchange to which section 358(a) applies, then, for purposes of applying section 705 (determination of basis of partner's interest) and § 1.704–1(b), any reduction, under section 358(h)(1), in the partnership's basis in corporate stock received in the transaction is treated as an expenditure of the partnership described in section 705(a)(2)(B). *See* paragraph (e), *Example 2* of this section. This expenditure must be allocated among the partners in accordance with section 704(b) and (c) and § 1.752–7(c). If a partner's share of the reduction, under section 358(h)(1), in the partnership's basis in corporate stock exceeds the partner's basis in the partnership interest, then the partner recognizes gain equal to the excess, which is treated as gain from the sale or exchange of a partnership interest. This paragraph does not apply to the extent that § 1.752–7(i)(4) applies to the assumption of the § 1.752–7 liability by the corporation.

(c) *Assumption of section 358(h) liability by partnership followed by transfer of partnership interest or partnership property to a corporation—trade or business exception.* Where a partnership assumes a section 358(h) liability from a partner and, subsequently, the partner transfers all or part of the partner's partnership interest to a corporation in an exchange to which section 358(a) applies, the section 358(h) liability is treated as associated only with the contribution made to the partnership by that partner. Similar rules apply where a partnership assumes a section 358(h) liability of a partner and a corporation subsequently assumes that section 358(h) liability from the partnership in an exchange to which section 358(a) applies. *See* paragraph (e), *Example 1* of this section.

(d) *Section 358(h) liabilities defined.* For purposes of this section, section 358(h) liabilities are liabilities described in section 358(h)(3).

(e) *Examples.* The following examples illustrate the provisions of this section. Assume, for purposes of these examples, that the obligation assumed by the corporation does not reduce the shareholder's basis in the corporate stock under section 358(d). The examples are as follows:

Example 1. Contribution of partnership interest to corporation. In 2004, A contributes undeveloped land with a value and basis of $4,000,000 in exchange for a 50% interest in PRS and an assumption by PRS of $2,000,000 of pension liabilities from a separate business that A conducts. A's basis in the PRS interest immediately after the contribution is A's basis in the land, $4,000,000, unreduced by the amount of the pension liabilities. PRS develops the land as a landfill. Before PRS has economically performed with respect to the pension liabilities, A contributes A's interest in PRS to Corporation X, in an exchange to which section 351 applies. At the time of the exchange, the value of A's PRS interest is $2,000,000, A's basis in PRS is $4,000,000, and A has no share of partnership liabilities other than the pension liabilities. For purposes of applying section 358(h), the contribution of the PRS interest to Corporation X is treated as a contribution to Corporation X of A's share of PRS assets and of A's share of the pension liabilities of PRS ($2,000,000). Because the pension liabilities were not assumed by PRS from A in an exchange in which either the trade or business associated with the liability or substantially all of the assets associated with the liability were transferred to PRS, the contribution of the PRS interest to Corporation X is not excepted from section 358(h) under section 358(h)(2). Under section 358(h), A's basis in the Corporation X stock is reduced by the $2,000,000 of pension liabilities.

Example 2. Contribution of partnership property to corporation. In 2004, in an exchange to which section 351(a) applies, PRS, a cash basis taxpayer, contributes $2,000,000 cash to Corporation X, also a cash basis taxpayer, in exchange for Corporation X shares and the assumption by Corporation X of $1,000,000 of accounts payable incurred by PRS. At the time of the exchange, PRS has two partners, A, a 90% partner, who has a $2,000,000 basis in the PRS interest, and B, a 10% partner, who has a $50,000 basis in the PRS interest. Assume that, under section 358(h)(1), PRS's basis in the Corporation X stock is reduced by the accounts payable assumed by Corporation X ($1,000,000). Under paragraph (b) of this section, A's and B's bases in PRS must be reduced, but not below zero, by their respective shares of the section 358(h)(1) basis reduction. If either partner's share of the section 358(h)(1) basis reduction exceeds the partner's basis in the partnership interest, then the partner recognizes gain equal to the excess. A's share of the section 358(h) basis reduction is $900,000 (90% of $1,000,000). Therefore, A's basis in the PRS interest is reduced to $1,100,000 ($2,000,000—$900,000). B's share of the section 358(h) basis reduction is $100,000 (10% of $1,000,000). Because B's share of the section 358(h) basis reduction ($100,000) exceeds B's basis in the PRS interest ($50,000), B's basis in the PRS interest is reduced to $0 and B recognizes $50,000 of gain. This gain is treated as gain from the sale of the PRS interest.

(f) *Effective date.* This section applies to assumptions of liabilities by a corporation occurring on or after June 24, 2003.

§ 1.704–1 [Amended]

3. Section 1.704–1 is amended as follows:

1. Paragraph (b)(1)(ii) is amended by removing the language ''The'' at the beginning of the first sentence and adding ''Except as otherwise provided in this section, the'' in its place.

2. Paragraph (b)(2)(iv)(*b*)(2) is amended by removing the language ''secured by such contributed property'' in the parenthetical.

3. Paragraph (b)(2)(iv)(*b*)(2) is further amended by removing the language ''under section 752'' in the parenthetical.

4. Paragraph (b)(2)(iv)(*b*)(5) is amended by removing the language ''secured by such distributed property'' in the parenthetical.

5. Paragraph (b)(2)(iv)(*b*)(5) is further amended by removing the language ''under section 752'' in the parenthetical.

6. Paragraph (b)(2)(iv)(*b*) is further amended by adding a sentence at the end of the paragraph.

The addition reads as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(b) * * * For liabilities assumed before June 24, 2003, references to liabilities in this paragraph (b)(2)(iv)(*b*) shall include only liabilities secured by the contributed or distributed property that are taken into account under section 752(a) and (b).

* * * * *

§ 1.704–2 [Amended]

4. In § 1.704–2, paragraph (b)(3) is amended by adding the language ''or a § 1.752–7 liability (as defined in § 1.752–7(b)(2)(i)) assumed by the partnership from a partner on or after June 24, 2003'' at the end of the sentence.

5. Section 1.705–1 is amended by adding paragraph (a)(8) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(8) For basis adjustments necessary to coordinate sections 705 and 358(h), *see* § 1.358–7(b). For certain basis adjustments with respect to a § 1.752–7 liability assumed by a partnership from a partner, *see* § 1.752–7.

* * * * *

§ 1.752–0 [Amended]

6. Section 1.752–0 is amended as follows:

1. The section heading and introductory text of § 1.752–0 are revised.

2. The entries for § 1.752–1(a)(1) through (a)(3) are redesignated as § 1.752–1(a)(2) through (a)(4).

3. A new entry for § 1.752–1(a)(1) is added.

4. The entries for § 1.752–1(a)(1)(i), (ii), (iii), and (iv) are added.

5. The entries for §§ 1.752–6 and 1.752–7 are added.

The revision and additions read as follows:

§ 1.752–0 Table of contents.

This section lists the major captions that appear in §§ 1.752–1 through 1.752–7.

§ 1.752–1 Treatment of partnership liabilities.

(a) Definitions.
(1) Liability defined.
(i) In general.
(ii) Obligation.
(iii) Other liabilities.
(iv) Effective date.

* * * * *

1.752–6 Partnership assumption of partner's § 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

(a) In general.
(b) Exceptions.
(1) In general.
(2) Transactions described in Notice 2000–44.
(c) Example.
(d) Effective date.
(1) In general.
(2) Election to apply § 1.752–7.

§ 1.752–7 Partnership assumption of partner's § 1.752–7 liability on or after June 24, 2003.

(a) General rules.
(1) Purpose and structure.
(2) Exception from disguised sale rules.
(b) Definitions.
(1) Assumption.
(2) § 1.752–7 liability.
(i) In general.
(ii) Amount and share of § 1.752–7 liability.
(3) § 1.752–7 liability partner.
(4) Remaining built-in loss associated with a § 1.752–7 liability.
(5) § 1.752–7 liability reduction.
(i) In general.
(ii) Partial dispositions and assumptions.
(6) § 1.752–7 liability transfer.
(7) Testing date.
(8) Trade or business.
(i) In general.
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(A) In general.
(B) Financial instruments.
(iii) Examples.
(9) Adjusted value.
(c) Application of section 704(c) to assumed § 1.752–7 liabilities.
(1) In general.
(2) Example.
(d) Special rules for sales of partnership interests, distributions of partnership assets, and assumptions of the § 1.752–7 liability after a § 1.752–7 liability transfer.
(1) In general.
(2) Exceptions.
(i) In general.
(ii) Examples.
(e) Transfer of § 1.752–7 liability partner's partnership interest.
(1) In general.
(2) Examples.
(3) Exception for nonrecognition transactions.
(i) In general.
(ii) Examples.
(f) Distribution in liquidation of § 1.752–7 liability partner's partnership interest.
(1) In general.
(2) Example.
(g) Assumption of § 1.752–7 liability by a partner other than § 1.752–7 liability partner.
(1) In general.
(2) Consequences to § 1.752–7 liability partner.
(3) Consequences to partnership.
(4) Consequences to assuming partner.
(5) Example.
(h) Notification by the partnership (or successor) of the economic performance of the § 1.752–7 liability.
(i) Tiered partnerships.
(1) Look-through treatment.
(2) Trade or business exception.
(3) Partnership as a § 1.752–7 liability partner.
(4) Transfer of § 1.752–7 liability by partnership to another partnership or corporation after a transaction described in paragraphs (e), (f), or (g).
(i) In general.
(ii) Subsequent transfers.
(5) Example.
(j) Effective date.
(1) In general.
(2) Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003.
(i) In general.
(ii) Manner of making election.
(iii) Filing of amended returns.
(iv) Time for making election.

7. In § 1.752–1, paragraphs (a)(1) through (a)(3) are redesignated as paragraphs (a)(2) through (a)(4) and a new paragraph (a)(1) is added to read as follows:

§ 1.752–1 Treatment of partnership liabilities.

(a) *Definitions*—(1) *Liability defined*—(i) *In general.* An obligation is a liability for purposes of section 752 and the regulations thereunder, only if and to the extent that incurring the obligation—

(A) Creates or increases the basis of any of the obligor's assets (including cash);

(B) Gives rise to an immediate deduction to the obligor; or

(C) Gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital.

(ii) *Obligation.* For purposes of this paragraph and § 1.752–7, an obligation is any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Internal Revenue Code. Obligations include, but are not limited to, debt obligations, environmental obligations, tort obligations, contract obligations, pension obligations, obligations under a short sale, and obligations under derivative financial instruments such as options, forward contracts, and futures contracts.

(iii) *Other liabilities.* For obligations that are not liabilities as defined in paragraph (a)(1)(i) of this section, *see* §§ 1.752–6 and 1.752–7.

(iv) *Effective date.* This paragraph (a)(1) applies to liabilities that are incurred or assumed by a partnership on or after June 24, 2003.

* * * * *

§ 1.752–5(a) [Amended]

8. Section 1.752–5 is amended as follows:

1. Paragraph 1.752–5(a) is amended by removing the language ''Unless'' at the beginning of the first sentence and adding ''Except as otherwise provided in §§ 1.752–1 through 1.752–4, unless'' in its place.

9. Section 1.752–6 is added to read as follows:

§ 1.752–6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

The text of proposed § 1.752–6 is the same as the text of § 1.752–6T published elsewhere in this issue of the **Federal Register**.

10. Section 1.752–7 is added to read as follows:

§ 1.752–7 Partnership assumption of partner's § 1.752–7 liability on or after June 24, 2003.

(a) *General rules*—(1) *Purpose and structure.* The purpose of this section is to prevent the acceleration or duplication of loss through the assumption of obligations not described in § 1.752–1(a)(1) in transactions involving partnerships. Under paragraph (c) of this section, any such obligation that is assumed by a partnership from a partner in a transaction governed by section 721(a) must be taken into account by applying principles under section 704(c). Paragraphs (e), (f), and (g) of this section provide rules for situations where a partnership assumes such an obligation from a partner and, subsequently, that partner sells or exchanges all or part of the partnership interest, that partner receives a distribution in liquidation of the partnership interest, or another partner assumes part or all of that obligation from the partnership. These rules prevent the duplication of loss by prohibiting the partnership and any person other than the partner from whom the obligation was assumed from claiming a deduction or capital expense to the extent of the built-in loss associated with the obligation. These rules also prevent the acceleration of loss by deferring the partner's deduction or loss attributable to the obligation (if any) until economic performance occurs. Paragraph (d) of this section provides a number of exceptions to paragraphs (e), (f), and (g) of this section, including a *de minimis* exception. Paragraph (i) of this section provides special rules for tiered partnership transactions.

(2) *Exception from disguised sale rules.* The assumption of a § 1.752–7 liability is not treated as an assumption of a liability or as a transfer of cash for purposes of section 707(a)(2)(B).

(b) *Definitions.* For purposes of this section, the following definitions apply—

(1) *Assumption.* A person that takes property subject to a § 1.752–7 liability of another person is treated as assuming the § 1.752–7 liability, but only to the extent of the fair market value of the property taken subject to the § 1.752–7 liability.

(2) *§ 1.752–7 liability*—(i) *In general.* A § 1.752–7 liability is an obligation (as defined in § 1.752–1(a)(1)(ii)) that is not described in § 1.752–1(a)(1)(i).

(ii) *Amount and share of § 1.752–7 liability.* The amount of a § 1.752–7 liability is the amount of cash that a willing assignor would pay to a willing assignee to assume the § 1.752–7 liability in an arm's-length transaction. A partner's share of a partnership's § 1.752–7 liability is the amount of deduction that would be allocated to the partner with respect to the § 1.752–7 liability if the partnership disposed of all of its assets, satisfied all of its liabilities (other than § 1.752–7 liabilities), and paid an unrelated person to assume all of its § 1.752–7 liabilities in a fully taxable arm's-length transaction (assuming such payment would give rise to an immediate deduction to the partnership).

(3) *§ 1.752–7 liability partner.* A § 1.752–7 liability partner is a partner from whom a partnership assumes a § 1.752–7 liability as part of a § 1.752–7 liability transfer or any person who acquires a partnership interest from the § 1.752–7 liability partner in a transaction described in paragraph (e)(3) of this section. If a partnership (lower-tier partnership) assumes a § 1.752–7 liability from another partnership (upper-tier partnership), then both the upper-tier partnership and the partners of the upper-tier partnership are § 1.752–7 liability partners. Therefore, paragraphs (e) and (f) of this section apply on a sale or liquidation of any partner's interest in the upper-tier partnership and on a sale or liquidation of the upper-tier partnership's interest in the lower-tier partnership. *See* paragraph (i)(3) of this section.

(4) *Remaining built-in loss associated with a § 1.752–7 liability.* The remaining built-in loss associated with a § 1.752–7 liability equals the amount of the § 1.752–7 liability as of the time of the assumption of the § 1.752–7 liability by the partnership, reduced by the portion of the § 1.752–7 liability previously taken into account by the § 1.752–7 liability partner under paragraph (i)(4) of this section and adjusted as provided in paragraph (c) of this section and § 1.704–3 for—

(i) Partnership allocations of loss or deduction with respect to the § 1.752–7 liability on or prior to the testing date; and

(ii) Any assumption of all or part of the § 1.752–7 liability by the § 1.752–7 liability partner (including any assumption that occurs on the testing date).

(5) *§ 1.752–7 liability reduction*—(i) *In general.* The § 1.752–7 liability reduction is the amount by which the § 1.752–7 liability partner is required to reduce the basis in the partner's partnership interest by operation of paragraphs (e), (f), and (g) of this section. The § 1.752–7 liability reduction is the lesser of—

(A) The excess of the § 1.752–7 liability partner's basis in the partner's partnership interest over the adjusted value of that interest (as defined in paragraph (b)(9) of this section); or

(B) The remaining built-in loss associated with the § 1.752–7 liability.

(ii) *Partial dispositions and assumptions.* In the case of a partial disposition of the § 1.752–7 liability partner's partnership interest or a partial assumption of the § 1.752–7 liability by another partner, the § 1.752–7 liability reduction is pro rated based on the portion of the interest sold or the portion of the § 1.752–7 liability assumed.

(6) *§ 1.752–7 liability transfer.* A § 1.752–7 liability transfer is any assumption of a § 1.752–7 liability by a partnership from a partner in a transaction governed by section 721(a).

(7) *Testing date.* The testing date is—

(i) For purposes of paragraph (e) of this section, the date of the sale, exchange, or other disposition of part or all of the § 1.752–7 liability partner's partnership interest;

(ii) For purposes of paragraph (f) of this section, the date of the partnership's distribution in liquidation of the § 1.752–7 liability partner's partnership interest; and

(iii) For purposes of paragraph (g) of this section, the date of the assumption (or partial assumption) of the § 1.752–7 liability by a partner other than the § 1.752–7 liability partner.

(8) *Trade or business*—(i) *In general.* A trade or business is a specific group of activities carried on by a person for the purpose of earning income or profit if the activities included in that group include every operation that forms a part of, or a step in, the process of earning income or profit. Such group of activities ordinarily includes the collection of income and the payment of expenses. Subject to paragraph (b)(8)(ii)

of this section, the group of activities must constitute the carrying on of a trade or business under section 162(a) (determined as though the activities were conducted by an individual).

(ii) *Trading and investment partnerships*—(A) *In general.* The activity of acquiring, holding, or disposing of financial instruments constitutes a trade or business for purposes of this paragraph (b)(8) if and only if the activity is conducted by an entity registered with the Securities and Exchange Commission as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a).

(B) *Financial instruments.* For purposes of paragraph (b)(8)(ii) of this section, financial instruments include stock in corporations; notes, bonds, debentures, or other evidences of indebtedness; interest rate, currency, or equity notional principal contracts; evidences of an interest in, or derivative financial instruments in, stock, securities, currencies, or commodities, including options, forward or futures contracts, or short positions; or any similar financial instrument.

(iii) *Examples.* The following examples illustrate the provisions of paragraph (b)(8) of this section:

Example 1. Corporation Y owns, manages, and derives rental income from an office building and also owns vacant land that may be subject to environmental liabilities. Corporation Y contributes the land subject to the environmental liabilities to PRS in a transaction governed by section 721(a). PRS plans to develop the land as a landfill. The contribution of the vacant land does not constitute the contribution of a trade or business because Corporation Y did not conduct any significant business or development activities with respect to the land prior to the contribution.

Example 2. For the past 5 years, Corporation X has owned and operated gas stations in City A, City B, and City C. Corporation X transfers all of the assets associated with the operation of the gas station in City A to PRS for interests in PRS and the assumption by PRS of the § 1.752–7 liabilities associated with that gas station. PRS continues to operate the gas station in City A after the contribution. The contribution of the gas station to PRS constitutes the contribution of a trade or business.

Example 3. For the past 7 years, Corporation Z has engaged in the manufacture and sale of household products. Throughout this period, Corporation Z has maintained a research department for use in connection with its manufacturing activities. The research department has 10 employees actively engaged in the development of new products. Corporation Z contributes the research department to PRS in exchange for a PRS interest and the assumption by PRS of pension liabilities with respect to the employees of the research department. PRS continues the research operations on a contractual basis with several businesses, including Corporation Z. The contribution of the research operations to PRS constitutes a contribution of a trade or business.

(9) *Adjusted value.* The adjusted value of a partner's interest in a partnership is the fair market value of that interest increased by the partner's share of partnership liabilities under ''1.752–1 through 1.752–5.

(c) *Application of section 704(c) to assumed § 1.752–7 liabilities*—(1) *In general.* Any § 1.752–7 liability assumed by a partnership in a § 1.752–7 liability transfer is treated under section 704(c) principles as having a built-in loss equal to the amount of the § 1.752–7 liability as of the date of the partnership's assumption of the § 1.752–7 liability. Thus, items of deduction or loss with respect to the § 1.752–7 liability, if any, must be allocated, first, to the § 1.752–7 liability partner to the extent of the built-in loss. Deductions or losses with respect to the § 1.752–7 liability that exceed the built-in loss are shared among the partners in accordance with section 704(b) and the regulations thereunder.

(2) *Example.* The following example illustrates the provisions of this paragraph (c):

Example —(i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value and basis of $400X, subject to a § 1.752–7 liability of $100X, for a 25% interest in PRS. B contributes $300X cash for a 25% interest in PRS, and C contributes $600X cash for a 50% interest in PRS. Assume that the partnership complies with the substantial economic effect safe harbor of § 1.704–1(b)(2). Under § 1.704–1(b)(2)(iv)(b), A's capital account is credited with $300X (the fair market value of Property 1, $400X, less the § 1.752–7 liability assumed by PRS, $100X). In 2005, PRS earns $200X of income and uses it to satisfy the § 1.752–7 liability. Assume that the cost to PRS of satisfying the § 1.752–7 liability is deductible by PRS. The $200X of partnership income is allocated according to the partnership agreement, $50X to A, $50X to B, and $100X to C.

ii. *Analysis.* Pursuant to paragraph (c) of this section, $100X of the deduction attributable to the economic performance of the § 1.752–7 liability is specially allocated to A, the § 1.752–7 liability partner, under section 704(c)(1)(A) and the regulations thereunder. No book item corresponds to this tax allocation. The remaining $100X of deduction attributable to economic performance of the § 1.752–7 liability is allocated, for both book and tax purposes, according to the partnership agreement, $25X to A, $25X to B, and $50X to C. If the partnership, instead, satisfied the § 1.752–7 liability over a number of years, the first $100X of deduction with respect to the § 1.752–7 liability would be allocated to A, the § 1.752–7 liability partner, before any deduction with respect to the § 1.752–7 liability would be allocated to the other partners. For example, if PRS were to satisfy $50X of the § 1.752–7 liability at a time when PRS reasonably believed that it would cost $200X to satisfy the § 1.752–7 liability in full, the $50X deduction with respect to the § 1.752–7 liability would be allocated to A for tax purposes only. No deduction would arise for book purposes. If PRS later paid a further $100X in satisfaction of the § 1.752–7 liability, $50X of the deduction with respect to the § 1.752–7 liability would be allocated, solely for tax purposes, to A and the remaining $50X would be allocated, for both book and tax purposes, according to the partnership agreement.

(d) *Special rules for sales of partnership interests, distributions of partnership assets, and assumptions of the § 1.752–7 liability after a § 1.752–7 liability transfer*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, paragraphs (e), (f), and (g) of this section apply to certain partnership transactions occurring after a § 1.752–7 liability transfer.

(2) *Exceptions*—(i) *In general.* Paragraphs (e), (f), and (g) of this section do not apply—

(A) If the partnership assumes the § 1.752–7 liability as part of a contribution to the partnership of the trade or business with which the liability is associated, and the partnership continues to carry on that trade or business after the contribution (for the definition of a trade or business *see* paragraph (b)(8) of this section); or

(B) If, immediately before the testing date, the amount of the remaining built-in loss with respect to all § 1.752–7 liabilities assumed by the partnership (other than § 1.752–7 liabilities assumed by the partnership with an associated trade or business) in one or more § 1.752–7 liability transfers is less than the lesser of 10% of the gross value of partnership assets or $1,000,000.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (d)(2):

Example 1. For the past 5 years, Corporation X, a C corporation, has been engaged in Business A and Business B. In 2004, Corporation X contributes Business A, in a transaction governed by section 721(a), to PRS in exchange for a PRS interest and the assumption by PRS of pension liabilities with respect to the employees engaged in Business A. PRS plans to carry on Business A after the contribution. Because PRS has assumed the pension liabilities as part of a contribution to PRS of the trade or business with which the liabilities are associated, paragraphs (e), (f), and (g) of this section do not apply to any transaction occurring after the § 1.752–7 liability transfer.

Example 2 —(i) *Facts.* The facts are the same as in Example 1, except that PRS also

assumes from Corporation X certain pension liabilities with respect to the employees of Business B. At the time of the assumption, the amount of the pension liabilities with respect to the employees of Business A is $3,000,000 (the A liabilities) and the amount of the pension liabilities associated with the employees of Business B (the B liabilities) is $2,000,000. Two years later, Corporation X sells its interest in PRS to Y for $9,000,000. At the time of the sale, the remaining built-in loss associated with the A liabilities is $2,100,000, the remaining built-in loss associated with the B liabilities is $900,000, and the gross value of PRS's assets (excluding § 1.752–7 liabilities) is $20,000,000. Assume that PRS has no § 1.752–7 liabilities other than those assumed from Corporation X.

(ii) *Analysis.* The only liabilities assumed by PRS from Corporation X that were not assumed as part of Corporation X's contribution of Business A were the B liabilities. Immediately before the testing date, the remaining built-in loss associated with the B liabilities ($900,000) was less than the lesser of 10% of the gross value of PRS's assets ($2,000,000) or $1,000,000. Therefore, paragraph (d)(2)(i)(B) of this section applies to exclude Corporation X's sale of the PRS interest to Y from the application of paragraph (e) of this section.

(e) *Transfer of § 1.752–7 liability partner's partnership interest*—(1) *In general.* Except as provided in paragraphs (d)(2) and (e)(3) of this section, immediately before the sale, exchange, or other disposition of all or a part of a § 1.752–7 liability partner's partnership interest, the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction. No deduction or capital expense is allowed to the partnership on the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability. For purposes of section 705(a)(2)(B) and § 1.704–1(b)(2)(ii)(b) only, the remaining built-in loss associated with the § 1.752–7 liability is not treated as a nondeductible, noncapital expenditure of the partnership. Therefore, the remaining partners' capital accounts and bases in their partnership interests are not reduced by the remaining built-in loss associated with the § 1.752–7 liability. If the partnership (or any successor) notifies the § 1.752–7 liability partner of the economic performance of the § 1.752–7 liability (as described in paragraph (h) of this section), then the § 1.752–7 liability partner is entitled to a loss or deduction. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount paid by the partnership in satisfaction of the § 1.752–7 liability (but not more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount paid in satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount paid in satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(2) *Examples.* The following examples illustrates the principles of paragraph (e)(1) of this section:

Example 1 —(i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value of $5,000,000 and basis of $4,000,000 subject to a § 1.752–7 liability of $2,000,000 in exchange for a 25% interest in PRS. B contributes $3,000,000 cash in exchange for a 25% interest in PRS, and C contributes $6,000,000 cash in exchange for a 50% interest in PRS. In 2006, when PRS has a section 754 election in effect, A sells A's interest in PRS to D for $3,000,000. At the time of the sale, the basis of A's PRS interest is $4,000,000, the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000, and PRS has no liabilities (as defined in § 1.752–1(a)(1)). Assume that none of the exceptions of paragraph (d)(2) of this section apply and that economic performance of the § 1.752–7 liability would have given rise to a deductible expense to A. In 2007, PRS pays $3,000,000 to satisfy the liability.

(ii) *Sale of A's PRS interest.* Immediately before the sale of the PRS interest to D, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest ($4,000,000) over the adjusted value of that interest ($3,000,000), $1,000,000, or the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000. Therefore, A recognizes no gain or loss on the sale of the PRS interest to D. D's basis in the PRS interest is $3,000,000. D's share of the adjusted basis of partnership property equals D's interest in the partnership's previously taxed capital of $2,000,000 (the amount of cash that D would receive on a liquidation of the partnership, $3,000,000, increased by the amount of tax loss that would be allocated to D in the hypothetical transaction, $0, and reduced by the amount of tax gain that would be allocated to D in the hypothetical transaction, $1,000,000). Therefore, the basis adjustment under section 743(b) is $1,000,000.

(iii) *Satisfaction of § 1.752–7 liability.* Neither PRS nor any of its partners is entitled to a deduction for the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). PRS is entitled to a deduction, however, for the amount by which the cost of satisfying the § 1.752–7 liability exceeds the remaining built-in loss associated with the § 1.752–7 liability. Therefore, in 2007, PRS may deduct $1,000,000 (cost to satisfy the § 1.752–7 liability, $3,000,000, less the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000). If PRS notifies A of the economic performance of the § 1.752–7 liability, then A is entitled to an ordinary deduction in 2007 of $1,000,000 (the § 1.752–7 liability reduction).

Example 2 —The facts are the same as in *Example 1* except that, at the time of A's sale of the PRS interest to D, PRS has a nonrecourse liability of $4,000,000, of which A's share is $1,000,000. A's basis in PRS is $5,000,000. At the time of the sale of the PRS interest to D, the adjusted value of A's interest is $4,000,000 (the fair market value of the interest ($3,000,000), increased by A's share of partnership liabilities ($1,000,000)). The difference between the basis of A's interest ($5,000,000) and the adjusted value of that interest ($4,000,000) is $1,000,000. Therefore, the § 1.752–7 liability reduction is $1,000,000 (the lesser of this difference or the remaining built-in loss associated with the § 1.752–7 liability, $2,000,000). Immediately before the sale of the PRS interest to D, A's basis is reduced sfrom $5,000,000 to $4,0000,000. A's amount realized on the sale of the PRS interest to D is $4,000,000 ($3,000,000 paid by D, increased under section 752(d) by A's share of partnership liabilities, or $1,000,000). Therefore, A recognizes no gain or loss on the sale. D's basis in the PRS interest is $4,000,000. Because D's share of the adjusted basis of partnership property is $3,000,000 (D's share of the partnership's previously taxed capital, $2,000,000, plus D's share of partnership liabilities, $1,000,000), the basis adjustment under section 743(b) is $1,000,000.

(3) *Exception for nonrecognition transactions*—(i) *In general.* Paragraph (e)(1) of this section does not apply where a § 1.752–7 liability partner transfers all or part of the partner's partnership interest in a transaction in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the transferor's basis in the partnership interest. In addition, paragraph (e)(1) of this section does not apply to a distribution of an interest in the partnership that has assumed the § 1.752–7 liability by a partnership that is the § 1.752–7 liability partner.

(ii) *Examples.* The following examples illustrate the provisions of this paragraph (e)(3):

Example 1— (i) *Facts.* In 2004, X contributes undeveloped land with a value and basis of $2,000,000 and subject to environmental liabilities of $1,500,000 to partnership LTP in exchange for a 50% interest in LTP. LTP develops the land as a landfill. In 2005, in a transaction governed by section 721(a), X contributes the LTP interest to UTP in exchange for a 50% interest in UTP. In 2008, X sells the UTP interest to A for $500,000. At the time of the sale, X's basis in UTP is $2,000,000, the remaining built-in

loss associated with the environmental liability is $1,500,000, and the gross value of UTP's assets is $2,500,000. The environmental liabilities were not assumed by LTP as part of a contribution by X to LTP of a trade or business with which the liabilities were associated. (*See* paragraph (b)(8)(iii), *Example 1* of this section.)

(ii) *Analysis.* Because UTP's basis in the LTP interest is determined by reference to X's basis in the LTP interest, X's contribution of the LTP interest to UTP is exempted from the rules of paragraph (e)(1) of this section. Under paragraph (i)(1) of this section, X's contribution of the LTP interest to UTP is treated as a contribution of X's share of the assets of LTP and UTP's assumption of X's share of the LTP liabilities (including § 1.752–7 liabilities). Therefore, X's transfer of the LTP interest to UTP is a § 1.752–7 liability transfer. The § 1.752–7 liabilities deemed transferred by X to UTP are not associated with a trade or business transferred to UTP for purposes of paragraph (d)(2)(i)(A) of this section, because they were not associated with a trade or business transferred by X to LTP as part of the original § 1.752–7 liability transfer. *See* paragraph (i)(2) of this section. Because none of the exceptions described in paragraph (d)(2) of this section apply to X's taxable sale of the UTP interest to A in 2008, paragraph (e)(1) of this section applies to that sale.

Example 2. The facts are the same as in *Example 1,* except that, rather than transferring the LTP interest to UTP in 2005, X contributes the LTP interest to Corporation Y in an exchange to which section 351 applies. Because Corporation Y's basis in the LTP interest is determined by reference to X's basis in that interest, X's contribution of the LTP interest is exempted from the rules of paragraph (e)(1) of this section. But *see* section 358(h) and § 1.358–7.

(f) *Distribution in liquidation of § 1.752–7 liability partner's partnership interest*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, immediately before a distribution in liquidation of a § 1.752–7 liability partner's partnership interest, the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction. This rule applies before section 737. No deduction or capital expense is allowed to the partnership on the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability. For purposes of section 705(a)(2)(B) and § 1.704–1(b)(2)(ii)(b) only, the remaining built-in loss associated with the § 1.752–7 liability is not treated as a nondeductible, noncapital expenditure of the partnership. Therefore, the remaining partners' capital accounts and bases in their partnership interests are not reduced by the remaining built-in loss associated with the § 1.752–7 liability. If the partnership (or any successor) notifies the § 1.752–7 liability partner of the economic performance of the § 1.752–7 liability (as described in paragraph (h) of this section), then the § 1.752–7 liability partner is entitled to a loss or deduction. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount paid by the partnership in satisfaction of the § 1.752–7 liability (but not more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount paid in satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount paid in satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(2) *Example.* The following example illustrates the provision of this paragraph (f):

Example —(i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1 with a fair market value and basis of $5,000,000 subject to a § 1.752–7 liability of $2,000,000 for a 25% interest in PRS. B contributes $3,000,000 cash for a 25% interest in PRS, and C contributes $6,000,000 cash for a 50% interest in PRS. In 2012, when PRS has a section 754 election in effect, PRS distributes Property 2, which has a basis and fair market value of $3,000,000, to A in liquidation of A's PRS interest. At the time of the distribution, the fair market value of A's PRS interest is $3,000,000, the basis of that interest is $5,000,000, and the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000. Assume that none of the exceptions of paragraph (d)(2) of this section apply to the distribution and that the economic performance of the § 1.752–7 liability would have given rise to a deductible expense to A. In 2013, PRS pays $1,000,000 to satisfy the entire § 1.752–7 liability.

(ii) *Redemption of A's PRS interest.* Immediately before the distribution of Property 2 to A, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest over the adjusted value of that interest ($2,000,000) or the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). Therefore, A's basis in Property 2 under section 732(b) is $3,000,000. Because this is the same as the partnership's basis in Property 2 immediately before the distribution, the partnership's basis adjustment under section 734(b) is $0.

(iii) *Satisfaction of § 1.752–7 liability.* PRS is not entitled to a deduction for the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000). Because this amount exceeds the amount paid by PRS to satisfy the § 1.752–7 liability ($1,000,000), PRS is not entitled to any deduction for the § 1.752–7 liability in 2013. If, however, PRS notifies A of the economic performance of the § 1.752–7 liability, then A is entitled to an ordinary deduction in 2013 of $1,000,000 (the amount paid in satisfaction of the § 1.752–7 liability) and a capital loss of $1,000,000 (the remaining § 1.752–7 liability reduction).

(g) *Assumption of § 1.752–7 liability by a partner other than § 1.752–7 liability partner*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, section 704(c)(1)(B) does not apply to an assumption of a § 1.752–7 liability from a partnership by a partner other than the § 1.752–7 liability partner. Instead, this paragraph (g) applies. The rules of paragraph (g)(2) of this section apply only if the § 1.752–7 liability partner is a partner in the partnership at the time of the assumption of the § 1.752–7 liability. The rules of paragraphs (g)(3) and (4) of this section apply to any assumption of the § 1.752–7 liability by a partner other than the § 1.752–7 liability partner, whether or not the § 1.752–7 liability partner is a partner in the partnership at the time of the assumption.

(2) *Consequences to § 1.752–7 liability partner.* If, at the time of an assumption of a § 1.752–7 liability from a partnership by a partner other than the § 1.752–7 liability partner, the § 1.752–7 liability partner remains a partner in the partnership, then the § 1.752–7 liability partner's basis in the partnership interest is reduced by the § 1.752–7 liability reduction. If the assuming partner (or any successor) notifies the § 1.752–7 liability partner of the economic performance of the § 1.752–7 liability (as described in paragraph (h) of this section), then the § 1.752–7 liability partner is entitled to a deduction or loss. The amount of that deduction or loss is, in the case of a partial satisfaction of the § 1.752–7 liability, the amount paid by the partnership in satisfaction of the § 1.752–7 liability (but not more than the § 1.752–7 liability reduction) or, in the case of a complete satisfaction of the § 1.752–7 liability, the remaining § 1.752–7 liability reduction. To the extent of the amount paid in satisfaction of the § 1.752–7 liability, the character of that deduction or loss is determined as if the § 1.752–7 liability partner had satisfied the liability. To the extent that the § 1.752–7 liability reduction exceeds the amount paid in satisfaction of the § 1.752–7 liability, the character of the § 1.752–7 liability partner's loss is capital.

(3) *Consequences to partnership.* Immediately after the assumption of the § 1.752–7 liability from the partnership by a partner other than the § 1.752–7

liability partner, the partnership must reduce the basis of partnership assets by the remaining built-in loss associated with the § 1.752–7 liability. The reduction in the basis of partnership assets must be allocated among partnership assets as if that adjustment were a basis adjustment under section 734(b).

(4) *Consequences to assuming partner.* No deduction or capital expense is allowed to an assuming partner (other than the § 1.752–7 liability partner) on the economic performance of a § 1.752–7 liability assumed from a partnership to the extent of the remaining built-in loss associated with the § 1.752–7 liability. Instead, on economic performance of the § 1.752–7 liability, the assuming partner must adjust the basis of the partnership interest, any assets (other than cash, accounts receivable, or inventory) distributed by the partnership to the partner, or gain or loss on the disposition of the partnership interest, as the case may be. These adjustments are determined as if the assuming partner's basis in the partnership interest at the time of the assumption were increased by the lesser of the amount paid to satisfy the § 1.752–7 liability or the remaining built-in loss associated with the § 1.752–7 liability. However, the assuming partner cannot take into account any adjustments to depreciable basis, reduction in gain, or increase in loss until economic performance of the § 1.752–7 liability. Any adjustment to the basis of an asset under this provision is taken into account over the recovery period of that asset.

(5) *Example.* The following example illustrates the provisions of this paragraph (g):

Example —(i) *Facts.* In 2004, A, B, and C form partnership PRS. A contributes Property 1, a nondepreciable capital asset with a fair market value and basis of $5,000,000, in exchange for a 25% interest in PRS and assumption by PRS of a § 1.752–7 liability of $2,000,000. B contributes $3,000,000 cash for a 25% interest in PRS, and C contributes $6,000,000 cash for a 50% interest in PRS. PRS uses the cash contributed to purchase Property 2. In 2007, PRS distributes Property 1, subject to the § 1.752–7 liability to B in liquidation of B's interest in PRS. At the time of the distribution, A's interest in PRS has a value of $3,000,000 and a basis of $5,000,000, and B's interest in PRS has a value and basis of $3,000,000. Also at that time, Property 1 has a value and basis of $5,000,000, Property 2 has a value and basis of $9,000,000, and the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000. Assume that none of the exceptions of paragraph (d)(2)(i) of this section apply to the assumption of the § 1.752–7 liability by B and that economic performance of the § 1.752–7 liability would have given rise to a deductible expense to A. In 2010, B pays $1,000,000 to satisfy the entire § 1.752–7 liability. At that time, B still owns Property 1, which has a basis of $3,000,000.

(ii) *Assumption of § 1.752–7 liability by B.* Section 704(c)(1)(B) does not apply to the assumption of the § 1.752–7 liability by B. Instead, A's basis in the PRS interest is reduced (to $3,000,000) by the § 1.752–7 liability reduction, *i.e.*, the lesser of the excess of A's basis in the PRS interest over the adjusted value of that interest ($2,000,000), or the remaining built-in loss associated with the § 1.752–7 liability as of the time of the assumption ($2,000,000). PRS's basis in Property 2 is reduced (to $7,000,000) by the $2,000,000 remaining built-in loss associated with the § 1.752–7 liability. B's basis in Property 1 under section 732(b) is $3,000,000 (B's basis in the PRS interest). This is $2,000,000 less than PRS's basis in Property 1 before the distribution of Property 1 to B. If PRS has a section 754 election in effect for 2007, PRS may increase the basis of Property 2 under section 734(b) by $2,000,000.

(iii) *Satisfaction of § 1.752–7 liability.* B is not entitled to a deduction for the economic performance of the § 1.752–7 liability in 2010 to the extent of the remaining built-in loss associated with the § 1.752–7 liability as of the time of the assumption ($2,000,000). As this amount exceeds the amount paid by B to satisfy the § 1.752–7 liability, B is not entitled to any deduction for the § 1.752–7 liability in 2010. B may, however, increase the basis of Property 1 by the lesser of the remaining built-in loss associated with the § 1.752–7 liability ($2,000,000) or the amount paid to satisfy the § 1.752–7 liability ($1,000,000). Therefore, B's basis in Property 1 is increased to $4,000,000. If B notifies A of the economic performance of the § 1.752–7 liability, then A is entitled to an ordinary deduction in 2010 of $1,000,000 (the amount paid in satisfaction of the § 1.752–7 liability) and a capital loss of $1,000,000 (the remaining § 1.752–7 liability reduction).

(h) *Notification by the partnership (or successor) of the economic performance of the § 1.752–7 liability.* For purposes of paragraphs (e), (f), and (g) of this section, notification by the partnership (or successor) of the economic performance of the § 1.752–7 liability must be attached to the § 1.752–7 liability partner's return for the year in which the loss is being claimed and must include—

(1) The amount paid in satisfaction of the § 1.752–7 liability, and whether the amounts paid were in partial or complete satisfaction of the § 1.752–7 liability;

(2) The name and address of the person satisfying the § 1.752–7 liability;

(3) The date of the payment on the § 1.752–7 liability; and

(4) The character of the loss with respect to the § 1.752–7 liability.

(i) *Tiered partnerships*—(1) *Look-through treatment.* For purposes of this section, a contribution by a partner of an interest in a partnership (lower-tier partnership) to another partnership (upper-tier partnership) is treated as a contribution of the partner's share of each of the lower-tier partnership's assets and an assumption by the upper-tier partnership of the partner's share of the lower-tier partnership's liabilities (including § 1.752–7 liabilities). *See* paragraph (e)(3)(ii), *Example 1* of this section. In addition, a partnership is treated as having its share of any § 1.752–7 liabilities of the partnerships in which it has an interest.

(2) *Trade or business exception.* If a partnership (upper-tier partnership) assumes a § 1.752–7 liability of a partner, and, subsequently, another partnership (lower-tier partnership) assumes that § 1.752–7 liability from the upper-tier partnership, then the § 1.752–7 liability is treated as associated only with any trade or business contributed to the upper-tier partnership by the § 1.752–7 liability partner. The same rule applies where a partnership assumes a § 1.752–7 liability of a partner, and, subsequently, the § 1.752–7 liability partner transfers that partnership interest to another partnership. *See* paragraph (e)(3)(ii), *Example 1* of this section.

(3) *Partnership as a § 1.752–7 liability partner.* If a transaction described in paragraph (e), (f), or (g) of this section occurs with respect to a partnership (upper-tier partnership) that is a § 1.752–7 liability partner of another partnership (lower-tier partnership), then such transaction will also be treated as a transaction described in paragraph (e), (f), or (g) of this section, as appropriate, with respect to the partners of the upper-tier partnership, regardless of whether the upper-tier partnership assumed the § 1.752–7 liability from those partners. (*See* paragraph (b)(3) of this section for rules relating to the treatment of transactions by the partners of the upper-tier partnership.) In such a case, the § 1.752–7 liability reduction with respect to each partner in the upper-tier partnership is equal to that partner's share of the § 1.752–7 liability. The partners of the upper-tier partnership at the time of the transaction described in paragraph (e), (f), or (g) of this section, and not the upper-tier partnership, are entitled to the loss or deduction on the economic performance of the § 1.752–7 liability. Similar principles apply where the upper-tier partnership is itself owned by one or a series of partnerships. This paragraph does not apply to the extent that § 1.752–7(i)(4) applies to the assumption of the § 1.752–7 liability by the lower-tier partnership.

(4) *Transfer of § 1.752–7 liability by partnership to another partnership or corporation after a transaction described in paragraphs (e),(f), or (g)*—(i) *In general.* If, after a transaction described in paragraphs (e), (f), or (g) of this section with respect to a § 1.752–7 liability assumed by a partnership (the upper-tier partnership), another partnership or a corporation assumes the § 1.752–7 liability from the upper-tier partnership (or the assuming partner) in a transaction in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the upper-tier partnership (or assuming partner), then—

(A) The upper-tier partnership (or assuming partner) must reduce its basis in any corporate stock or partnership interest received by the remaining built-in loss associated with the § 1.752–7 liability (but the partners of the upper-tier partnership do not reduce their bases or capital accounts in the upper-tier partnership); and

(B) No deduction or capital expense is allowed to the assuming partnership or corporation on the economic performance of the § 1.752–7 liability to the extent of the remaining built-in loss associated with the § 1.752–7 liability.

(ii) *Subsequent transfers.* Similar rules apply to subsequent assumptions of the § 1.752–7 liability in transactions in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the transferor. If, subsequent to an assumption of the § 1.752–7 liability by a partnership in a transaction to which paragraph (i)(4)(i) of this section applies, the § 1.752–7 liability is assumed from the partnership by a partner other than the partner from whom the partnership assumed the § 1.752–7 liability, then the rules of paragraph (g)(4) of this section apply.

(5) *Example.* The following example illustrates the provisions of paragraphs (i)(3) and (i)(4) of this section.

Example —(i) *Assumption of § 1.752–7 liability by UTP and transfer of § 1.752–7 liability partner's interest in UTP.*

In 2004, A, B, and C form partnership UTP. A contributes Property 1 with a fair market value and basis of $5,000,000 subject to a § 1.752–7 liability of $2,000,000 in exchange for a 25% interest in UTP. B contributes $3,000,000 cash in exchange for a 25% interest in UTP, and C contributes $6,000,000 cash in exchange for a 50% interest in UTP. UTP invests the $9,000,000 cash in Property 2. In 2006, A sells A's interest in UTP to D for $3,000,000. At the time of the sale, the basis of A's UTP interest is $5,000,000, the remaining built-in loss associated with the § 1.752–7 liability is $2,000,000, and UTP has no liabilities other than § 1.752–7 liabilities. Assume that none of the exceptions of paragraph (d)(2) of this section apply and that economic performance of the § 1.752–7 liability would give rise to a deductible expense to the payor. Under paragraph (e) of this section, immediately before the sale of the UTP interest to D, A's basis in UTP is reduced to $3,000,000 by the $2,000,000 § 1.752–7 liability reduction. Therefore, A recognizes no gain or loss on the sale of the UTP interest to D. D's basis in the UTP interest is $3,000,000.

(ii) *Assumption of § 1.752–7 liability by LTP from UTP.* In 2008, at a time when the estimated amount of the § 1.752–7 liability has increased to $3,500,000, UTP contributes Property 1 and Property 2, subject to the § 1.752–7 liability, to LTP in exchange for a 50% interest in LTP. At the time of the contribution, Property 1 still has a value and basis of $5,000,000 and Property 2 still has a value and basis of $9,000,000. UTP's basis in LTP under section 722 is $14,000,000. Under paragraph (i)(4) of this section, UTP must reduce its basis in LTP by the $2,000,000 remaining built-in loss associated with the § 1.752–7 liability (as of the time of the sale of the UTP interest by A). The partners in UTP are not required to reduce their bases in UTP by this amount.

(iii) *Sale by UTP of LTP interest.* In 2010, UTP sells its interest in LTP to E for $10,500,000. At the time of the sale, Property 1 still has a value and basis of $5,000,000, Property 2 still has a value and basis of $9,000,000, and the remaining built-in loss associated with the § 1.752–7 liability is still $3,500,000. Under paragraph (e) of this section, immediately before the sale, UTP must reduce its basis in the LTP interest by the § 1.752–7 liability reduction. Under paragraph (a)(4) of this section, the remaining built-in loss associated with the § 1.752–7 liability is $1,500,000 (remaining built-in loss associated with the § 1.752–7 liability, $3,500,000, reduced by the amount of the § 1.752–7 liability taken into account under paragraph (i)(4) of this section, $2,000,000). The difference between the basis of the LTP interest held by UTP ($12,000,000) and the adjusted value of that interest ($10,500,000) is also $1,500,000. Therefore, the § 1.752–7 liability reduction is $1,500,000 and UTP's basis in the LTP interest must be reduced to $10,500,000. In addition, UTP's partners must reduce their bases in their UTP interests by their proportionate shares of the § 1.752–7 liability reduction. Thus, the basis of each of B's and D's interest in UTP must be reduced by $375,000 and the basis of C's interest in UTP must be reduced by $750,000. In 2011, D sells the UTP interest to F.

(iv) *Economic performance of § 1.752–7 liability by LTP.* In 2012, LTP pays $3,500,000 to satisfy the § 1.752–7 liability. Under paragraphs (e) and (i)(4) of this section, LTP is not entitled to any deduction with respect to the § 1.752–7 liability. Under paragraph (i)(3) of this section, UTP also is not entitled to any deduction with respect to the § 1.752–7 liability. If LTP notifies A, B, C and D of the economic performance of the § 1.752–7 liability, then A is entitled to a deduction in 2012 of $2,000,000, B and D are each entitled to deductions in 2012 of $375,000, and C is entitled to a deduction in 2012 of $750,000.

(j) *Effective date*—(1) *In general.* This section applies to § 1.752–7 liability transfers occurring on or after June 24, 2003.

(2) *Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003*—(i) *In general.* A partnership may elect to apply this section to assumptions of liabilities (including § 1.752–7 liabilities) occurring after October 18, 1999, and before June 24, 2003. Such an election is binding on the partnership and all of its partners. A partnership making such an election must apply all of the provisions of these proposed regulations (other than § 1.752–6).

(ii) *Manner of making election.* A partnership makes an election under this paragraph (j)(2) by attaching the following statement to its timely filed return: ''[Insert name and employer identification number of electing partnership] elects under § 1.752–7 of the Income Tax Regulations to be subject to the rules of § 1.358–7, 1.752–7, § 1.704–1(b)(2)(iv)(*b*), 1.704–2(b)(3), 1.705–1(a)(7), and 1.752–1 with respect to all liabilities (including § 1.752–7 liabilities) assumed by the partnership after October 18, 1999 and before June 24, 2003. In the statement, the partnership must list, with respect to each liability (including each § 1.752–7 liability) assumed by the partnership after October 18, 1999 and before June 24, 2003—

(A) The name, address, and taxpayer identification number of the partner from whom the liability was assumed;

(B) The date on which the liability was assumed by the partnership;

(C) The amount of the liability as of the time of its assumption; and

(D) A description of the liability.

(iii) *Filing of amended returns.* An election under this paragraph (j)(2) will be valid only if the partnership and its partners promptly amend any returns for open taxable years that would be affected by the election.

(iv) *Time for making election.* An election under this paragraph (j)(2) must be filed with the first Federal income tax return filed by the partnership on or after September 24, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–15282 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA286–0404A; FRL–7518–1]

Approval and Promulgation of State Implementation Plans; California—San Joaquin Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California regarding the San Joaquin Valley ozone nonattainment area (San Joaquin Valley). The submittal revises commitments for adoption of control measures for attaining the 1-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA or the Act) regarding EPA action on SIP submittals. EPA is also proposing to find that the adoption and implementation of the measures that are the subject of this SIP revision correct a previous finding regarding non-implementation of the SIP. If finalized, this finding would terminate the sanctions and FIP clocks associated with the previous finding.

DATES: Written comments on this proposal must be received by July 24, 2003.

ADDRESSES: Comments should be addressed to the EPA contact listed below. The rulemaking docket for this notice may be inspected by appointment at: EPA Region 9, Air Division Planning Office, 75 Hawthorne Street, San Francisco, CA.

Copies of the SIP materials are also available for inspection at the following locations: California Air Resources Board, 1001 I Street, Sacramento, CA. San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA.

FOR FURTHER INFORMATION CONTACT: Doris Lo at (415) 972–3959, *lo.doris@epa.gov*, or EPA Region 9 (AIR–2), 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION:

I. Background

When the CAA was amended in 1990, each area of the Country that was designated nonattainment for the 1-hour ozone standard was classified by the severity of the area's air quality problem. See CAA sections 107(d)(1)(C) and 181(a). The San Joaquin Valley [1] was initially classified as ''serious'' with an attainment date of no later than November 15, 1999. *See* 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1).

On November 15, 1994, the California Air Resources Board (CARB) submitted an ozone SIP for the San Joaquin Valley (1994 SIP). On January 8, 1997 (62 FR 1149), EPA published a final approval of the 1994 SIP which included, among other things, a list of commitments to adopt and implement 19 local control measures for volatile organic compounds (VOC) and oxides of nitrogen (NO_X), a rate of progress (ROP) demonstration and an attainment demonstration.

On November 8, 2001 (66 FR 56476), EPA found that the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) had failed to implement six of the 19 control measure commitments in the 1994 SIP. On the effective date of this finding (December 10, 2001), an 18 month 2:1 offset sanction clock and a 2-year highway sanction and FIP clock were started pursuant to CAA sections 110(c) and 179. In order to terminate these clocks, EPA stated that the SJVUAPCD must adopt and implement the six control measures by November 15, 2002.

II. 2001 SIP Amendment

On June 11, 2002, CARB submitted the San Joaquin Valley 2001 Amendment to the 1994 ozone SIP (2001 Amendment). This submittal became complete by operation of law pursuant to CAA section 110(k)(1)(B) on December 11, 2002. The purpose of the 2001 Amendment was primarily to address EPA's non-implementation finding and to reflect more accurate information gathered during the rule development process. Table 1 summarizes the relevant commitments in the 1994 SIP and the commitments in the 2001 Amendment.

TABLE 1

Rule	1994 SIP			2001 Amendment		
	Adopt	Implement	TPD	Adopt	Implement	TPD
4601, Architectural Coatings	1Q/96	1Q/98	1.51 (VOC)	10/31/01	11/30/01	1.3 (VOC)
4662, Organic Solvent Degreasing	1Q/96	1Q/98	2.44 (VOC)	4/2001	5/2001	11.28 (VOC)
4692, Commercial Charbroiling	2Q/96	2Q/98	0.39 (VOC)	3/31/02	4/30/02	0.39 (VOC)
4623, Organic Liquid Storage	2Q/91	2Q/96	13.2 (VOC)	12/20/01	1/20/02	0.2 (VOC)
4411, Oil Production Well Cellars	2Q/96	2Q/98	0.56 (VOC)	none	none	none
4663, Organic Solvent Waste *	2Q/96	2Q/96	0.19 (VOC)	12/20/0	1/20/02	*0.73 (VOC)
4412, Oil Workover Rigs	2Q/96	2Q/98	0.87 (NO_X)	none	none	none
4703, Stationary Gas Turbine Engines	.....	.....	.....	4/19/02	5/19/02	1.8 (NO_X)

* This estimated reduction also includes reductions from related modifications to Rules 4602, 4603, 4604, 4605, 4606, 4607, 4653, 4661, 4662, 4663 and 4684.

The District deleted the commitment for rule 4411 after evaluating an analogous but more stringent existing California requirement (*see* title 14, California Code of Regulations, section 1774). Similarly, the District deleted the commitment for rule 4412 because it was preempted by CARB's adoption of the Statewide Portable Equipment Registration Program (*see* 13 CCR 2450–2466). The 1.8 ton/day emission reduction in rule 4703 is a new commitment in the 2001 Amendment and, as such, does not replace a prior commitment.

Some of the control measures that are the subject of commitments in the 2001 Amendment achieve more emission reductions than their analogues in the 1994 SIP, while others achieve fewer. The cumulative emission reductions achieved by the six measures in the 2001 Amendment (13.9 ton/day VOC

[1] The San Joaquin Valley ozone nonattainment area includes the following counties in California's central valley: San Joaquin, part of Kern (*see* 66 FR 56476), Fresno, Kings, Madera, Merced, Stanislaus and Tulare.

and 1.8 ton/day NO_X) exceed the cumulative reductions committed to in the 1994 SIP (8.1 ton/day VOC and 0.9 ton/day NO_X) for the replacement measures.

The SJVUAPCD has adopted rules 4601, 4662, 4692, 4623, 4663 and 4703. These rules, with minor exceptions,[2] were all implemented by or before November 2002.

III. Evaluation of the 2001 Amendment

Section 110(l) of the CAA prohibits EPA from approving SIP revisions that would ''interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' EPA believes that the 2001 Amendment, in conjunction with 14 CCR 1774 and 13 CCR 2450–2466, does not interfere with the statutory attainment date for the San Joaquin Valley area, no later than November 15, 2005, because it results in cumulative emission reductions of 5.8 tons/day VOC and 0.9 ton/day NO_X beyond those to be achieved by the measures committed to in the 1994 SIP. Furthermore, since the commitments in the 2001 Amendment have been generally implemented, there will be no adverse impact on reasonable further progress requirements for the area.[3]

IV. The Non-Implementation Finding

As discussed above, EPA issued its November 8, 2001, non-implementation finding (66 FR 56476) because SJVUAPCD had failed to adopt and implement six control measures committed to in the 1994 SIP. The non-implementation finding stated that ''* * * the SJVUAPCD is obliged by its existing SIP to meet the specific requirements of its commitments. However, CARB and the District have the opportunity to amend the SIP by showing that reasonable further progress and other requirements of the CAA can be met with a revised schedule of controls and associated emission reductions.'' Based on the above evaluation, EPA believes that these requirements have been met and that the adoption and implementation of rules 4601, 4662, 4692, 4623, 4663 and 4703 in the 2001 Amendment and 14 CCR 1774 and 13 CCR 2450–2466 are tantamount to the adoption and implementation of the analogous rules in the 1994 SIP.

While our November 8, 2001, non-implementation finding specified that adoption and implementation of the six measures in the 1994 SIP would terminate sanctions, the measures in the 2001 Amendment should also be submitted to EPA for SIP approval. With the exception of rules 4411 and 4412, all measures in Table 1 have been submitted and found complete. While we concur with the SJVUAPCD that it is not necessary to duplicate 17 CCR 1774 and 13 CCR 2450–2466 requirements by adopting rules 4411 and 4412, we believe these state requirements should be submitted for incorporation into the federally enforceable SIP. Based on discussions with CARB, we believe these requirements will be submitted to EPA in the next few months.

V. Proposed Action

We are proposing to fully approve the 2001 Amendment under CAA section 110(k)(3) because EPA believes that approval is consistent with section 110(l) of the CAA. We are also proposing to find that the deficiencies that resulted in our November 8, 2001, non-implementation finding have been corrected by the adoption and implementation of rules 4601, 4662, 4692, 4623, 4663 and 4703 in the 2001 Amendment and 14 CCR 1774 and 13 CCR 2450–2466.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

This proposed rule will not have a significant impact on a substantial number of small entities because the SIP approval and associated finding under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing and terminate sanctions clocks. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

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

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law and proposes to find that portions of the state implementation plan have been implemented and, as such, imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

[2] *See* footnote 3.

[3] All of the requirements found in the 2001 Amendment rules have been implemented with the following exceptions: An aerospace exemption under rule 4662 expires in 2006; a requirement for retrofitting tanks under rule 4623 does not have to be implemented until 11/15/03; technology-forcing requirements for cleaning solvents under rule 4663 do not have to be implemented until 11/15/03; and a technology forcing requirement for photochemical resins under rule 4663 does not have to be implemented until 6/30/05. EPA believes that the emissions reductions associated with these future implementation dates are small and do not impact attainment and reasonable further progress.

E. Executive Order 13132, Federalism

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

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard and terminates sanction clocks, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, 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. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 13, 2003.

Jack P. Broadbent,

Acting Regional Administrator, Region 9.

[FR Doc. 03–15899 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA124–4079b; FRL–7517–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the municipal solid waste landfill (MSW) section 111(d) plan (the plan) submitted by the Pennsylvania Department of Environmental Protection (PADEP) for the purpose of controlling landfill gas emissions (*i.e.*, nonmethane organic compounds) from existing landfills, excluding those in the geographical areas of Allegheny County and the City of Philadelphia. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). In the final rules section of this **Federal Register**, EPA is approving the Commonwealth of Pennsylvania's plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.

EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 24, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *wilkie.walter@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA124–4079 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *wilkie.walter@epa.gov,* attention PA124–4079. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

Please note that if EPA receives adverse comment or an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 16, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–15760 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 121
Tuesday, June 24, 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

Forest Service

Acker Fire Salvage, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the Acker Fire Salvage within the Buckeye and Skillet/Emerson Facial 6th Field sub-watersheds on the Tiller Ranger District of the Umpqua National Forest. During 2002, the Acker Creek fire created about 1,600 acres of canopy mortality in both the Buckeye and Skillet/Emerson Facial 6th Field sub-watersheds. Of this total, about 600 acres of mature or late seral trees were killed or are dying. These trees represent a substantial economic value to nearby communities and ecological value to species that depend on large wood. The sub-watershed is about 120 miles south and east of Roseburg, and 120 miles north and east of Medford, Oregon. Proposed activities include the harvest of dead and dying trees through a commercial timber sale on about 350 acres in the matrix land allocation, and the planting of the harvested areas with a mixture of native conifers, hardwoods, shrubs and forbs. This proposal complies with the 1990 Umpqua National Forest Land and Resource Management Plan (Forest Plan), as amended. The Wildfire Effects Evaluation Project (2003) disclosed the effects of the Acker Fire on the Buckeye and Skillet/Emerson Facial 6th Field sub-watersheds. Forest Service plans to implement salvage portion of proposal by the fall of 2004 and post-sale activities, such as planting harvested areas, in the winter of 2005. The Forest Service gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the proposal should be received in writing by July 25, 2003.

ADDRESSES: Send written comments to James A. Caplan, Forest Supervisor, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action or EIS to Alan Baumann, Timber Management Assistant, Tiller Ranger District, 27812 Tiller Trail Hwy., Tiller, Oregon 97484; e-mail: *abaumann@fs.fed.us;* Phone: 541–825–3201.

SUPPLEMENTARY INFORMATION: The Acker Fire Salvage planning area comprises about 14,200 acres of which about 300 acres (2 percent) are private lands. About 1,400 acres of plantations were burned in the Matrix portion of the fire complex and will need to be re-established. There are no planned activities within the inventoried roadless area or the Rogue-Umpqua Divide Wilderness. The Planning Area includes all or portions of sections 1, 11–16, and 22–24, T. 29S, R. 1E; and sections 6, 7, 18 or 19, T. 29S, R. 2E, Willamette Meridian, Douglas County, Oregon.

Purpose and Need for Action. There is a need to salvage merchantable dead and dying trees for the purpose of recovering salvageable volume from fire damaged trees and begin essential reforestation efforts. There is a need to maintain the ecological base for species that depend on large wood on the forest floor or standing as snags. The trees are within the Acker Planning Area and will be removed in a manner consistent with the Forest Plan.

Proposed Action. The proposed action is to harvest about 350 acres of mature and late serial dead and dying trees, spread throughout 15 separate timber stands, from a total of 1600 acres (plantations and older forest) that had canopy mortality in the Acker Fire. Of these dead trees, about 2 to 6 trees per acre will be left as coarse down wood and snags.

No new roads are being planned. Additionally, riparian reserves will not be included in salvage plans nor will green trees be cut except for safety purposes. The proposed harvest is in the matrix lands allocation of the Buckeye and Skillet/Emerson Facial 6th Field sub-watersheds. Upon completion of harvest activities, the area will be planted with a mixture of conifers and hardwoods including: Douglas-fir; Ponderosa pine, sugar and white pine; western red cedar and incense-cedar; willow and red alter; Pacific yew; and other native trees, hardwoods and shrubs.

This analysis will consider a range of alternatives that will address the purpose and need for the proposed project. The no-action alternative will be part of this range so that effects associated with not implementing any of the proposed activities can be evaluated. Preliminary issues identified include effects on: soil productivity, fuels reduction, water quality, diameter harvest limits and invasive weeds.

Scoping Process. The Umpqua National Forest is seeking public input on this proposed action. A comment sheet will be posted to the Forest website and were requested with the mailing of the scoping letter. The proposed action will be published in the Umpqua National Forest Quarterly Schedule of Proposed Actions and posted on the Forest website on the Internet: *http://www.fs.fed.us/r6/umpqua/planning/planning1.html.*

The forest Service will be seeking additional information, comments, and assistance from Federal, State and local agencies, tribal governments, and other individuals or organizations who may be interested or affected by the proposed project. Public meetings and field trips are scheduled. Dates and locations for these activities will be announced. The scoping process will include identifying: issues; alternatives to the proposed action; and potential environmental effects (that is, direct, indirect and, cumulative effects) of the proposed action and alternatives.

Comment Requested. Comments received in response to this notice and through scoping, include names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under

36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review September 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available December 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the Acker Fire Salvage. The Responsible Official is James A. Caplan, Forest Supervisor, Umpqua National Forest. The Responsible Official will document the decision and rationale for the Acker Fire Salvage decision in the Record of Decision. The decision will be subject to review under Forest Service Appeal Regulations (36 CFR Part 215).

Dated: June 10, 2003.

James A. Caplan,

Forest Supervisor.

[FR Doc. 03–15849 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, July 24, 2003 and August 21, 2003. The purpose of these meetings is to provide orientation to Advisory Committee members, and to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held July 24, 2003 and August 21, 2003.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 23 and August 20, respectively, will have the opportunity to address the Committee at those sessions.

Dated: June 17, 2003.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 03–15850 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, June 30, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held June 30, 2003, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 17, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–15851 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Housing Demonstration Program

AGENCY: Rural Housing Service, United States Department of Agriculture (USDA)

ACTION: Notice of funding for the rural housing demonstration program.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing loan funds for Fiscal Year (FY) 2003 for the Rural Housing Demonstration Program. For FY 2003, RHS has set aside $1 million for the Innovative Demonstration Initiatives. The Agency is soliciting proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. Under section 506(b), RHS may provide loans to low income borrowers to purchase innovative housing units and systems that do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

EFFECTIVE DATE: June 24, 2003.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW., Washington, DC 20250–0783, Telephone: (202) 720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949, 42 U.S.C. 1476, authorizes a housing demonstration program that could result in housing that these families can afford. Section 506(b) imposes two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year. Grant funds for these proposals are not authorized.

Rural Development State Directors are authorized in FY 2003 to accept demonstration concept proposals from individuals.

The objective of the demonstration programs is to test new approaches to constructing housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will review each application for completeness and accuracy. Some demonstration proposals may not be completely consistent with 7 CFR part 3550—Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units and systems which do not meet existing published standards, rules, regulations, or policies. The innovative housing units and systems should be creative, affordable, durable, energy efficient, and include a diversity of housing types. Examples of eligible proposals include, but are not limited to: new or improved energy-savings houses, roofing that cools, building techniques that cut costs and improve the quality of rural housing

The Equal Credit Opportunity Act and Title VIII of the Civil Rights Act of 1968 provide that a program such as this be administered affirmatively so that individuals of similar low-income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, national origin, familial status and disability. Under Section 504 of the Rehabilitation Act of 1973 Rural Development makes reasonable accommodations to permit persons with disabilities to apply for agency programs. Executive Order 12898 requires the Agency to conduct a Civil Rights Impact Analysis on each project prior to loan approval. Also, the requirements of Executive Order 11246 are applicable regarding equal employment opportunity when the proposed contract exceeds $10,000.

Completed applications that have been determined to carry out the objectives of the program will be considered on a first come, first served basis based on the date a completed application was submitted. An application is considered complete only if the ''Application for Approval of Housing Innovation'' is complete in content, contains information related to the criteria and all applicable additional information required by the application form has been provided. All application packages must be in accordance with the technical management requirements and address the criteria in the Proposal Content. The application, technical management requirements, Proposal Content and Criteria and further information may be obtained from the Rural Development State office in each state. (See the State Office address list at the end of this notice or access the Web site at *http://www.rurdev.usda.gov/recd_map.html*.) Applicants submitting an incomplete application will be advised in writing of additional information needed for continued processing.

The following evaluation factors will not be weighted and are non-competitive. RHS, in its analysis of the proposals received, will consider whether the proposals will carry out the objectives of this demonstration effort in accordance with the following criteria:

A. Housing Unit Concept

1. A proposal must be well beyond the ''idea'' state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full scale field testing in a rural setting.

2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.

3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.

1. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.

1. Efficiency in the use of materials and labor, with respect to cost in place, conservation of materials, and the effective use of labor skills. Potential for use in the Mutual Self-Help Housing program will be considered.

6. Selection of materials for durability and ease of maintenance.

7. Concepts for the effective use of land and development.

B. Organization Capabilities

1. The experience and ''know-how'' of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of RHS's housing programs.

2. The management structure and organization of the proposer.

3. The quality and diversity of management and professional talent proposed as ''key individuals.''

4. The management plan of how this effort will be conducted.

C. Cost and Price Analysis

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.

2. Projected cost of ''housing in place,'' with particular reference to housing for very low and low-income families.

The State Director will send an acceptable proposal to the National Office for concurrence by the RHS Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are available for section 502 single family housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available RHS eligible loan applicant, the RH demonstration program applicant will have to advance funds to complete the construction of the demonstration housing, with the risk that there may be no RHS applicant or other purchaser from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V and RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted; RHS will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0114.

Dated: June 13, 2003.

James E. Selmon III,

Acting Administrator, Rural Housing Service.

The following is an address list of Rural Development State Offices across the nation:

Alabama

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400.

Alaska

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 761–7705.

Arizona

Phoenix Corporate Center, 3003 N. Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700.

Arkansas

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200.

California

Agency 4169, 430 G Street, Davis, CA 95616–4169, (530) 792–5800.

Colorado

Room E100, 655 Parfet Street, Lakewood, CO 80215, (720) 544–2903.

Delaware and Maryland

PO Box 400, 4607 S. DuPont Highway, Camden, DE 19934–9998, (302) 697–4300.

Florida and Virgin Islands

PO Box 147010, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400.

Georgia

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162.

Hawaii

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309.

Idaho

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600.

Illinois

2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6222, (217) 398–5412 for automated answer.

Indiana

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100.

Iowa

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663.

Kansas

PO Box 4653, 1303 SW First American Place, Suite 100, Topeka, KS 66604, (785) 271–2700.

Kentucky

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (859) 224–7300.

Louisiana

3727 Government Street, Alexandria, LA 71302, (318) 473–7920.

Maine

PO Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9110.

Massachusetts, Connecticut, Rhode Island

451 West Street, Amherst, MA 01002, (413) 253–4300.

Michigan

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100.

Minnesota

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800.

Mississippi

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316.

Missouri

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976.

Montana

Unit 1, Suite B, PO Box 850, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580.

Nebraska

Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5551.

Nevada

2100 California Street, Carson City, NV 89701–5336, (775) 887–1222.

New Jersey

Tarnsfield Plaza, Suite 22, 800 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

Room 255, 6200 Jefferson Street, NE., Albuquerque, NM 87109, (505) 761–4950.

New York

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400.

North Carolina

Suite 260, 4405 Bland Road, Raleigh, NC 27609, (919) 873–2000.

North Dakota

Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502–1737, (701) 530–2044.

Ohio

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2418, (614) 255–2400.

Oklahoma

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000.

Oregon

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300.

Pennsylvania

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299.

Puerto Rico

IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095.

South Carolina

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163.

South Dakota

Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100.

Tennessee

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300.

Texas

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700.

Utah

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Post Office Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4320.

Vermont and New Hampshire

City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000.

Virginia

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550.

Washington

Suite B, 1835 Black Lake Blvd., SW., Olympia, WA 98512–5715, (360) 704–7740.

West Virginia

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 284–4860.

Wisconsin

4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600.

Wyoming

Federal Building, Room 1005, 100 East B, PO Box 820, Casper, WY 82602, (307) 261–6300.

[FR Doc. 03–15920 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003; Correction

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published May 16, 2003 (68 FR 26941–26943). This action is taken to remove references to the application deadline of August 14, 2003.

Accordingly, the notice published May 16, 2003 (68 FR 26941–26943), is corrected as follows:

On page 26941, in the third column, in the 30th line of the SUMMARY, remove the sentence reading ''This Notice changes the timeframe to submit applications for the Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003 to be August 14, 2003.''.

On page 26942, in the third column, under ''Application Process'', in the eighth line, remove the sentence reading ''No application will be accepted after 5 p.m., local time, on August 14, 2003 unless date and time is extended by another Notice published in the **Federal Register**.''.

Dated: June 18, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–15824 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

[I.D. 061803I]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary.

Form Number(s): None.

OMB Approval Number: 0648–0409.

Type of Request: Regular submission.

Burden Hours: 420.

Number of Respondents: 70.

Average Hours Per Response: 3 hours for a commercial fishing panel response; and 10 hours for a dive shop log.

Needs and Uses: The purpose of this information collection is to obtain socioeconomic monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of ''no take zones'' in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the ''no take zones''. Two voluntary data collection efforts support the socioeconomic monitoring program.

The first collection involves a set of panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and assess the impacts of Sanctuary regulations. Information on catch, effort, revenues, and operating and capital costs will be obtained to do financial performance analysis. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, and years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data will be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the ''no take areas'' versus other areas for snorkeling, scuba diving, and glass-bottom boat rides. Volunteers will collect the logbooks monthly.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annual, recordkeeping.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of

Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15950 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–NK–S

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Ohio Angler Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 325.

Number of Respondents: 1,050.

Average Hours Per Response: 15 minutes for two logbooks; 5 minutes for a survey questionnaire; and 5 minutes for a follow-up telephone survey.

Needs and Uses: This information collection will provide important assistance to the NOAA Damage Assessment Center (DAC) in performing Natural Resource Damage (NRD) assessments. In the course of assessing economic losses due to oil or chemical spills, DAC frequently employs econometric models of recreational activity. The Ohio Angler Survey will provide an estimate of an economic input essential to these models, by taking advantage of a situation unique to the Ohio State Park system. The respondents will be licensed Ohio anglers. They will be asked to complete semi-annual logs of their fishing and a one-time survey. Non-respondents will be asked to respond to a telephone survey.

Affected Public: Individuals or households.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by June 27, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15951 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber From Canada (C 122 839)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Policy bulletin; request for comments.

SUMMARY: The purpose of this policy bulletin is, consistent with the intent of U.S. law, to provide an incentive for Canadian provinces to move to market-based systems of timber sales that ensure that the provinces receive adequate remuneration for sales of standing timber. The proposed policies are intended to serve as the basis for a long-term, durable solution to the ongoing dispute between the United States and Canada over trade in softwood lumber and encourage the development of an integrated market for forest products consistent with the goals of the North American Free Trade Agreement and sustainable forestry.

DATES: To be assured of consideration, written comments must be received not later than July 25, 2003. Rebuttal comments must be received not later than August 8, 2003.

ADDRESSES: A signed original and six copies of each set of comments, including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Grant D. Aldonas, Under Secretary for International Trade, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Softwood Lumber Policy Bulletin.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3965.

Request for Comment

The Department solicits comments pertaining to its proposed policies on softwood lumber from Canada. Initial comments should be received by the Under Secretary not later than July 25, 2003. Any rebuttals to the initial comments should be received by the Under Secretary not later than August 8, 2003. Commenters should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days.

Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. To facilitate their consideration by the Department, initial and rebuttal comments regarding these proposed policies should be submitted in the following format: (1) Number each comment in accordance with the paragraph numbering of the proposed policy being addressed; (2) begin each comment on a separate page; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section ''Summary of the Comment;'' and (4) concisely state the issue identified and discussed in the comment and provide reasons for any recommendation.

In order to ensure timely and complete distribution of comments, the Department recommends the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on a DOS formatted 3.5″ diskette, Iomega Zip disk, or Compact Disc (CD-R or CD-RW). Please submit each comment as a separate file on the electronic media and name each separate file using the paragraph numbering of the proposed policy being addressed in the comment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the IA Web site at the following address: ''*http://ia.ita.doc.gov/*''.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address *webmaster_support@ita.doc.gov*.

Dated: June 18, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

Policy Bulletin—Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber From Canada

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Purpose of the Policy Bulletin

A government may confer a benefit on an industry by virtue of the provision of goods or services for ''less than adequate remuneration.'' Section 771(5)(E)(iv) of the Tariff Act of 1930, as amended; 19 U.S.C. 1677(5)(E)(iv). The term ''adequate remuneration'' is not defined in the statute. The Department interprets the term ''adequate remuneration,'' as used in section 771(5)(E)(iv), to mean fair market value. The government provision of goods or services at or above fair market value, therefore, does not provide a countervailable subsidy.

Softwood lumber from Canada is, with certain exceptions, currently subject to countervailing duties, based on the Department's determination that the Canadian provinces provided their lumber producers with a subsidy by selling timber from provincial lands for less than ''adequate remuneration,'' *i.e.*, for less than fair market value. The purpose of this policy bulletin is, consistent with the intent of U.S. law, to provide an incentive for Canadian provinces to move to market-based systems of timber sales that ensure that the provinces receive adequate remuneration for their sales of standing timber to Canadian producers of softwood lumber.

More broadly, the Department intends the policy guidance to serve as the basis for a long-term, durable solution to the ongoing dispute between the United States and Canada over trade in softwood lumber and encourage the development of an integrated market for forest products consistent with the goals of the North American Free Trade Agreement and sustainable forestry. The Department is publishing this policy bulletin with the goal that firms in Canada are free from government restraints that inhibit their ability to respond to changing conditions in the markets in which they operate and pay market prices for their timber.

The overriding objective is to create economic conditions under which lumber producers and timber markets throughout North America would face the same competitive pressures. The Department expects that reforms introduced by the Canadian provinces, consistent with the discussion below, will result in a North American market in which lumber producers and timber markets in Canada and the United States operate under similar competitive conditions and that timber valuations would equilibrate, subject to the normal qualifications based on geography, species, and other factors that normally apply in the case of timber markets in either country.

General Statement of Policy

Upon submission of an application by a provincial government that satisfies the criteria for initiation, the Department will conduct a changed circumstances review of the countervailing duty order on certain softwood lumber from Canada (''countervailing duty order'')[1] to determine whether reforms to the province's system of timber sales meet the standards set out in this policy bulletin for a market-based timber sales system that charges adequate remuneration.[2] If those standards are met, the Department will determine that the provincial system does not provide a countervailable subsidy and will revoke the countervailing duty order with respect to lumber produced in that province.[3]

I. Standard for a Market-Based Timber Sales System

To be considered ''market-based,'' a province must implement changes in its current timber sales programs that—(1) eliminate practices and policies that inhibit the ability of lumber producers to respond to changes in the market; and (2) ensure that the pricing of standing timber on provincial lands is set by reference to prices established in an open and competitive, independently functioning market for sales of standing timber or logs. Open and competitive, independently functioning markets, as discussed below, are based on buyers and sellers participating unencumbered by artificial constraints that are part of existing administered systems.

A. Policies and Practices That Inhibit Market Response

In order to move toward a market-based system of timber sales and ensure that a province receives adequate remuneration for its sales of standing timber, it is essential that the price for standing timber be set with reference to prices established in independently functioning markets. Just as important, however, are any government practices that limit the operation of market forces and interfere with an industry participant's ability to respond freely to changes in the marketplace. Functioning markets rely on industry participants to respond to market signals free of artificial constraint.

Accordingly, as part of any changed circumstances review, the Department will determine whether individual provinces have, in fact, eliminated or substantially reformed the policies and practices identified below in a way that removes the current constraints on a lumber producer's ability to respond to changes in the market and, thereby, reinforces the operation of market forces.

1. Appurtenancy Requirements

Appurtenancy and similar provisions mandate that the tenure holder process timber harvested under the tenures in

[1] *Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Softwood Lumber Products from Canada,* 67 FR 37,775 (May 30, 2002).

[2] Solely for the purpose of such changed circumstances reviews, the policies set forth in this bulletin supercede any prior guidelines, analytical frameworks or draft policies for assessing whether a provincial timber sales system is market-based and, therefore, does not provide a countervailable subsidy. The calculation of an *ad valorem* subsidy rate from provincial stumpage programs in an administrative review or other type of proceeding is governed by the Department's regulations at 19 CFR 351.511.

[3] Revocation is also contingent on the absence of any other countervailable subsidies (above *de minimis* in the aggregate), whether such subsidies are new or preexisting.

specific mills or mills they own, which limits the ability of tenure holders to rationalize their harvesting operations, log purchase and sale operations, and lumber production in response to changing market conditions.

2. Minimum Cut Requirements

Perhaps the most extreme interference with market forces is in the operation of minimum cut requirements. These requirements, which can be either explicit or implicit, are currently imposed on or perceived by tenure holders to apply to provincial forest land and oblige tenure holders to cut a certain volume of timber during a set period regardless of conditions in downstream product markets that drive the actual demand for timber on the stump. These requirements can be explicitly provided for in provincial regulations or imposed implicitly through the means by which the province implements its policies with respect to the annual allowable cut under tenures and licenses. The result is either a requirement or an incentive to continue harvesting and producing lumber even when market conditions would dictate otherwise.

3. Mill Closure Restrictions

Mill closure restrictions generally dictate the number of days a mill must be in productive operation in order for the operator to maintain access to its tenure. As a result, a mill may be forced to continue to produce lumber even when market conditions would otherwise compel a cut in production or closure of the mill.

4. Minimum Processing Requirements

Minimum processing requirements require the tenure holder or timber buyer to undertake some minimum amount of processing of the timber harvested (or an equivalent volume) before it can be shipped from the province. These requirements have the effect of constraining the impact of market forces in public and private timber markets, as well as limiting the options available to the tenure holder to rationalize harvesting operations, log purchase and sale operations, and lumber production in response to changing market conditions. The elimination or reform of such requirements would reinforce the normal operation of supply and demand in any open and competitive, independently functioning market for timber sales. The Department will, as a consequence, take into account any minimum processing requirements in evaluating the market chosen by a province as a reference point for setting stumpage on provincial lands.

5. Long-Term, Non-Transferable Tenure

Long-term, non-transferable tenures create barriers to entry or exit from the market for provincial timber, which limit competition for the province's timber and the ability of individual firms to adjust to changing conditions in the marketplace.

An important aspect of long-term, non-transferable tenure is the degree to which the security of supply it affords also inhibits the responsiveness of tenure holders to changes in the market. Such inhibition would serve to undermine the overall operation of market forces in the province; which in turn interferes with the market's ability to set prices. The issues may, however, be most appropriately addressed as a factor affecting the use of reference points in independently functioning markets as a basis for setting stumpage rates on the administered portion of a province's harvest. Adjustments to the observed prices may be required to take into account the differences in the attributes of sales in the independently functioning market and long-term, non-transferable arrangements on provincial lands, including the security of supply associated with a long-term, non-transferable tenures on the administered portion of a province's harvest.

6. Offsetting Provincial Actions

The Department will also examine any evidence that suggests that a province maintains or introduces other requirements or conditions on the sale of provincial timber that would inhibit or undercut the operation of the policy reforms discussed above. The Department will, for example, want to ensure that a province's decisions with respect to the annual allowable cut authorized on provincial lands is consistent with sound forest management and the full rotational economics of the forest, rather than a means of increasing supply and thereby artificially lowering the amount charged on provincial stumpage.

B. Market-Based Pricing

By ''market-based pricing,'' the Department means that a province sets its prices for sales of standing timber on provincial lands either through free and open competition, such as auctions of standing timber or log markets, or a system that ensures the equivalent result. In either instance, to qualify the system must ensure that a province receives adequate remuneration on all provincial timber.

1. Reference Prices

For any portion of a provincial harvest that continues to be sold under prices set administratively the Department will, in general, focus on whether those prices are set by reference to a sufficient range of representative transactions in one or more independently functioning markets for sales of standing timber or logs. Examples of independently functioning markets would include open and competitive auctions of standing timber on provincial lands, competitive log markets, robust and competitive markets for the sale of standing timber or logs harvested from private lands within the province, and, where relevant, similar markets functioning in other jurisdictions.

In assessing whether any reference market is an open, competitive, and functioning independently, the Department will not employ a presumption that a market must represent a specific percentage of the a province's harvest before it could be used as a point of reference for setting prices on the administered portion of the harvest. The Department will, instead, employ a rule of reason—one that is designed to ensure that the market used as a point of reference affords a sufficient basis to establish fair market prices that would then apply to the administered portion of the timber sales system. As reflected in the discussion below with respect to the number of market participants, all other things being equal, the greater the number of market participants who must participate in the reference market for a sizeable share of the furnish for their mills, the stronger the evidence that the reference market is open, competitive and functioning independently of the administered portion of a province's harvest, and would, as a consequence, serve as an adequate reference point for assessing stumpage on provincial lands.

One reason for adopting that approach is the potentially significant interplay between a province's willingness to undertake the tenure reforms outlined above and the percentage of its harvest that could be used as a reference point for pricing on the administered portion of the province's harvest. To the extent a province has made the reforms outlined above and tenure holders are free to respond to changes in the market, it is easier to identify and evaluate the operation of independent market forces and the size of the reference market per se becomes less significant in ensuring an adequate range of reliable prices that could be used to set stumpage on the administered portion of a province's harvest.

In assessing whether the market-based reference prices provide an adequate basis for setting administered prices that constitute adequate remuneration, the Department will focus on (1) whether the market(s) a province chooses to use as a point of reference (''reference market'') actually functions as a market and (2) whether that reference market functions independently of the administered portion of that province's harvest. In determining whether the reference market in fact, ''functions'' as a truly competitive market, the Department will consider the number of participants, open access to the market, the volume of timber traded on the market (including imports and exports), the lack of restraints on buyers and sellers, access to market information, and other factors listed below. For the Department to determine that the market used as a reference point operates ''independently,'' the Department will want to assure itself, consistent with the discussion below about the direction of the causal link between the reference market and the administered portion of the harvest, that prices observed in the reference market are the result of the free operation of market forces unaffected by any distortions associated with provincial administered timber policies or the effect from stumpage rates charged on the administered portion of the harvest.

More specifically, the Department will examine, inter alia, the following characteristics of each reference market chosen by a province for setting the prices for standing timber on the administered portion of a province's harvest, regardless of whether the market chosen involves auctions of the province's own standing timber, auction sales in other jurisdictions, private sales within the province or in other jurisdictions, or any other set of market-based transactions.

a. Number of Participants in the Reference Market. The province must demonstrate that there are sufficient numbers of participants in the reference market to ensure that no individual or group of market participants

can influence the sales prices. This does not mean that a small number of actual participants on any particular transaction necessarily means that the market is not functioning. Rather, the more fundamental question is whether the market is contestable (*i.e.*, anyone who wants to bid or buy and use the fiber as they choose, depending on the form of sale, has a fair and open opportunity to do so).

In addition, to the extent that many producers are able to source all, or virtually all, of their wood fiber needs from crown tenure, these parties would not be active participants in the private market. As noted above, all other things being equal, the greater the number of market participants who must participate in the reference market or other competitive markets for a sizeable share of the furnish for their mills, the stronger the evidence that the reference market is open, competitive and functioning independently of the administered portion of a province's harvest and would, as a consequence, serve as an adequate reference point for assessing stumpage on provincial lands.

b. Quality of Information. The province must demonstrate that similar full and transparent information is available to all participants in the reference market about alternative commercial opportunities, particularly with respect to price. This is especially important in those instances in which a province intends to rely for its reference prices on a private market that is made up largely of bilaterally negotiated sales of standing timber on private lands, but would be important to the Department's assessment of any auction-based system as well.

Thus, for example, it would be particularly important for any private owner of standing timber to have access to current information on prices others are receiving for similar stands in assessing the amount he or she intends to charge. This would help sellers (either public or private) develop a ''reservation price,'' a price below which the seller will not sell—one that is consistent with the fully allocated costs of the seller's investment in bringing the forest to a harvestable state. For small holders, this could ensure that they receive the ''market price'' even if only a limited number of buyers were making bids. This information flow could take the form of internet pages, trade publications, or other similar sources of public information.

In addition, a significant feature of any independently functioning market is the availability of sufficient information about the characteristics of timber being offered for sale in such markets to all buyers such that the seller and no individual buyer has an unfair advantage. The more significant the uncertainty about the quality of the timber, the higher risk that the uncertainty will result in lower prices for the timber in such markets. As a consequence, the Department will examine whether potential buyers in the reference market have the opportunity to survey the timber or there are commercial services available that will survey the timber in order to eliminate any potential advantages that preferential access to information about a given stand might otherwise confer.

c. Direction of the Causal Link. The province must demonstrate that the prices established in the reference market are determined independently (*i.e.*, independent of any influence from distortions associated with provincial administered timber policies or the effects from pricing of stumpage on long-term tenures on provincial land). More to the point, in any attempt to translate prices established in an independently functioning market to stumpage charged on the administered portion of a province's timber, the Department will want to ensure that it is the prices found in private or otherwise independently functioning markets that is dictating the prices on the administered portion of the harvest (*i.e.*, that causality runs from auction sales or private markets to administered sales), rather than the reverse.

Thus, for example, in the case of a province that chooses to rely on a market for private timber within the province as a reference point for establishing prices on the administered portion of its harvest, the province must demonstrate that its pricing model ensures that firms or individuals with significant long term tenures cannot artificially force down prices in the private market to lower stumpage charged on the administered portion of the harvest.

d. Barriers to Entry or Exit in the Market. The province must demonstrate that there are no significant barriers to entry or exit into the reference market for either sellers (private woodlot owners, log traders, and, potentially, tenure holders) or buyers (lumber, pulp and paper mills, or other processors). Thus, for example, the Department will want to examine whether there are participation constraints that limit competition such as nationality requirements, conditions requiring that a bidder own a sawmill, or barriers to inter-provincial or international trade in private sector logs that affect the market to be used as a reference point.

e. Safeguards Against Collusive Behavior. In addition to examining the structure of the reference market for establishing the stumpage on the administered portion of its harvest, the Department must be assured that the market is free of any collusive behavior and that the province has in place adequate safeguards against such behavior. Such safeguards are particularly important when considering the design of any auction system for sales of public timber, but that is not the only environment in which such safeguards are relevant. Beyond auction design lies the consideration whether the market a province uses as a reference point on prices is protected against collusive behavior. The question is both one of law and of the enforcement activities of authorities responsible for administering the relevant jurisdiction's laws designed to ensure competition.

2. Transparency

Transparency is a key feature of both markets and sound administrative practice that the Department will examine with respect to any pricing system. The following discussion highlights three areas in which transparency will be factored into the Department's analysis of whether a timber sales system is market-based.

a. Transparency in the Functioning of the Market Used as a Reference Point for Market Prices. A factor in considering the adequacy of any reference market is the transparency with which that market operates. For example, in the case of the auction of public timber, one of the key features of the market for standing timber that such a system generates is the timely publication of the results of the auctions so that all participants in the market have adequate information on which to set expectations for succeeding bids. At the same time, publication of the results will assist in providing a verifiable set of prices in a sufficiently robust market to afford an adequate basis for setting stumpage prices on the administered portion of the province's harvest.

Similarly, in the case of log markets, adequate public information about the transactions on the market would be essential to the ability of participants in the market to rely on the results in setting expectations for future bidding on logs. The Department would need to see a similar degree of transparency in the reporting of prices on transactions in a log market to be able to assess whether the market could serve as an adequate reference point for setting stumpage rates on public lands or otherwise provide assurances of the adequacy of remuneration.

To serve as an adequate reference market, a log market must place the logs for sale on reasonable terms to any bidder and operate on price, as opposed to ''swaps,'' with sufficient volume moving through the market to ensure that it provides an adequate basis for setting stumpage. As reflected in the discussion above with respect to the number of market participants and entry and exit barriers, prices must result from a competitive process open to all interested buyers and sellers. In addition, the log markets must establish a way of ensuring that information about individual transactions is accurately reported and publicly available in order to inform market participants regarding the going rates for certain logs, as well as to serve as a useful reference point for setting stumpage on the public harvest.

Most private transactions for timber in Canada are conducted through a series of bilateral negotiations between buyers and sellers. While there is a good deal of information available on the going rates that certain market participants might offer or pay in the market, there is generally no systematic reporting of such transactions, through an active public exchange for example, that would ensure both a stronger market and a more reliable reference point for setting stumpage rates on the administered portion of a province's harvest. Demonstrating transparency in such markets would provide significant confidence in the results that the market produced and, therefore, in the market's reliability as a reference point. Transparency will also be critical in markets where previous transactions were not on a price basis, *e.g.*, log swaps.

b. Application of Prices Observed in Independently Functioning Markets to Stumpage Set on the Administered Portion of

a Province's Harvest. The province must also demonstrate that the mechanism by which it translates the reference prices to the administered portion of the harvest is transparent. The Department can determine that a timber sales system is market-based only if the mechanism by which market references prices are applied in the administered pricing system is transparent and accurate.

In determining whether a system is transparent, the Department will consider the extent to which—(1) the province relies on publicly available information on market prices as a starting point for setting stumpage; (2) the province collects information from private market participants in a rigorous, systematic, and verifiable manner and regularly publishes this information; (3) information on adjustments and the basis for those adjustments is publicly available; (4) the calculation involved in adjusting market prices to apply to the harvest on public lands, while taking into account the appropriate adjustments, produces an observable result consistent with the reference point in the market and is based on objective verifiable information, including where possible market-determined costs; and (5) the results of the calculation (*i.e.*, the resulting stumpage fees) are publicly available to all market participants so that they can serve, in some respects, as a safeguard of the stumpage system.

Adjustments should be kept to the minimum necessary, and must be fully and economically justified, and transparent so as to maintain a close and accurate link between market-determined and administered prices and avoid adjustments that might lead to the over- or under-valuation of timber.

To the extent that prices and costs in the reference market are identified and translated using surveys of private transactions, great care must be exercised in survey design. Surveys should be representative, timely, and reflective of the commercial experience of buyers, sellers, and other commercial intermediaries to ensure there is no opportunity for reporting bias. Moreover, as discussed below, the tremendous information requirements needed for accurate transmission of stumpage prices raise the need for an extensive information collection and reporting function.

Given the significant variation in stumpage prices associated with the numerous characteristics of each plot, an accurate transmission from the reference market to the administered harvest requires a significant amount of information. The Department must be satisfied that all relevant characteristics of the administered portion of the harvest are adequately accounted for in the reference market. These factors could include, among others, the biophysical characteristics of the different plots of trees subject to stumpage transactions; different harvesting conditions, and different industry characteristics (*i.e.*, large and small producers of different types of products). Because of this, the information requirements from the reference market are quite high.

c. Comparability of Obligations Imposed on Purchaser. The terms and conditions that apply to sales of timber in reference markets are likely to be different from those that apply to the purchase of standing timber under a long-term tenure on provincial land. The use of reference markets will therefore necessarily require some adjustment for the differences in the terms and conditions applicable to the two forms of timber sales contract. Transparency in the calculation and application of those adjustments will be essential for the Department to determine that the administered pricing system properly translates the references prices to the provincial harvest in a manner that ensures that the provinces receive adequate remuneration.

II. Examples of Market-Based Timber Sales

As noted above, market reference prices may come from a single source (*e.g.*, competitive auctions) or multiple sources (auctions, private market transactions, within or outside the province). The Department recognizes that some provinces may choose to rely on a variety of mechanisms to facilitate the operation of market forces within the province. Regardless of the mechanism adopted, consistent with Part I of this Policy Bulletin, market reference prices must come from open, competitive, independently functioning markets and ensure that provinces receive adequate remuneration for all provincial timber. What follows is a series of examples of how the Department would apply its policy guidance in the context of a specific market.

A. Auctions of Provincial Timber

One means of establishing a market price for standing timber as a reference price for setting stumpage would involve selling a substantial portion of a province's own timber at auction. That, combined with the elimination of the constraints currently in place on the ability of the tenure holders to respond to changing market conditions, could provide a sufficient basis for finding that the system was market-based, thereby ensuring that a province received adequate remuneration for its timber, and providing the legal basis for revocation of the outstanding order with respect to that province.

1. Example of Auction Sales

Province A eliminates existing constraints on tenure holders in the form of minimum cut requirements, appurtenancy clauses, and mill closure limitations. Province A also eliminates or reforms any minimum processing requirements in order to ensure that market forces are fully at play within the province and between the province and other jurisdictions. In addition, Province A makes its tenures freely divisible and transferable and fully subject to competition policy. In addition, Province A manages its harvest, particularly its annual allowable cut, on the basis of sound forestry and full rotational economics, rather than as a means of artificially expanding supply.

With respect to pricing, Province A implements an auction system for sales of provincial timber that ensures a sufficient volume of timber and a representative sample of transactions to permit the auction prices to serve as an open, competitive and independently functioning market and as an adequate (*i.e.*, statistically reliable) reference point for setting stumpage prices on the administered portion of the harvest. Province A manages its harvest and locates its auctions in a manner best designed to maximize participation and competition for the fiber, and introduces other reforms in its timber allocation system that have the effect of increasing the share of competitive sales progressively over time.

To encourage participation by all market participants in the auction process, Province A ensures that there are no barriers to eligibility for bidding or the use of fiber other than those necessary to ensure that the bidder can fulfill the contract. Tenure reforms undertaken by Province A ensure that a sufficient portion is sold through competitive markets, either as timber or logs, to provide the number and range of transactions necessary to extrapolate accurately from the auction sales to prices charged for stumpage on the administered portion of the harvest. Tenure reforms undertaken by Province A result in the need for all, or virtually all, market participants to, obtain a significant share of their fiber from the reference market or competitive log markets on an ongoing basis.

In terms of auction design, Province A constructs the auction on the basis of sealed bids. Province A also adopts adequate procedures to ensure against collusive bidding. Prices for all auction sales are published regularly for the benefit of all market participants. Auction winners should be required to harvest the timber within a specified period.

Province A can demonstrate that it ties its stumpage rates, accounting for any necessary adjustments, directly and accurately to the prices observed in auctions for similar stands of timber. Province A publishes stumpage charged so that the information is broadly available to all market participants.

In addition, in an effort to expand the competition for fiber throughout the province generally, Province A reinforces the operation of log markets within the province on the basis of price, rather than fiber swaps. Province A ensures that increasing amounts of fiber will flow through such log markets by virtue of eliminating the constraints on tenure that would currently prevent sales on log markets, rather than swaps. Province A ensures that information on log market transactions are broadly available to all interested market participants by establishing the means for all transactions to be recorded with the province and then made available to the public. Administered timber volumes that flow through fully open and competitive log markets, unrestricted in market participants or by minimum processing requirements, would count towards the overall portion of crown timber subject to competitive pressure and help ensure that Province A receives adequate remuneration on all timber sales.

2. Analysis

If all the conditions outlined above and those discussed elsewhere in the Policy Bulletin were met, the Department would revoke the current countervailing duty order with respect to that province. Province A would have to demonstrate that it had the

two essential elements of a market-based system of timber pricing that would assure the Department that the province was receiving adequate remuneration within the meaning of the law. First, Province A would have eliminated all or virtually all of the current constraints on companies operating in the province that currently prevent them from adjusting to changing market conditions. Second, Province A would have introduced and implemented a system of auctions that were sufficient to establish market prices that could be used to set stumpage on the administered portion of its harvest, ensuring that the province received adequate remuneration on all timber sales.

More specifically, by eliminating the minimum cut requirements, mill closure limitations and appurtenancy clauses, as well as making its tenures freely divisible and transferable, Province A has ensured not only that firms are not compelled to produce when markets would otherwise dictate against it, but also removed barriers to the increased flow of fiber from tenure holders onto competitive markets, whether in the form of transfers of tenure, sales of standing timber, or sales of logs. The ability to move timber through those various forms of competitive market will also have the effect of increasing the value of those markets as indications of stronger competition for fiber within the province. As a result of these and other changes, the typical manufacturer will participate in competitive timber and log markets for a sizeable portion of their fiber requirements on an ongoing basis under all market conditions.

In addition, by eliminating any minimum processing requirements within the province, and potentially between the province and other jurisdictions, Province A has increased the ability of markets within the province to transmit information about prices and sales opportunities that the minimum processing requirements previously foreclosed. A subsidiary benefit of eliminating the minimum processing requirements and permitting purchases of the province's logs by buyers from outside the province, Province A would expand the opportunities for arbitrage between markets in different jurisdictions and thereby preclude the ability of producers in Province A to benefit from changes in provincial policies without the competitive benefit of those changes in policy flowing to competitors in other jurisdictions.

With respect to pricing, Province A will have ensured that it has a reliable point of reference in a range of market transactions that is representative of the harvest within the province. By ensuring that there are only the minimum necessary requirements to be eligible to bid on the province's timber, Province A will have eliminated one of the main barriers created by the long-term tenure system—the barrier to new entrants into the market for Province A's timber. Similarly, by introducing tenure reforms that have the effect of ensuring that virtually all market participants have to participate in the auction system or competitive log markets for a sizeable portion of their fiber, Province A will ensure that firms within the province face competitive pressures akin to those faced elsewhere in the North American market. To the extent that the tenure reforms, over time, also yield a reduction in the percentage of the harvest that is subject to long-term tenures relative to that portion of the harvest that is sold at auction or through open and competitive log markets, Province A will reinforce the competition for timber on private and Crown land as well.

By ensuring that the information on prices established at auction is broadly available to all market participants, Province A will have increased the quality of information available on alternative commercial opportunities. It will have ensured that the maximum amount of information about transactions in the market place is flowing back to market participants to inform their decision not only about future auctions, but about prices reflected in other competitive markets within the jurisdiction.

Province A will also have ensured, in the process, that the adjustments needed to translate the prices observed at auction into stumpage charged on the administered portion of the harvest accurately and solely reflect the different terms and conditions between auction sales and the administered portion of the harvest. In doing so, Province A will ensure that the stumpage charges on the administered portion of the harvest ultimately reflect the value of the fiber in an open, competitive market, which is necessary to demonstrate that the province is receiving adequate remuneration for its timber.

By reinforcing the operation of log markets within the province, even though they would not be used as a reference point for setting stumpage, Province A would have helped create an effective outlet for fiber that will become increasingly available on the market as a result of the elimination of the constraints currently imposed on tenure holders. In addition, by providing a means by which log market transactions are made publicly available to market participants, Province A has fostered a more competitive market within the province for fiber, which would tend to reinforce the utility of the auctions as a reference point for the pricing of stumpage on the administered portion of Province A's harvest. That result would flow directly from the ability of the log markets to improve the range of alternative commercial opportunities available to market participants. To the extent that Province A improves the ability of the log markets to function by shifting licenses or tenures toward new market participants in the future, it will have the effect of expanding the competitive forces at work in the market by easing the entry of new competitors.

B. Comparison With Prices Established in Markets in Other Jurisdictions

Another alternative mechanism a province might use to ensure that it received adequate remuneration within the meaning of the statute would be to use prices generated in a market outside its jurisdiction. While taking into account the need for adjustments in order to ensure a fair comparison between standing timber sold in the two jurisdictions, prices generated in auctions from public lands or private markets, for example, could serve as an adequate reference point for setting stumpage on the administered portion of a province's harvest, if combined with adequate policy reforms in other areas of the province's timber sales program.

1. Example of Prices Established in Markets in Other Jurisdiction(s)

Province B eliminates any existing minimum cut, mill closure, appurtenancy, and minimum processing requirements. Province B also provides for the divisibility and free transfer of tenure. Province B manages its harvest, particularly its annual allowable cut, on the basis of sustainable forestry, rather than as a means of artificially expanding supply.

Province B relies on prices from the sale of standing timber in open, competitive markets in an adjacent jurisdiction, or jurisdictions, to establish the reference point for setting stumpage on the administered portion of its harvest. The independently functioning markets for standing timber in the other jurisdiction, or jurisdictions, have no barriers to entry or exit, provide for the publication of price information to all market participants, include appropriate safeguards against collusive bidding, and provide a representative range of prices for standing timber comparable to that sold in Province B.

In addition, Province B reinforces the operation of the private market for standing timber within the province through the changes in conditions applicable to tenures on provincial lands. Province B also develops a mechanism for gathering and publishing the information on pricing in that private market, which is currently characterized by a series of bilateral negotiations between buyers and sellers. Province B commits not to reduce the share of competitive sales and should increase the share of competitive sales progressively over time.

Province B ensures that it adopts a transparent means, with the appropriate adjustments, to translate the prices established by open, competitive, and independently functioning markets in the adjacent jurisdiction into stumpage charged on the administered portion of Province B's harvest.

2. Analysis

By eliminating those conditions that prevent companies from adjusting to changes in the market, in the form of minimum cut, mill closure limitations, appurtenancy clauses, and minimum processing requirements, Province B ensures that firms participating in its market can respond appropriately to market signals from downstream product markets. Firms would be free to adjust their production accordingly.

Similarly, by providing for the divisibility and transferability of tenure, Province B encourages competition for timber within the province. In effect, Province B has eliminated the principal barrier to entry or exit from the market for standing timber within the province. It also ensures that a greater volume of timber or logs will enter the private market for fiber within the province.

By linking its stumpage system to open and competitive markets in an adjacent jurisdiction that satisfies the criteria outlined in the example, Province B also ensures that

it has a reference point in an independently functioning market to use in setting stumpage on the administered portion of its harvest. Province B has thus adopted a reference point that ensures that it receives adequate remuneration for its timber. Any adjustments should be kept to the minimum necessary, and must be fully and economically justified, and transparent so as to maintain a clear and observable relationship between market-determined and administered prices.

The province's efforts to strengthen its private market are intended to address the reference points it might use to set stumpage at a later date. In the interim, Province B's efforts in that regard will also serve to improve the functioning of the market within the province by lowering barriers to entry into the market by new market participants. It also ensures a more competitive market for additional fiber that may flow through the private market as a result of changes in the conditions applicable to tenures on provincial land by providing all market participants with information regarding alternative commercial opportunities. While not directly relevant to the question of whether Province B has made those changes necessary to pursue a changed circumstances review, the effort to strengthen the private market does serve to increase the confidence the Department may have in the operation of the province's stumpage system and its ability to ensure that Province B receives Adequate remuneration for its timber.

The key issue for Province B under the facts set out in the example is likely to be the transparency it can introduce into the means by which it translates prices from auctions of standing timber in the adjacent jurisdiction to stumpage charged for comparable sales of timber on the administered portion of the province's harvest. It will be essential for Province B to establish the validity of the mechanism or calculation it uses in translating the prices from the adjacent jurisdiction to Province B's harvest—it must be transparent in the sense that it is publicly available and that the potential adjustments are known and appropriate to the task.

Equally important, it will be essential that the province make the results of both its methodology and the stumpage charged on sales of standing timber available to all market participants. Market price signals are the key means for distilling information about market conditions and the province must ensure that, consistent with the other changes it has made to eliminate constraints on the ability of firms to adjust to market conditions, the province has made available the key information that should guide firms in making those adjustments.

Under the circumstances outlined above, the Department would revoke the countervailing duty order with respect to imports of softwood lumber manufactured from the timber harvested in Province B.

C. Other Timber Sales Methods Designed To Achieve Adequate Remuneration

The Department acknowledges that there may be market circumstances unique to a province such that the provincially administered portion of the harvest constitutes the vast majority of available supply and the provincial forest industry is dominated by a single integrated forestry firm. In such circumstances it would be difficult to establish an independently functioning market, either in the form of auction of crown timber or reliance in private sales, in the province. Moreover, the bio-physical characteristics of the forest resource, and its remote location, render the use of independently functioning markets in other jurisdictions highly problematic due to the magnitude of necessary adjustments.

Where such unique circumstances exist, the Department will examine whether the province's means of setting stumpage on the administered portion of its harvest achieves the equivalent economic effects of the alternatives set out above and ensures that the province receives adequate remuneration. Such an alternative would have to be independently evaluated based on its merits. Where, however, a province eliminated the conditions imposed on tenures as outlined in the discuss in Part I above, and implemented a method of timber valuation that afforded the province adequate remuneration with in the meaning of the statute, the Department would, consistent with the conditions outlined above and discussed elsewhere in the Policy Bulletin, revoke the current countervailing duty order with respect to that province.

III. Changed Circumstances Review

A. Timing

A Province may submit a request for a changed circumstances review at any time. Prior to filing such a request, at the request of a province, the Department will consult with the province over the contents of such a request.

B. Content of Request

The Department will initiate a changed circumstances review upon receipt of an application containing the following information:

1. Appropriate documentation (*e.g.*, laws, regulations) demonstrating elimination of any policies and practices that inhibit market response, as defined in section A.1, above; and

2. A detailed explanation of the design and operation of the market-based provincial timber pricing system with supporting documentation and data showing that system meets the standards set forth in this policy bulletin.

3. Consistent with the examples set out above, evidence that provinces submit in support of their request for review should include, as appropriate—

- Evidence that the conditions a province currently imposes on tenures set out in Part I have been eliminated or reformed, as a matter of law, and that such changes in the conditions have been fully implemented in the timber sales program;
- Evidence that demonstrates that the reference markets a province chooses to use for purposes of setting stumpage on the administered portion of its harvest operates in a manner that is open and competitive, particularly with respect to the number of market participants, the volume of timber sold through the reference market, ease of entry and exit by market participants, the quality of information available to market participants, barriers to individuals or firms artificially lowering prices in the reference market as a means of lowering stumpage charged on the administered portion of the harvest, and the transparency of the operation of the market;
- Evidence that demonstrates how the prices observed in the reference market are accurately and transparently translated to the stumpage charged on the administered portion of the harvest consistent with the examples set out above, particularly with respect to any adjustments made between the timber sold in the reference market and that sold on the administered portion of provincial lands; and
- Evidence regarding stumpage charges on the administered portion of the harvest before and after the provincial reforms are implemented that reflects the impact of the changes on stumpage prices and evidence that demonstrates that stumpage charged on the administered portion of the harvest is consistent with the range of prices observed in other open and competitive markets for timber sales of similar species, quality, and market conditions.
- Any other relevant evidence concerning the operation of the provincial timber sales system.

Although the Department may issue supplemental requests for information, the application should, to the fullest extent possible, contain all of the information necessary to determine whether the provincial timber sales system is market-based so that the Department may determine whether there is evidence of changed circumstances sufficient to warrant a review.

C. Evidentiary Standard

The Department has made a final determination that the Canadian provinces provide a subsidy to lumber producers by selling timber for less than adequate remuneration. In a changed circumstances review, the burden is on the province to establish that those circumstances have changed such that revocation of the order with respect to that province is warranted. Specifically, the province must establish the basis for revocation through substantial, verifiable evidence demonstrating, in accordance with this Policy Bulletin and as required by U.S. law, that the provincial timber sales system has been revised and is operating so as to ensure that the province receives adequate remuneration within the meaning of the U.S. countervailing duty law.

D. Conduct of the Review

The Department will conduct the Changed Circumstances Review in accordance with sections 351.216 and 351.221 of the Department's regulations. Pursuant to those regulations, the Department will, within 270 days, issue a final results of review. The Department may issue requests for information and will verify information submitted in the application and any responses to requests for additional information. The Department will, upon request by an interested party, hold a public hearing, pursuant to 19 CFR 351.310.

E. Effective Date of Revocation

As reflected in section III.B, the Department anticipates that, on the date the application for the changed circumstance review is filed (''application date''), the reforms of the provincial timber sales system will be in place and operating so as to ensure that the province receives adequate remuneration. Accordingly, if the Department determines, as a result of the review, that revocation of the order with respect to the province is warranted, the Department will normally order revocation of the countervailing duty order with respect to all unliquidated entries of the subject merchandise produced in the province from timber harvested in the province that is entered, or withdrawn from warehouse, on or after the application date. If, however, reforms necessary to demonstrate a market-based timber sales program are not in effect or operational at the time of a province's application date, the Department may alter the effective date of the revocation to reflect the date on which such reforms took effect during the period of the changed circumstance review.

[FR Doc. 03–15931 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The invention listed below is owned in whole by the U.S. Government, as represented by the Department of Commerce. The invention will be available for licensing beginning July 1, 2003, in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The invention available for licensing beginning July 1, 2003 is:

[Docket No.: 94–042US]

Title: Optical Trap For Detection and Quantitation Of Subzeptomolar Quantities of Analytes.

Abstract: Tightly focused beams of laser light are used as ''optical tweezers'' to trap and manipulate polarizable objects such as microspheres of glass or latex with diameters on the order of 4.5 micrometers. When analytes are allowed to adhere to the microspheres, small quantities of these analytes can be manipulated, thus allowing their detection and quantitation even when amounts and concentrations of the analytes are extremely small. Illustrative examples include measuring the strength needed to break antibody-antigen bonds and the detection of DNA sequences.

Dated: June 17, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–15872 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Public Meeting of the National Conference on Weights and Measures

SUMMARY: Notice is hereby given that the annual meeting of the National Conference on Weights and Measures will be held July 13 through July 17, 2003, at the John Ascuaga's Nugget Hotel, Sparks, Nevada. This meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The annual meeting of the Conference brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that related to the field of weights and measures technology and administration. Pursuant to (15 U.S.C. 272 (b) (6)), the National Institute of Standards and Technology supports the National Conference on Weights and Measures in order to promote uniformity among the States in the complexity of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: July 13–17, 2003.

ADDRESSES: John Ascuaga's Nugget Hotel, Sparks, Nevada.

FOR FURTHER INFORMATION CONTACT: Henry V. Oppermann, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. Telephone (301) 975–4004, or email: *owm@nist.gov.*

Dated: June 17, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–15873 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061803F]

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Sadler, (727)570-5326 or *Robert.Sadler@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants in federally regulated fisheries are required to obtain Federal fishing permits. Certain permit actions may be appealed. Permitted vessels are also required to provide certain

notifications prior to trips or other specified actions. Coupons are required in the wreckfish fishery to track Individual Transferable Quotas.

NOAA needs information from the applications for the identification of fishing vessels and dealers and the management of the fisheries. Use of permits also aids in enforcement of fishery regulations.

II. Method of Collection

Notifications are made by telephone. Applications and other documentation must be submitted in paper form.

III. Data

OMB Number: 0648–0205.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individual or households.
Estimated Number of Respondents: 10,500.
Estimated Time Per Response: 20 minutes for a vessel permit or an aquacultured live rock site permit; 2 hours for additional moratorium permit application documentation in the reef fish/coastal migratory pelagic charter fisheries; 5 minutes for a dealer permit; 2 hours for a stone crab permit appeal; 45 minutes for an aquacultured live rock site evaluation form; 15 minutes for a notification/authorization for trap retrieval; 5 minutes for other notifications; 5 minutes for a coupons for tracking an Individual Transferable Quota in the wreckfish fishery; 5 hours for a permit appeal in the reef fish and coastal migratory pelagic moratorium fisheries; and 5 hours for a commercial vessel permit documentation in the stone crab fishery.
Estimated Total Annual Burden Hours: 15,434.
Estimated Total Annual Cost to Public: $1,222,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15947 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061803G]

Proposed Information Collection; Comment Request; Southeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Poffenberger at 305–361–4263, ext. 263, or at *John.Poffenberger@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants in most Federally-managed fisheries in the Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. Participants in the Atlantic snapper-grouper and mackerel fisheries are required to submit information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

II. Method of Collection

The information is submitted on paper forms. Logbooks are completed daily and submitted on either a by trip or monthly basis, depending on the fishery. Fixed costs are submitted on an annual basis. Other information is submitted on a trip basis.

III. Data

OMB Number: 0648–0016.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; individuals or households.
Estimated Number of Respondents: 3,925.
Estimated Time Per Response: 20 minutes for a catch and effort report for the Columbian waters fishery; 10 minutes for logbook trip reports in other fisheries; 2 minutes for a negative catch and effort or logbook trip report; 12 minutes for a headboat logbook in the Gulf of Mexico reef fish and coastal migratory pelagic fisheries and the South Atlantic snapper-grouper fishery; 15 minutes for an aquacultured live rock logbook report; 10 minutes for a trip operating cost survey in the snapper-grouper and mackerel fisheries; 30 minutes for an annual fixed-cost economic surveys in the same fisheries; 10 minutes for cost data in the swordfish fishery; and 15 minutes for a discard and marine mammal/bird/sea turtle interaction report from the 20% sample of fishermen selected.
Estimated Total Annual Burden Hours: 14,086.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15948 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061803H]

Proposed Information Collection; Comment Request; Economic Data for U.S. Commercial Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 25, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rita Curtis, Department of Commerce, NOAA, National Marine Fisheries Service, 1315 East West Highway, ı12752, Silver Spring, MD 20910 (301–713–2328).

SUPPLEMENTARY INFORMATION:

I. Abstract

Economic data for selected U.S. commercial fisheries will be collected for each of the following groups of operations: (1) processors, including onshore plants, mothership vessels, and at-sea catcher/processor vessels; (2) catcher vessels; and (3) charter vessels. Companies associated with these groups will be surveyed for expenditure, earnings, and employment data; and for basic demographic data on fishing and processing crews.

In general, questions will be asked concerning ex-vessel and wholesale prices and revenue, variable and fixed costs, expenditures, dependence on the fisheries, and fishery employment. The data collection efforts will be coordinated to reduce the additional burden for those who participate in multiple fisheries. Participation in these data collections will be voluntary.

The data will be used for the following three purposes: (1) to monitor the economic performance of these fisheries through primary processing; (2) to analyze the economic performance effects of current management measures; and (3) to analyze the economic performance effects of alternative management measures. The measures of economic performance to be supported by this data collection program include the following: (1) contribution to net national benefit; (2) contribution to income of groups of participants in the fisheries (i.e., fishermen, vessel owners, processing plant employees, and processing plant owners); (3) employment; (4) regional economic impacts (income and employment); and (5) factor utilizations rates. As required by law, the confidentiality of the data will be protected.

A two-prong approach to data collection will be adopted. In the majority of fisheries, data collections will focus each year on a different component of the U.S. commercial fisheries, with only limited data collected in previously-surveyed components of these fisheries. The latter will be done to update the models that will be used to track economic performance and to evaluate the economic effects of alternative management actions. This cycle of data collection will result in economic performance data being available and updated for all the components of the U.S. commercial fisheries identified above.

In a limited number of fisheries, the approach adopted will result in an ongoing economic data collection program. Economic data collection programs will only be initiated in a) high-profile fisheries with significant seasonal variation; and b) fisheries with an existing data collection program to which economic questions can be appended. Examples of the latter include appending trip-specific economic questions to observer and logbook programs survey vehicles. The number of questions asked under an economic data collection program will be far more limited than those asked in a one-time survey, which have estimated average response times of approximately 10 minutes and two hours, respectively.

Contingent upon OMB approval of this proposed data collection, voluntary surveys currently being conducted under ''Economic Performance Data for the West Coast (California-Alaska) Commercial Fisheries'' (OMB Number 0648–0369) will be covered under this national umbrella.

II. Method of Collection

Data will be collected from a sample of the owners and operators of catcher vessels, catcher/processors, on-shore processing plants, motherships, and charter vessels that participate in these fisheries. In the majority of fisheries, data collection will involve mailing questionnaires to the selected members of each of the different survey groups. In many cases, individuals may receive the questionnaire in advance to allow them to prepare their response but may be interviewed to ensure the clarity of their responses. In those fisheries in which economic questions are appended to an existing program, respondents will be requested to return the completed form along with their regular submission, as appropriate. To the extent practicable, the data collected will consist of data that the respondents maintain for their own business purposes. Therefore, the collection burden will consist principally of transcribing data from their internal records to the survey instrument and participating in personal interviews. In addition, current data reporting requirements will be evaluated to determine if they can be modified to provide improved economic data at a lower cost to the Agency and with reduced burden on potential respondents. Similarly, it will be determined if some of these data can be collected more effectively and efficiently from the firms that provide bookkeeping and accounting services to potential respondents. This data collection method would be used only after obtaining permission to do so from participants in the fisheries.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,400.

Estimated Time Per Response: 1–2 hours for a response from a catcher vessel (burden estimation calculated using 1.5 hours per response); 1 hour for a response from a charter vessel; 8 hours for a response from a West Coast or Alaska processor, including factory trawlers, motherships and on-shore primary plants processor; 1–2 hours for a response from an East Coast or Gulf processor (burden estimation calculated using 1.5 hours per response); 10 minutes per response to a single trip form; and 20 minutes per response for an annual expenditure form.

Estimated Total Annual Burden Hours: 7,850.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–15949 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061803A]

Marine Mammals; File No. 716–1705

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Fred Sharpe, Ph.D., Alaska Whale Foundation, 4739 University Way NE, #1239, Seattle Washington 98105, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*) and killer whales (Orcinus orca) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 24, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Gene Nitta, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The proposed activities involve research on North Pacific humpback whales and killer whales and are a continuation of studies previously authorized under Permit Nos. 866 and 716–1456. Studies on Pacific herring will also be conducted in order to test various aspects of humpback foraging ecology and social biology. In order to examine the behavior, social structure and foraging ecology of North Pacific humpback whales, the applicant is requesting authorization for 350 annual takes by close approach for photo-identification and behavioral observation, 280 annual takes by acoustic recordings and playbacks of conspecific sound and 18 annual takes by suction cup tagging with Crittercam/TDR dive tags. The researcher also proposes to continue opportunistic photo-identification and behavioral observation of killer whales and is requesting 300 annual takes for these purposes. All research activities will be conducted over a five year period in the waters of southeastern Alaska including Chatham Strait, Dixon Entrance, Cross Sound, and Icy Strait and the waters of Washington state.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 19, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–15952 Filed 6–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Federal Acquisition Regulation; Information Collection; Contractors' Purchasing Systems Reviews

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 (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractors' purchasing systems reviews (CPSRs). This OMB clearance expires on September 30, 2003.

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: Comments may be submitted on or before August 25, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA, (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a CPSR, as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.
Total Burden Hours: 26,860.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: June 17, 2003.

Ralph J. DeStefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–15941 Filed 6–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Federal Acquisition Regulation; Information Collection; Government Property

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 (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. This OMB clearance expires on September 30, 2003.

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 August 25, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

''Property,'' as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished ''as is'' from the time of inspection until time of receipt.

(nn) FAR 49.602–2(a)–(e) refers to the inventory schedule forms, SF's 1426 through 1434.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Number of Respondents: 27,884.

Responses per Respondent: 488.6.

Total Responses: 13,624,759.

Average Burden Hours Per Response: .4826.

Total Burden Hours: 6,575,805.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case 1995–013) which is due to expire in June 2000 and will not be renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

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. 9000–0075, Government Property, in all correspondence.

Dated: June 17, 2003.

Ralph J. DeStefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–15942 Filed 6–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Federal Acquisition Regulation; Information Collection; Summary Subcontract Report

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 of an existing OMB clearance (9000–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning summary subcontract report. This OMB Clearance expires on September 30, 2003.

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 August 25, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden 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

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.
Responses Per Respondent: 1.66.
Total Responses: 7,098.
Average Burden Hours Per Response: 15.90.
Total Burden Hours: 112,864.
Obtaining Copies of Justifications: 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. 9000–0007, Summary Subcontract Support, in all correspondence.

Dated: June 17, 2003.

Ralph J. DeStefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–15943 Filed 6–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

RIN 1840–ZA03

Upward Bound Program Participant Expansion Initiative

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of proposed priority.

SUMMARY: Using fiscal year (FY) 2003 funds, the Secretary of Education proposes to establish an absolute priority to provide supplemental funds of up to $100,000 to selected Upward Bound Program projects. Those eligible to receive funds under this absolute priority must have received supplemental funds in FY 2000 and serve at least one target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 school year. Applicants not eligible for the absolute priority are invited to apply and will be funded, subject to availability of funds, as described in the funding order below. The selected projects must use the supplemental funds to provide services to eligible project participants with the greatest need for those services.

The Secretary further proposes that projects that receive supplemental funds under this priority are required to select otherwise eligible participants who attend a target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 school year and who have the greatest need for Upward Bound services. Otherwise, eligible students having the greatest need for Upward Bound services are those who:

1. Have not met the State academic achievement standard for grade eight in reading/language arts;

2. Have not met the State academic achievement standard for grade eight in math; or

3. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

By using State academic achievement assessments to determine student eligibility for services, schools can align this initiative with the requirements and activities supported by the No Child Left Behind Act of 2001.

DATES: We must receive your comments on or before July 24, 2003.

ADDRESSES: Address all comments about this proposed priority to Larry Oxendine, U.S. Department of Education, 1990 K Street, NW., Room 7044, Washington, DC 20006–8510. If you prefer to send your comments through the Internet, use the following address: *margarita.benitez@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Margarita Benitez, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority. During and after the comment period, you may inspect all public comments about this priority in room 7039, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for

this type of aid, you may call (202) 502–7600. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Background

In FY 2003, the Congress appropriated more funds than the Administration requested for the Federal TRIO Programs. In examining the options available to the Secretary for allocating these additional funds, the Secretary determined that a portion of the funds should be used to increase support to the Upward Bound Program. The Upward Bound Program, authorized under section 402C of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1070a–13, helps low-income, potential first-generation, college students acquire the skills and motivation necessary for success in education beyond secondary school.

The purpose of this proposed supplement is to help the Upward Bound Program achieve one of its key performance goals: increasing the college enrollment rate of low-income, first generation college students. A recent evaluation of the Upward Bound Program found it has not been effective in increasing college preparation and enrollment of its program participants. The evaluation did find that the program has significant effects on higher risk students, but that the program was inadequately targeted to these students.

Under the absolute priority, the Upward Bound Program will increase the number of eligible students with the greatest need who are served by the Upward Bound Program. The students with the greatest need are generally those from the lowest income levels who have potential for college but are not performing successfully in high school. The Secretary believes that limiting supplemental funds to projects that serve the above described target schools is a good way to ensure that projects serve the lowest income students because the free lunch is limited to students from families with the lowest family income. An estimated 150 current Upward Bound projects could receive supplemental funds to serve at least twenty (20) additional students.

Proposed Absolute Priority

Under 34 CFR 75.105(c), the Secretary proposes to give an absolute preference to applications that meet the following absolute priority.

The Secretary will provide supplemental funds of up to $100,000 to regular Upward Bound Program projects that:

1. Are selected for funding under the FY 2003 Upward Bound Program funding competition;

2. Serve a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 school year;

3. Received supplemental funds in FY 2000 under the Notice of Final Priority dated July 24, 2000 (65 FR 45698–45699); and

4. Agree to select at least 20 students who attend a target high school in which at least 50 percent of the students were eligible to receive free lunches under the National School Lunch Act during the 2001–2002 school year and have the greatest need for project services. Students who have the greatest need for project services are those students who:

a. Have not met the State academic achievement standard for grade eight in reading/language arts;

b. Have not met the State academic achievement standard for grade eight in math; or

c. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Veteran Upward Bound projects and Upward Bound Math/Science projects are not eligible to participate in this initiative.

The Secretary proposes to fund applications in the following order:

1. Applications that meet the absolute priority.

2. All other applications.

If funds are available after funding all applications that meet the absolute priority, the Secretary will select from among the remaining applicants based upon the highest scores received (including prior experience points) in the Upward Bound FY 2003 Funding Competition.

Upward Bound projects that wish to receive supplemental funds will be required to submit:

- The identity of the target schools to be served by the project.
- The number of students who were eligible for free lunch under the National School Lunch Act at each of the target high schools to be served by the project in the 2001–2002 school year and the total number of students enrolled at those target schools in that year,
- The number of additional students, not less than 20, that the project plans to serve,
- A revised budget; and
- A narrative describing how the supplemental funds will be used to address each participant's greatest need.

Performance Measures: The effectiveness of the Upward Bound Program Participant Expansion Initiative will be measured by the college enrollment rate of higher-risk low-income first generation college students who are program participants. All grantees will be expected to provide documentation of educational outcomes of participating students for the purposes of assessing the effectiveness of individual projects and the initiative overall.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and action for this program.

Applicable Program Regulations: 34 CFR part 645.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following site: *http://www.ed.gov/legislation/FedRegister.html.*

To use PDF, you must have the Adobe Acrobat Reader which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070.

Dated: June 19, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–15933 Filed 6–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, July 9, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

• The meeting will feature a discussion with the U.S. Department of Energy, the U.S. Environmental Protection Agency and the Tennessee Department for Environment and Conservation. The agencies have been invited to provide prioritized lists of projects for the Oak Ridge Site-Specific Advisory Board to use in formulating a work plan for fiscal year 2004.

• Each agency will list a set of priorities and provide justification for their placement on the list.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on June 18, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–15944 Filed 6–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 9, 2003, 6 p.m.–8 p.m.

ADDRESSES: Pahrump Nugget Hotel and Casino Convention Center, 650 South Highway 160, Pahrump, Nevada 89048.

FOR FURTHER INFORMATION CONTACT: Kelly Kozeliski, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–2836, fax: 702–295–5300, e-mail *kozeliskik@nv.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Speakers from the Department of Energy's Nevada Test Site and Waste Isolation Pilot Plant will present up to date information on shipments of radioactive waste from Nevada to New Mexico.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

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 Kelly Kozeliski at the address listed above.

Issued at Washington, DC on June 18, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–15945 Filed 6–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments concerning proposed revisions to three of the existing electric power surveys that expire November 30, 2004. The surveys are: Form EIA–826, ''Monthly Electric Sales and Revenue with State Distributions Report,'' Form EIA–861, ''Annual Electric Power Industry Report,'' and Form EIA–906, ''Power Plant Report.''

DATES: Written comments must be filed on or before August 25, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESS: Send comments to Stan Kaplan. To ensure receipt of the comments by the due date, submission by e-mail (*stan.kaplan@eia.doe.gov*) is recommended. Comments can be sent by FAX to 202–287–1934. The mailing address is Energy Information Administration, Electric Power Division, EI–53, U.S. Department of

Energy, Washington, DC 20585–0650. Alternatively, Stan Kaplan may be contacted by telephone at (202) 287–1803.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed revised Forms EIA–826, ''Monthly Electric Sales and Revenue with State Distributions Report,'' with instructions, EIA–861, ''Annual Electric Power Industry Report,'' with instructions, and EIA–906, ''Power Plant Report,'' with instructions should be directed to Stan Kaplan at the address listed above. The revised Schedule I, Part A through Part C of the Form EIA–826, ''Monthly Electric Sales and Revenue with State Distributions Report,'' the revised Schedule IV, Part A through Part C of the Form EIA–861, ''Annual Electric Power Industry Report,'' and the revised Form EIA–906, ''Power Plant Report,'' are also available on EIA's Web site at *http://www.eia.doe.gov/cneaf/electricity/page/forms.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resources, reserves, production, demand, technology, and related economic and statistical information. Among other activities, this information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval of survey changes by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA collects information about the electric power industry for use by government and private sector analysts. The survey information is disseminated in a variety of publications, electronic products, and electronic data files. For details on EIA's electric power information program, please visit EIA's Web site at *http://www.eia.doe.gov/fuelelectric.html.*

II. Current Actions

The EIA will request OMB approval of modifications to Schedule I, Part A through Part C of the Form EIA–826, to Schedule IV, Part A through Part C of the Form EIA–861, and to the Form EIA–906.

The proposed changes to the Form EIA–826 and Form EIA–861 reflect the need to revise the definition of the commercial and industrial sectors to include data previously reported in the ''other'' sector and to add two new sector categories, transportation and irrigation. Electricity used for public street and highway lighting, interdepartmental or intra-company sales (sales to other departments within the entity), and sales to public authorities has been reported in the ''other'' sector but would now be reported in the commercial sector. Electricity sales for agriculture, excluding irrigation, has been reported in the ''other'' sector but would now be reported in the industrial sector.

Data on revenues, megawatthours, and number of customers for electric energy supplied for transportation, such as electrified rails, would now be reported in the transportation sector and energy supplied for irrigation would now be reported in the irrigation sector.

The proposed changes to the Form EIA–906 reflect the need to collect information on fuel used to generate electric power at the facility level. In addition, data on electricity generation and fuel used to generate electricity are needed at the prime mover, the motive force that drives an electric generator (*e.g.* steam engine, turbine, or water wheel).

As a means of improving the three electric power surveys, EIA proposes the following specific changes:

Form EIA–826,''Monthly Electric utility Sales and Revenue with State Distributions Report,'' will eliminate reporting in the ''other'' sector and have that information reported in the appropriate commercial and industrial sectors on Schedule I, Parts A through C. In addition, two new sector categories, transportation and irrigation, will be added on Schedule I, Part A through Part C.

Form EIA–861,''Annual Electric Power Industry Report,'' will eliminate reporting in the ''other'' sector and have that information reported in the appropriate commercial and industrial sectors on Schedule IV, Parts A through C. In addition, two new sector categories, transportation and irrigation, will be added on Schedule IV, Part A through Part C.

Form EIA–906, ''Power Plant Report,'' will collect information on total fuel used and fuel used to generate electric power, rather than the production of heat and/or steam that is used in industrial processes. In addition, the form will collect some data elements at the prime mover level, while continuing to collect other data at the facility level.

Those elements that are proposed to be collected at the prime mover level include electricity generation and the fuel(s) used to generate electricity.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. The estimated reporting burdens for these three forms are not expected to change with the proposed revisions. The reporting burdens are: 1.50 hours per monthly response for Form EIA–826, ''Monthly Electric Sales and Revenue With State Distributions Report,'' 7.30 hours per annual response for Form EIA–861, ''Annual Electric Power Industry Report,'' and 1.40 hours per response on the Form EIA–906, ''Power Plant Report.'' These estimated burdens

include the total time necessary to provide the requested information. In your opinion, how accurate are these estimates?

E. The agency's estimate in the above paragraph is only the cost to a respondent for the time it will take to complete each form. Due to the proposed changes, will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with these forms?

F. What additional actions could be taken to minimize the burden of these forms? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other types of information technology.

G. To your knowledge, does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, June 18, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–15886 Filed 6–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–104]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

June 18, 2003.

Take notice that on June 16, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective May 16, 2003:

Substitute Second Revised Sheet No. 862

CEGT states that the purpose of this filing is to correct an Activity Rate reported inaccurately in the May 16, 2003, filing.

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 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15919 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–002]

Enbridge Pipelines (Louisiana Intrastate) L.L.C.; Notice of Shortened Comment Period

June 17, 2003.

Take notice that on June 16, 2003, Enbridge Pipelines (Louisiana Intrastate) L.L.C., (Louisiana Intrastate) filed an offer of settlement relative to Louisiana Intrastate's filings in Docket Nos. PR03–11–000 and PR03–11–001. The settlement is uncontested and no parties have intervened in these proceedings and the Commission staff supports the Settlement.

Louisiana Intrastate requests that the Commission establish a shortened comment period for comments on the settlement.

Take notice that initial comments are due on or before June 23, 2003, and reply comments are due on or before June 26, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15842 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–317–000]

Gulf South Pipeline Company LP; Notice of Application

June 17, 2003.

On June 6, 2003, Gulf South Pipeline Company LP (Gulf South), 20 East Greenway, Houston, Texas 77046, filed an application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, for authorization to construct, own and operate two horizontal replacement injection/withdrawal wells in the Bistineau Storage Facility, located in Bienville Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission 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.

Gulf South proposes to construct, own and operate two new horizontal injection/withdrawal wells, approximately 440 feet of associated 8-inch diameter gathering lines and appurtenant facilities. Gulf South states these wells will be operated within Gulf South's current certificated limits, and will not exceed its certificated storage capacity or deliverability.

Any questions concerning this application may be directed J. Kyle Stephens, Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, phone (713) 544–7309, fax (713) 544–

4818, email: *kyle.stephens@gulfsouthpl.com.*

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. If filng by paper, 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. 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.

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.

Comment Date: July 8, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15839 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–522–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

June 17, 2003.

Take notice that on June 11, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, reflecting an effective date of June 1, 2003.

Original Sheet No. 8E

Gulfstream states that this filing is being made to implement a Park negotiated rate transaction under Rate Schedule PALS pursuant to Section 31 of the General Terms and Conditions (GT&C) of Gulfstream's FERC Gas Tariff. Gulfstream also states that the tariff sheet identifies and describes the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the Maximum Park Quantity. Gulfstream explains that the proposed tariff sheet includes footnotes where necessary to provide further detail on the agreement.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

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 sections 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 23, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15846 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–000]

High Island Offshore System, L.L.C.; Notice of Informal Settlement Conference

June 17, 2003.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9 a.m. on June 25, 2003, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Donald Heydt at (202) 502–8740, *donald.heydt@ferc.gov* or Irene Szopo at (202) 502–8323, *irene.szopo@ferc.gov.*

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15844 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–013]

Kern River Gas Transmission Company; Notice of Negotiated Rates

June 17, 2003.

Take notice that on June 11, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 495, to be effective June 5, 2003.

Kern River states that the purpose of this filing is to reflect the assignment of

a negotiated rate transportation service agreement between Kern River and Victorville-Gas, LLC, to High Desert Power Trust, and to update the reference to this agreement in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

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 sections 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 23, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15843 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–409–004 and RP00–631–005]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

June 18, 2003.

Take notice that on June 13, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order on Rehearing and Compliance Filing (Order) issued in Docket Nos. RP00–409–000 and RP00–631–000, *et al.*, on May 14, 2003. The Order approved, subject to a number of modifications, Natural's compliance filing related to its Order No. 637 docket filed herein on December 23, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket Nos. RP00–409 and RP00–631.

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 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15916 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–18–004]

Northern Illinois Gas Company; Notice of Compliance Filing

June 18, 2003.

Take notice that on June 5, 2003, Northern Illinois Gas Company (Nicor) filed a revised copy of its Operating Statement, with an effective date of May 1, 2002.

Nicor states that this filing is being made pursuant to its October 17, 2002, Stipulation and Agreement (Settlement), which was approved by order of the Commission issued April 10, 2003 (103 FERC ¶ 61,031 (2003)) (April 10 Order).

Nicor states that the Settlement approved by the April 10 Order requires Nicor to file, within 30 days of the effective date of the Settlement, a revised Operating Statement to (i) eliminate the $50 minimum daily charge; (ii) remove section 5.14 of the Operating Statement; and (iii) revise section 2.15A to reflect that a shipper will not be charged for confirmed service not actually used, if service is interrupted or curtailed by Nicor.

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 on or before the protest date as shown below. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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: July 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15914 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–356–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Technical Conference

June 17, 2003.

The Commission in its order issued on May 28, 2003,[1] directed that a technical conference be held to address certain issues raised by Southern Star's tariff filing to shift from monthly to daily allocation of gas on its system.

Take notice that a technical conference will be held on Thursday, June 26, 2003, at 11 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15845 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–523–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

June 17, 2003.

Take notice that on June 11, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Forty-Eighth Revised Sheet No. 50, with an effective date of June 1, 2003.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under section 4 of the Transco's Rate Schedule FT-NT.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

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 sections 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 23, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15847 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–524–000]

Transwestern Pipeline Company; Notice of Tariff Filing

June 18, 2003.

Take notice that on June 13, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective June 1, 2003:

Fourteenth Revised Sheet No. 5B.02
Twelfth Revised Sheet No. 5B.03

Transwestern states that its Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271, *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for Settlement Base Rates (''SBRs'') for the Current Firm Shippers listed in the Global Settlement and any shippers receiving permanently released capacity from those Current Firm Shippers. Transwestern states that the purpose of this filing, effective June 1, 2003, is to reflect the permanent release of part of Current Firm Shipper El Paso Merchant Energy's capacity to Sacramento Municipal Utility District (SMUD). Transwestern states that it is adding SMUD to the SBR and TCR II rate sheets. Transwestern asserts that in addition, Conoco Inc. is being eliminated from the SBRs tariff sheet to reflect the termination of Conoco Inc.'s service agreement to which the SBRs had applied.

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 Sections 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 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15917 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern Star Central Gas Pipeline, Inc., 103 FERC ¶ 61,243 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–525–000]

Western Gas Interstate Company; Notice of Compliance Filing

June 18, 2003.

Take notice that on June 12, 2003, Western Gas Interstate Company (WGI), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 2003:

Second Revised Sheet No. 136
Third Revised Sheet No. 137
Second Revised Sheet No. 137A
Second Revised Sheet No. 230A
Second Revised Sheet No. 230C
Fifth Revised Sheet No. 247

WGI states that the purpose of the filing is to comply with Order No. 587-R and the applicable Version 1.6 standards adopted by the North American Energy Standards Board and recommendations of the Wholesale Gas Quadrant approved by the Commission.

WGI states that copies of this filing were served on its customers and interested state commissions.

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 sections 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 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15918 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–68–000, et al.]

Katahdin Transmission, LLC, et al.; Electric Rate and Corporate Filings

June 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Katahdin Transmission, LLC

[Docket No. EG03–68–000]

Take notice that on June 12, 2003, Katahdin Transmission, LLC (KT LLC) filed with the Federal Energy Regulatory Commission (Commission) an Amendment to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 365.5 of the Commission's regulations.

KT LLC states that it is a Delaware limited liability company that will own and simultaneously lease to Great Lakes Hydro America, LLC (GLHA), a company with exempt wholesale generator status, certain interests in equipment that will comprise a discrete portion of a new 115 kV interconnection project, which will, operationally, become part of an existing ''eligible facility'' owned and operated by GLHA in Millinocket and East Millinocket, Maine.

Comment Date: July 8, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–007]

Take notice that on June 12, 2003, in compliance with PJM Interconnection, L.L.C., 103 FERC § 61,167 (2003), PJM Interconnection, L.L.C. (PJM) submitted a compliance filing in which it redesignated sheets of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to comply with Designation of Electric Rate Schedule Sheets, Order No. 614, 1996–2000 Stats. & Regs., Regs. Preambles § 31,096 (2002).

Copies of this filing have been served on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: July 3, 2003.

3. Rayo Energy LLC

[Docket No. ER03–782–001]

Take notice that on June 11, 2003, Rayo Energy LLC (REL) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to its application filed on April 29, 2003. REL states that revisions have been made to Attachment A, Original Rate Schedule FERC No. 1, Original Sheet No. 1, under the headings of Availability and Applicability. REL requests a shortened comment period for the revised filing.

Comment Date: June 23, 2003.

4. Commonwealth Edison Company

[Docket No. ER03–816–001]

Take notice that on June 11, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreement and executed Dynamic Scheduling Agreement entered into between ComEd and Alliant Energy under ComEd's Open Access Transmission Tariff (OATT). ComEd requests an effective date of April 1, 2003.

ComEd states that copies of the filing were served upon Alliant Energy, the Illinois Commerce Commission and Wisconsin Public Service Commission.

Comment Date: July 2, 2003.

5. Southern California Edison Company

[Docket No. ER03–950–000]

Take notice that on June 12, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and The City of Azusa (Azusa).

SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence performance of the engineering, design, obtaining CPUC approval, procurement of equipment and material and construction of interconnection facilities capable of servicing 28 MW of wholesale Distribution Load.

SCE further states that copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

Comment Date: July 3, 2003.

6. Moraine Wind LLC

[Docket No. ER03–951–000]

Take notice that on June 12, 2003, Moraine Wind LLC (Moraine Wind) filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, an Application for Order Accepting Initial Rate Schedule, which would allow

Moraine Wind to engage in the sale of electric energy and capacity at market-based rates. Moraine Wind states that it is engaged in the business of developing, and will construct, own, and operate, a 51 MW wind power generation facility located in Murray and Pipestone counties, Minnesota. Moraine Wind states that it seeks certain waivers, blanket approvals, and authorizations under the Commission's regulations. Moraine Wind states that it also seeks waiver of the 60-day notice and 120-day prefiling requirements under 18 CFR 35.3.

Comment Date: July 3, 2003.

7. Maine Electric Power Company

[Docket No. ER03–952–000]

Take notice that on June 12, 2003, Maine Electric Power Company (MEPCO) tendered for filing a Notice of Termination of the Interconnection Support Agreement between MEPCO, Central Maine Power Company, and Bangor Hydro-Electric Company. MEPCO states that this interconnection support agreement is currently designated as FERC Rate Schedule No. 18. MEPCO further states that it seeks an effective termination date of January 1, 2003.

Comment Date: July 3, 2003.

Standard Paragraph

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, please 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15921 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 17, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No:* 12455–000.

c. *Date Filed:* April 18, 2003.

d. *Applicant:* The Borough of Lehighton, Pennsylvania.

e. *Name of Project:* Beltzville Lake Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers existing Beltzville Lake Dam and Reservoir, on the Pohopoco Creek in Carbon County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. John F. Hanosek, Borough Manager; Borough of Lehighton, Box 29—Municipal Building, Lehighton, PA 18235, (610) 377–4002.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the Corps' existing Beltzville Lake Dam would consist of: (1) One 6.5-foot-diameter, 250-foot-long buried steel penstock, (2) a powerhouse containing two generating units with a total installed capacity of 2.15 MW, (3) a 12-kv transmission line approximately .3 miles long, and (4) appurtenant facilities. The project would have an annual generation of 13.33 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15841 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 18, 2003.

Take notice that the following plan has been filed with the Commission and is available for public inspection:

a. *Type of Plan:* Comprehensive recreation and land use plan.

b. *Project No:* 2004–138.

c. *Date Filed:* May 1, 2003.

d. *Applicant:* City of Holyoke Gas & Electric Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* The project is located on the Connecticut River, in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* License Article 418; Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Paul Ducheney, 66 Suffolk St., Holyoke, MA 01040, (413) 536–9340.

i. *FERC Contact:* Hillary Berlin at 202–502–8915.

j. *Deadline for filing comments, motions to intervene and protest:* July 14, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Plan:* The licensee filed a Comprehensive Recreation and Land Management Plan pursuant to license article 418. The plan includes the following management elements: recreation, land, buffer zone, and riparian. Primary issues in the plan include recreation facility and program development, habitat and shoreline protection measures, term and conveyance for conservation easements, protection of the Bachelor and Stony Brook parcels, disposition of Cove Island, recreational user conflicts, and strategies for the provision of open space, public access, and wildlife preservation.

l. 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–15913 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO Conferences on Midwest Market Initiative Protocols and on Open Access Transmission and Energy Markets Tariff

June 17, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend two conferences sponsored by the Midwest Independent Transmission System Operator, Inc. (MISO) on its Midwest Market Initiative Protocols (MMI Protocols) and Open Access Transmission and Energy Markets Tariff. The staff's attendance is part of the Commission's ongoing outreach efforts. The first conference will be held on June 23 (10 a.m. to 4 p.m.) and June 24, 2003 (8 a.m. to noon), to discuss the MMI Protocols. The second conference will be held on July 1, 2003 (10 a.m. to 4 p.m.), to discuss the Open Access Transmission and Energy Markets Tariff. The conferences will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 701 City Center Drive, Carmel, IN 46032. These meetings are open to the public. The meetings may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; in Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*; in Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.; and in Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–15840 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 and RT01–67–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, GridFlorida, LLC; Notice of Technical Conference

June 18, 2003.

Take notice that a technical conference will be held on September 15, 2003, from approximately 9:30 a.m. to 3:30 p.m. at the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Gerald Gunter Building, Tallahassee, Florida. Members of the Commission will attend and participate in the discussion. An agenda will be issued at a later time.

This conference is one in a series of regional technical conferences announced in the White Paper issued in Docket No. RM01–12–000 on April 28, 2003. The purpose of the conference is to discuss wholesale market platform and RTO issues related to the proposed GridFlorida RTO/ISO. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale 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. In particular, the meeting will focus on issues related to the proposed GridFlorida RTO/ISO.

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:

Steve Rodgers, Director, Division of Tariffs & Market Development—South, Office of Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8227.

steve.rodgers@ferc.gov.

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.

[FR Doc. 03–15915 Filed 6–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice

June 18, 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 25, 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.

832nd Meeting, June 25, 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# EL03–77, 000, Enron Power Marketing, Inc. And Enron Energy Services, Inc.

Other#S RP03–311, 000, Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp.

E–2.

Docket# EL03–123, 001, *Richard Blumenthal, Attorney General of the State of Connecticut and The Connecticut Department of Public Utility Control* v. *NRG Power Marketing, Inc.*

OTHER#S EL03–129, 000, Connecticut Light and Power Company

E–3.

Reserved

E–4.

Reserved

E–5.

Reserved

E–6.

Docket# EL01–10, 000, *Puget Sound Energy, Inc.,* v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*

Other#S EL01–10, 001, *Puget Sound Energy, Inc.,* v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*

EL01–10, 007, *Puget Sound Energy, Inc.,* v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*

EL01–10, 009, *Puget Sound Energy, Inc.,* v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*

E–7.

DOCKET# EL02–28, 000, *Nevada Power Company and Sierra Pacific Power Company* v. *Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

EL02–28, 002, *Nevada Power Company and Sierra Pacific Power Company* v. *Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

OTHER#S EL02–29, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–29, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–30, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–30, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–31, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–31, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–32, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–32, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–33, 000, *Nevada Power Company and Sierra Pacific Power Company* v. *Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

EL02–33, 002, *Nevada Power Company and Sierra Pacific Power Company* v. *Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

EL02–34, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–34, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–38, 000, *Nevada Power Company and Sierra Pacific Power Company v. Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

EL02–38, 002, *Nevada Power Company and Sierra Pacific Power Company* v. *Enron Power Marketing, Inc., El Paso Merchant Energy and American Electric Power Services, Corp.*

EL02–39, 000, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–39, 002, *Nevada Power Company* v. *Morgan Stanley Capital Group, Calpine Energy Services, Mirant Americas Energy Marketing, L.P., Reliant Energy Services, BP Energy Company and Allegheny Energy Supply Company, L.L.C.*

EL02–43, 000, *Southern California Water Company* v. *Mirant Americas Energy Marketing*

EL02–43, 002, *Southern California Water Company* v. *Mirant Americas Energy Marketing*

EL02–56, 000, *Public Utility District No. 1 Snohomish County, Washington* v. *Morgan Stanley Capital Group, Inc.*

EL02–56, 002, *Public Utility District No. 1 Snohomish County, Washington* v. *Morgan Stanley Capital Group, Inc.*

E–8.

DOCKET# EL02–60, 003, *Public Utilities Commission of the State of California* v. *Sellers of Long Term Contracts to the California Department of Water Resources*

OTHER#S EL02–62, 003, *California Electricity Oversight Board* v. *Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources*

E–9.

DOCKET# EL02–80, 002, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

OTHER#S EL02–80, 001, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–81, 001, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–81, 002, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc.,Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–82, 001, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–82, 002, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–83, 001, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, and El Paso Merchant Energy, L.P.*

EL02–83, 002, *PacifiCorp* v. *Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing &*

Trading Company, and El Paso Merchant Energy, L.P.
E–10.
Omitted
E–11.
Docket# ER03–793, 000, New England Power Companny
E–12.
Docket# ER03–807, 000, PJM Interconnection, L.L.C.
E–13.
Docket# ER03–708, 000, Pacific Gas and Electric Company
E–14.
Docket# ER03–811, 000, Entergy Services, Inc
E–15.
Docket# ER03–810, 000, New York Independent System Operator, Inc.
E–16.
Docket# ER03–830, 000, California Power Exchange Corporation
E–17.
Docket# ER03–836, 000, New York Independent Transmission System Operator, Inc.
E–18.
Docket# ER03–684, 000, Wisconsin Power and Light Company
E–19.
Docket# SC00–1, 001, Montana Power Company
E–20.
Docket# ER03–37, 000, Sierra Pacific Power Company and Nevada Power Company
Other#s ER02–2609, 000, Sierra Pacific Power Company and Nevada Power Company
E–21.
Docket# ER03–83, 000, TRANSLink Development Company, LLC
E–22.
Docket# ER03–791, 000, California Power Exchange Corporation
E–23.
Docket# ER0,3–875, 000, California Independent System Operator Corporation
E–24.
Omitted
E–25.
Omitted
E–26.
Docket# ER02–2014, 010, Entergy Services, Inc.
E–27.
Docket# ER01–2214, 002, Entergy Services, Inc.
E–28.
Omitted
E–29.
Docket# ER03–242, 001, American Electric Power Service Corporation
Other#s ER03–242, 002, American Electric Power Service Corporation
E–30.
Omitted
E–31.
Docket# ER01–3141, 001, American Electric Power Service Corporation
Other#S ER01,–3141, 002 American Electric Power Service Corporation
ER01–3141, 003, American Electric Power Service Corporation
E–32.
Omitted
E–33.
Omitted
E–34.
Docket# EL02–128, 001, *Sithe New England Holdings, LLC* v. *ISO New England, Inc.*
E–35.
Docket# ES02–51, 001, Westar Energy, Inc.
E–36.
Docket# ER98–1438, 015, Midwest Independent Transmission System Operator, Inc.
Other#s EC98–24, 009, Midwest Independent Transmission System Operator, Inc.
ER01–479, 005, Midwest Independent Transmission System Operator, Inc.
E–37.
Docket# EC03–40, 001, ITC Holdings Corp., ITC Holdings Limited Partnership, International Transmission Co., DTE Energy Co. and Detroit Edison Co.
Other#s EC03–40, 002, ITC Holdings Corp., ITC Holdings Limited Partnership, International Transmission Co., DTE Energy Co. and Detroit Edison Co.
ER03–343, 001, ITC Holdings Corp., ITC Holdings Limited Partnership, International Transmission Co., DTE Energy Co. and Detroit EdisonCo.
ER03–343, 002, ITC Holdings Corp., ITC Holdings Limited Partnership, International Transmission Co., DTE Energy Co. and Detroit EdisonCo.
E–38.
Omitted
E–39.
Omitted
E–40.
Omitted
E–41.
Omitted
E–42.
Omitted
E–43.
Docket# ER03–366, 001, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–366, 002, Midwest Independent Transmission System Operator, Inc.
ER03–366, 003, Midwest Independent Transmission System Operator, Inc.
ER03–368, 001, Midwest Independent Transmission System Operator, Inc.
ER03–368, 003, Midwest Independent Transmission System Operator, Inc.
ER03–368, 004, Midwest Independent Transmission System Operator, Inc.
E–44.
Omitted
E–45.
Omitted
E–46.
Docket# EL00–95, 000, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s EL00–95, 045, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
EL00–95, 069, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
EL00–98, 000, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 042, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 058, Investigation of Practices of the California Independent System Operator and the California Power Exchange
PA02–2, 000, Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices
EL02–113, 000, El Paso Electric Company, Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation
EL02–114, 000, Portland General Electric Company
EL02–115, 000, Avista Corporation and Avista Energy
EL02–115, 001, Enron Power Marketing, Inc.
EL03–59, 000, Reliant Energy Services, Inc.
EL03–60, 000, BP Energy Company
EL03–77, 000, Enron Power Marketing, Inc., and Enron Energy Services, Inc.
RP03–311, 000, Bridgeline Gas Marketing, L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp.
E–47.
Docket# EL03–55, 000, *AES Warrior Run, Inc.* v. *Potomac Edison Company d/b/a Allegheny Power*
E–48.
Docket# EL03–37, 000, *Town of Norwood, Massachusetts* v. *National Grid USA, New England Electric System, Massachusetts Electric Company and Narragansett Electric Light Company*
E–49.
Omitted
E–50.
Docket# AC03–20, 000, American Electric Power Service Corporation
E–51.
Docket# ER99–2326, 000, Pacific Gas and Electric Company
Other#S EL99–68, 000, Pacific Gas and Electric Company
E–52.
Docket# EL01–22, 002, Idaho Power Company
E–53.
Omitted
E–54.
Docket# EL01–118, 000, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations
Other#S EL01–118, 001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations
E–55.
Docket# EL01–122, 005, PJM Interconnection, L.L.C.

E–56.
Docket# ER03–835, 000, PJM Interconnection, L.L.C.
E–57.
Docket# ER03–806, 000, Sierra Pacific Power Company and Nevada Power Company
E–58.
Docket# ER03–31, 001, United Illuminating Company
Other#s ER03–31, 000, United Illuminating Company

Miscellaneous Agenda

M–1.
Docket# RM02–14, 000, Regulation of Cash Management Practices
M–2.
Docket# RM03–8, 000, Quarterly Financial Reporting and Revisions To the Annual Reports

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP03–485, 000, Honeoye Storage Corporation
G–2.
Docket# RP03–431, 000, Maritimes & Northeast Pipeline, L.L.C.
G–3.
Docket# RP03–435, 000, Texas Gas Transmission Corporation
G–4.
Docket# RP03–438, 000, Texas Eastern Transmission, L.P.
G–5.
Docket# RP03–420, 000, Iroquois Gas Transmission System, L.P.
G–6.
Docket# RP03–433, 000, Energy West Development, Inc.
G–7.
Docket# RP03–472, 000, Black Marlin Pipeline Company
G–8.
Docket# RP03–457, 000, Algonquin Gas Transmission Company
G–9.
Docket# RP03–384, 000, North Baja Pipeline, LLC
G–10.
DOCKET# PR03–7, 000, AIM Pipeline, LLC
OTHER#S PR03–7, 001, AIM Pipeline, LLC
G–11.
DOCKET# RP98–54, 000, Colorado Interstate Gas Company
OTHER#S SA98–4, 000, Edgar W. White
G–12.
DOCKET# RP03–135, 000, Southern Star Central Gas Pipeline, Inc.
OTHER#S RP03–135, 001, Southern Star Central Gas Pipeline, Inc.
G–13.
DOCKET# RP00–337, 005, Kern River Gas Transmission Company
G–14.
DOCKET# RP96–320, 058, Gulf South Pipeline Company, LP.
G–15.
DOCKET# RP03–314, 001, Northern Natural Gas Company
G–16.
OMITTED
G–17.
OMITTED
G–18.
DOCKET# RP03–41, 003, *e prime, inc.* v. *PG&E Gas Transmission, Northwest Corporation*
G–19.
DOCKET# RP00–205, 006, PG&E Gas Transmission, Northwest Corporation
G–20.
DOCKET# RP00–107, 000, Williston Basin Interstate Pipeline Company
G–21.
OMITTED
G–22.
DOCKET# RP00–326, 002, Columbia Gulf Transmission Company
OTHER#S RP00–326, 003, Columbia Gulf Transmission Company
RP00–605, 002, Columbia Gulf Transmission Company
RP00–605, 003, Columbia Gulf Transmission Company
RP02–39, 003, Columbia Gulf Transmission Company
RP02–39, 004, Columbia Gulf Transmission Company
G–23.
DOCKET# RP03–403, 000, PG&E Gas Transmission, Northwest Corporation
G–24.
DOCKET# RM03–10, 000, Amendments to Blanket Sales Certificates
G–25.
DOCKET# PR03–14, 000, *Tractebel Energy Marketing, Inc.,* v. *Hill-Lake Storage, L.P.*
G–26.
DOCKET# RP03–483, 000, Northwest Pipeline Corporation
G–27.
DOCKET# IS03–150, 001, Shell Pipeline Company LP
G–28.
OMITTED
G–29.
DOCKET# RP96–200, 103, CenterPoint Energy Gas Transmission Company
G–30.
DOCKET# RP00–487, 001, Tuscarora Gas Transmission Company
OTHER#S RP01–14, 001, Tuscarora Gas Transmission Company

Energy Projects—Hydro

H–1.
DOCKET# P–2016, 056, City of Tacoma, Washington
H–2.
DOCKET# P–6032, 051, Niagara Mohawk Power Corporation
H–3.
DOCKET# P–10455, 023, JDJ Energy Company

Energy Projects—Certificates

C–1.
DOCKET# CP01–415, 008, East Tennessee Natural Gas Company
C–2.
DOCKET# CP02–116, 002, Tennessee Gas Pipeline Company
OTHER#S CP02–117, 002, Tennessee Gas Pipeline Company
C–3.
DOCKET# CP03–40, 000, Sid Richardson Energy Services, Ltd.
C–4.
DOCKET# CP02–233, 000, Equitrans, L.P. and Carnegie Interstate Pipeline Company

Magalie R. Salas,

Secretary.

[FR Doc. 03–15975 Filed 6–19–03; 4:18 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2003 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required primarily due to increased operations and maintenance expenses at the project. The Administrator has developed a proposed Robert D. Willis rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning October 1, 2003, the proposed rates would increase annual revenues approximately 35.0 percent from $353,700 to $477,612.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end August 25, 2003.

1. Public Information Forum—July 15, 2003, 9 a.m. central time, Tulsa, OK

2. Public Comment Forum—July 31, 2003, 9 a.m. central time, Tulsa, OK

ADDRESSES: The forums will be held in Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103. Five copies of the written comments, together with a diskette in MS Word or Corel Word Perfect, regarding the proposed rate change should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma, 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of

Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment study using the existing Robert D. Willis rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facilitiy for power and energy marketed by Southwestern will be under-collected without an increase in revenues. The need for increased revenues is primarily due to increased costs for Corps of Engineers' operations and maintenance expenses. The Revised Power Repayment Study shows that an increase in annual revenue of $123,912 (a 35.0 percent increase), beginning October 1, 2003, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Robert D. Willis Power Repayment Studies and the proposed rate schedule. If you desire a copy of the Robert D. Willis Power Repayment Data Package with the proposed Rate Schedule, submit your request to Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6696 or via email to *gene.reeves@swpa.gov.*

A Public Information Forum is scheduled to be held on July 15, 2003, to explain to customers and the public the proposed rate and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Public Information Forum should indicate in writing by letter or facsimile transmission (918–595–6656) by July 8, 2003, their intent to appear at such Forum. If no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum is scheduled to be held on July 31, 2003, at which interested persons may submit written comments or make oral presentations of their views and comments related to the rate proposal. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers.

Persons interested in attending the Public Comment Forum should indicate in writing by letter or facsimile transmission (918–595–6656) by July 25, 2003, their intent to appear at such Forum. If no one so indicates their intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to the Administrator, Southwestern, in writing by July 25, 2003, their intent to appear at such Forum, so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee.

Written comments on the proposed Robert D. Willis Rate are due on or before August 25, 2003. Five copies of the written comments, together with a diskette in MS Word or Corel Word Perfect, should be submitted to the Administrator, Southwestern, at the above-mentioned address for Southwestern's offices.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the amended Robert D. Willis Rate Proposal, and Power Repayment Studies in support of the proposed rate to the Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: June 13, 2003.

Michael A. Deihl,

Administrator.

[FR Doc. 03–15887 Filed 6–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Operational Alternatives for Post–2004 Operations

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent.

SUMMARY: The Western Area Power Administration (Western), is a Federal power marketing administration within the Department of Energy (DOE) and markets Federal power from the Central Valley and Washoe Projects through the Sierra Nevada Region (SNR). SNR is implementing a new Marketing Plan on January 1, 2005. On December 31, 2004, three existing long-term contracts with the Pacific Gas and Electric Company (PG&E) expire. To cost effectively implement its new Marketing Plan, SNR identified a number of alternative post-2004 operating scenarios. Western must select and implement one of these alternatives in a timely manner so that customers of SNR will avoid substantial business risk and uncertainty and not be subject to increased costs.

DATES: Written comments from entities interested in commenting must be received no later than 4 p.m., PDT, August 8, 2003. Western will accept written comments received via regular mail through the U.S. Postal Service if they are postmarked at least 3 days before August 8, 2003, and received no later than August 13, 2003. Entities are encouraged to hand deliver or use certified or electronic mail for delivery of comments. Western will not consider comments received after the prescribed

date and time. SNR will hold a Public Information Forum to describe the alternatives under consideration on July 9, 2003, Folsom, CA, beginning at 10 a.m. SNR will also hold a Public Comment Forum on July 30, 2003, Folsom, California, at 10 a.m.

ADDRESSES: The Public Information Forum and Public Comment Forum will be held at the Lake Natoma Inn, 702 Gold Lake Drive, Folsom, California. Written comments should be sent to Tom Carter, Power Operations Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, or by electronic mail to *TCarter@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Tom Carter, Power Operations Manager, (916) 353–4427, or by electronic mail at *TCarter@wapa.gov*.

SUPPLEMENTARY INFORMATION:

Authorities

The Marketing Plan for marketing power by the SNR after 2004, published in the **Federal Register** (64 FR 34417) on June 25, 1999, was established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Background

Western is a Federal power marketing administration within DOE and published its 2004 Power Marketing Plan (Marketing Plan) for SNR in the **Federal Register** (64 FR 34417) on June 25, 1999. The Marketing Plan specifies the terms and conditions under which Western will market Federal power from the Central Valley Project (CVP), the Washoe Project, and any additional power purchased to supplement Federal hydropower generation beginning January 1, 2005. SNR has three long-term contracts (Contracts 14–06–200–2947A (2947A), 14–06–200–2948A (2948A), and 14–06–200–2949A (2949A)) with PG&E expiring on December 31, 2004. The Southern California Edison Company (SCE) and the San Diego Gas and Electric Company (SDG&E) are also parties to Contract 2947A. The three contracts provide for the integrated and interdependent operation of the Federal and PG&E transmission systems. PG&E provides transmission services to SNR's customers and Project Use loads on the PG&E system, interconnects the section of the Pacific AC Intertie (PACI) line owned by Western with PG&E-owned facilities, and provides Western with 400 megawatts (MW) of transmission capacity rights to and from the Pacific Northwest.

Under legislation authorizing the construction of the Federal CVP, the Federal Government had originally planned to construct Federal generation and transmission facilities to serve specific Project Use facilities and Preference Power allottees. PG&E proposed an alternative solution, which integrated the transmission and generation resources of both organizations. PG&E stated that its approach would be more economic and would be less costly than if the Federal Government undertook construction. This synergistic approach became the basis of the relationship between Western and PG&E for more than 50 years. In 1967, Western and PG&E executed Contracts 2947A, 2948A, and 2949A. Contract 2947A provides Western up to 400 MW of priority transmission capacity on the PACI transmission system. Under Contract 2948A, PG&E integrates the hydro-generation resources of the CVP and Western's purchased energy with its resource portfolio to meet the combined PG&E and SNR loads. Under this arrangement, PG&E provides firming energy, as needed, to support the Project Use loads and SNR's power allocations. Contract 2949A interconnects PG&E's transmission system with Western's at PG&E's Round Mountain Substation.

As part of PG&E's overall operational responsibilities under Contract 2948A, PG&E provides control area services to support SNR's loads. When California restructured its electric utility industry in 1996 with the passage of Assembly Bill 1890, the California Independent System Operator (CAISO) was created and took over operational control of the transmission lines of the three investor-owned utilities (PG&E, SCE, and SDG&E). The CAISO also assumed control area operator responsibilities for the geographic service territory of the three investor-owned utilities. Under existing arrangements, PG&E secures control area services from the CAISO to meet PG&E's contractual obligations for Contract 2948A deliveries.

PG&E has indicated that after the contracts expire, it will no longer provide the services identified in these contracts under the same terms and conditions in support of SNR's power marketing program. When these three long-term contracts expire on December 31, 2004, PG&E has informed Western that SNR must either obtain or self-provide many of the control area services currently provided by Contract 2948A for Project Use loads and its customers directly connected to the Federal transmission system. In addition, SNR will need to initiate new scheduling arrangements for Project Use loads, CVP generation, and customer allocations served through, or attached to, the CAISO controlled-grid. To ensure non-interrupted cost-effective deliveries of Federal power, Western is preparing to assume responsibility for providing many of these services.

Beginning January 1, 2005, SNR is assuming that it has the responsibility for providing many of the services currently provided by PG&E under existing contracts for the delivery of Federal power to Project Use loads on both the Federal and PG&E transmission systems. Nothing in this notice should be taken as a waiver of Western's rights or ability to take other actions to secure service.

To maintain operational flexibility for the CVP and the Washoe Project, as well as to implement the Marketing Plan in a cost-effective manner in the post-2004 environment, SNR is considering several alternative operating scenarios. One of the alternatives identified by SNR is the option of forming a new control area. Other alternatives include becoming a CAISO Participating Transmission Owner (TO) or operating within the CAISO control area as a sub-control area in a manner similar to a Metered Sub-System (MSS). The purpose of this notice is to advise interested stakeholders of SNR's potential activities and to solicit comments on the alternatives.

The Marketing Plan describes how SNR will market CVP, the Washoe Project, and purchased power resources during the period January 1, 2005, through December 31, 2024. CVP power facilities include 11 powerplants with a maximum operating capacity of about 2,044 MW and an estimated average annual generation of 4.6 million megawatt hours (MWh). The Washoe Project's Stampede Powerplant has a maximum operating capacity of 3.65 MW with an estimated annual generation of 10,000 MWh. The Sierra Pacific Power Company owns and operates the only transmission system available for access to the Stampede Powerplant.

Each of the alternatives under consideration will expose SNR and its customers to a different set of financial and operational risks and will require the development of different operating protocols and procedures.

Depending upon the alternative selected, Western may be required to

purchase, acquire, or construct additional facilities to establish the electrical boundaries of its system and provide a contiguous path between facilities owned by Western. For instance, Western owns the 94-circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie) but does not own the electrical facilities that interconnect this line to Round Mountain Substation. Western also does not own the transformation facilities between the 500-kV and 230-kV transmission lines at Round Mountain Substation or the interconnection facilities for the 230-kV transmission lines at the Cottonwood Substation. Interconnection facilities for a number of Western-owned transmission lines at the Cottonwood Substation are also not owned by Western. The scope of the acquisition or construction of new facilities will be determined in large part by the point at which SNR defines its control area or sub-control area boundaries.

Description of Alternatives

SNR has identified the following alternative post-2004 operating scenarios:

1. The no-action alternative;
2. Executing a Transmission Control Agreement (TCA) and becoming a CAISO Participating TO;
3. Executing a sub-control agreement with CAISO similar to its MSS concept; or
4. Forming a Western Electricity Coordinating Council (WECC)/North American Electric Reliability Council (NERC) certified control area with the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) generation and load, and certain other generation and load within the proposed control area boundary.

Factors To Be Considered During Decision-Making

In making a decision as to which post-2004 operational scenario to implement, SNR has identified factors that it will use in its decision-making process. These factors include, but are not limited to:

1. *Flexibility:* Preserves the ability of SNR to join a Federal Energy Regulatory Commission (FERC) approved and certified Regional Transmission Organization (RTO) in the future and to implement other industry changes;
2. *Certainty:* Assures that cost-of-service rates are stable and predictable;
3. *Durability:* Operating protocols are well established and subject to minimal changes over time;
4. *Operating Transparency:* Minimizes operating impacts to third parties;
5. *Cost-Effectiveness:* Cost shifts are minimized and relative cost-benefit ratios to SNR's customers will be considered.

FERC is actively encouraging the formation of RTOs. An RTO is an independent transmission system operator, governed by an independent board of directors. The RTO is responsible for operating a geographically discrete and interconnected regional transmission system consistent with prudent utility practices as defined by NERC and WECC. The selected alternative must have sufficient flexibility to allow SNR to accommodate the possibility of joining an RTO as well as modifying its operations to implement other changes in the electric utility industry. Although Western is not required to undertake a formal public process to select an operating configuration for post-2004 operations, Western has determined that it serves the public interest to allow interested stakeholders an opportunity to provide comments as Western goes through its decision-making process. In arriving at its final decision, SNR will accept and evaluate all comments received from interested stakeholders and ensure that its decision-making process is consistent with all applicable Federal laws, regulations, and procedures.

No-Action Alternative

If this alternative is selected, SNR and Reclamation would not execute successor transmission arrangements with PG&E or the CAISO. Since a basis for transactions or business relationships necessary to carry out deliveries of power to customers does not exist, substantial business uncertainty would result. One or more of the parties could pursue litigation to determine the respective positions of Western and its individual customers, Reclamation, CAISO, and PG&E. This alternative creates business uncertainty and operational impediments which would result from not having successor agreements in place with PG&E and the CAISO.

CAISO Participating Transmission Owner

Under this alternative, SNR, at a minimum, would need to execute a TCA, thus transferring operational control of the Federal transmission system to the CAISO. SNR would, however, retain responsibility for continuing to maintain all of its transmission facilities. Execution of the TCA would obligate SNR to conform its maintenance, operations, business, and administrative practices to all applicable CAISO protocols and procedures provided they do not conflict with existing Federal law.

Transmission revenue requirements associated with annual maintenance and capital repayment obligations for the Federal transmission system on behalf of SNR would be recovered through the CAISO Transmission Access Charge (TAC). In lieu of utility-specific cost-of-service rates, Federal transmission system beneficiaries would transition to a statewide rate, which represents the melded cost of all statewide Participating TO transmission revenue requirements.

To participate in the CAISO markets, and as the owner of the Federal generation assets, Reclamation would have to execute a Participating Generator Agreement (PGA). Execution of the PGA would allow the CVP to contribute energy and/or ancillary services in excess of SNR's existing contractual obligations into the market, if available.

Scheduling power across the Federal system would be done by the CAISO under terms governed by the CAISO tariffs. These tariffs are intended to afford equal opportunity use of all the existing transmission under CAISO control to all market participants. Under the existing CAISO Tariff, transmission of CVP generation to Project Use loads and SNR's customers will not be afforded any preference. In addition, if transmission is constrained; *e.g.*, inter-zonal or intra-zonal congestion exists, non-Federal generation may be re-dispatched to cover loads. As the anticipated Scheduling Coordinator (SC) for Reclamation's Project-Use loads and resources, SNR would pay the market clearing price for any power deliveries associated with energy imbalance costs. Under this scenario, assuming that SNR is the SC for both CVP generation and Project-Use loads, power would be scheduled from CVP generation to its customers and any excess generation, if available, would be bid as reserve (unloaded) capacity into the CAISO markets. Any imbalances caused by load deviations would be paid for by the SC for Project Use loads and SNR's customers. All revenues from sales to the CAISO markets would be applied to meet the repayment requirements of the CVP. The revenue requirement for CVP transmission will be collected by the CAISO under terms of the TCA.

From an operational perspective, CVP generation would be scheduled into the CAISO control area and the CAISO-controlled grid, including Federal

transmission assets, would be used to deliver Federal power and/or purchases to Project Use loads and SNR's customers. Under this alternative, the costs associated with energy deliveries to Project Use loads and SNR's customers are subject to the hourly CAISO market prices, transmission congestion charges, imbalance energy charges, and all other charges that the CAISO imposes to cover its costs or to collect revenue it must collect for transmission owners. Whenever actual load requirements exceed the scheduled amounts, the energy would be provided by the CAISO under its energy imbalance program.

From an organizational perspective, this alternative appears to be the easiest to implement. SNR would not need a real-time transmission scheduling or an automatic generation control (AGC) desk; however, to retain its status as an SC, a 24-hour merchant desk would still need to be established. A real-time transmission switching desk to monitor the Federal system, perform outage coordination and switching for maintenance activities, and coordinate system restoration activities would be needed. SNR would also have to maintain a settlements organization to account for and bill various charges associated with purchases and deliveries for customers for which SNR is designated as the SC and to reconcile and account for revenues associated with generation sales into the CAISO markets.

The impact of implementing this alternative would effectively increase the cost of transmission to all SNR customers. The differential would be most pronounced for those entities directly connected to the Federal transmission system. Integrating the Federal transmission system into the CAISO-controlled grid would result in an integrated TAC. However, since many of the direct-connected transmission users' transactions do not involve the use of the CAISO-controlled grid, direct-connected customers could end up paying for service that they would not necessarily need under other alternatives. Non-direct-connected customers would pay the non-discriminatory rate associated with the use of the CAISO-controlled grid. The net effect is that the overall average cost of transmission service could decrease for the rest of the existing CAISO market participants.

Executing an MSS Agreement With the CAISO

In lieu of becoming a Participating TO, the CAISO has offered SNR the option of becoming an MSS. The CAISO defines an MSS as the system of a transmission owner bounded by CAISO-certified revenue quality meters at each interface point and generating units internal to that metered system. Under this alternative, SNR and Reclamation will need to define the physical boundaries of the MSS, ensure the appropriate revenue quality meters are present at each interface point and the generators, and ensure the appropriate communications and telemetry are in place. Since the MSS concept recognizes internal generation, Reclamation will not need to execute a PGA. To minimize the cost of receiving services from the CAISO markets, SNR will need to balance its energy and ancillary services obligations on a continuous basis. This function will require a 24-hour per day balancing authority or an AGC desk. To minimize costs associated with deviations between actual loads and resources, a 24-hour merchant desk is required. To become an MSS, SNR would need to negotiate and execute an MSS agreement with the CAISO.

The MSS and the control area alternatives are very similar from an operational perspective. Both a control area and an MSS must define their boundaries at interconnections with others and both must have the ability to use the physical electrical path across these boundaries. The proposed transmission system boundaries for both the control area and the MSS can be viewed at the following Web site location: *http://www.wapa.gov/sn/P04/PDF/SNR-Boundary-06–02–03.PDF*

The northern boundary for the MSS alternative could change. Under the MSS alternative, Western would propose to put its Malin-Round Mountain transmission line in the CAISO control area and put its northern boundary at the 230-kV at the Round Mountain Substation on the Round Mountain-Cottonwood transmission line. Transmission scheduling between Malin and Round Mountain under the MSS alternative could be done by the CAISO while scheduling of transmission between Captain Jack and Tracy could be done by SNR. Western would still retain its existing capacity rights under a successor arrangement. The CAISO would remain the path operator for Path 66, the interface between the California-Oregon Border and Northern California, with the ability to curtail schedules on these paths if reliability is jeopardized.

An MSS is responsible for matching its internal loads and exports with generation and imports on an interval defined in the MSS agreement with the CAISO (not necessarily second-by-second). The MSS must maintain reserves in an amount that the MSS load bears to the entire load of the CAISO control area as defined in the MSS Agreement with the CAISO multiplied by the CAISO control area largest hazard (not necessarily the MSS largest hazard). The MSS does not have any responsibility to maintain the frequency of interconnection. This responsibility rests with the CAISO as the control area operator. The technical requirements for MSS performance are defined by the MSS Agreement with the CAISO. These requirements may change due to the CAISO Tariff revisions.

The CAISO's April 8, 2003, MSS proposal to SNR included the following key principles:

1. The MSS methodology would model SNR's service territory to include the entities directly connected to its transmission system unless these entities did not want to be included for scheduling and settlement purposes. The California-Oregon Transmission Project (COTP) line would also be included in SNR's MSS. An accommodation would have to be made for CAISO's share of COTP capacity rights currently owned by PG&E.

2. The CAISO would provide ''Net'' Settlements treatment for various CAISO market charges, as appropriate, based on cost causation principles.

3. No PG&E Unaccounted-for Energy (UFE) charge would be applied to load within SNR's territory.

4. SNR has the option of choosing to follow MSS load with MSS generation to minimize uninstructed energy deviation costs. Penalties would apply to all uninstructed deviations. The CAISO has also suggested that SNR could include entities not directly connected to its transmission system within the MSS and follow those loads with CVP generation.

5. SNR and Reclamation would have the ability to schedule customized combinations of MSS resources on a System Unit basis (aggregating resources for scheduling and settlements) to provide Reclamation with flexibility in dispatching individual generating resources.

6. Reclamation would not have to file a PGA, and Reclamation and SNR would have full access to all CAISO markets and associated services.

7. SNR would have the option of using multiple individual scheduling identifiers, as required, to facilitate and simplify CAISO settlements for SNR SC customers located on the CAISO grid but which are external to, and scheduled separately from, the Western MSS.

8. Ancillary services obligations would be based on a load ratio share of the CAISO ancillary services requirement.

9. Control area services would be provided by the CAISO.

Under the CAISO MSS proposal, SNR would, in essence, be a sub-control area operating within the CAISO control area with the AGC system operating in the flat tie-line mode. This means that the AGC algorithms would not contain a component to assist in the frequency support of the interconnection. SNR would regulate generation internal to the MSS so that the net actual interchange (net power flows to the CAISO and interconnected control areas) matches the net scheduled interchange.

From a transmission scheduling perspective, the MSS option requires SNR to schedule deliveries across the COTP line but not the Malin-Round Mountain line. Currently, these schedules are done between the CAISO and the Bonneville Power Administration (BPA). Implementation of the MSS option, including scheduling the use of transmission from the Pacific Northwest, will require coordination between SNR, CAISO, and BPA.

Forming a New Control Area

A control area is a specifically defined geographic region where responsibility for continuously matching generation and load is in accordance with NERC and WECC planning and operating criteria. A control area operator is responsible for continuously monitoring and balancing its resources against its load obligations and providing frequency support to the interconnected system. The control area operator must meet scheduled interchange requirements with other control areas, assist in maintaining the frequency of the electric power system, and provide sufficient generating capacity to maintain operating reserves. The control area operator must also ensure that it operates its transmission system in concert with other transmission providers in the area to maintain the reliability of the interconnected electric system.

Under this alternative, SNR would establish boundary and interface points with neighboring control areas; *e.g.*, BPA, CAISO, the Sacramento Municipal Utility District, and others, and install the appropriate metering and communication telemetry systems. In addition to the 24-hour merchant desk and the AGC desk identified under the MSS option previously, a transmission scheduling and security desk is also needed. Implementation of this option requires negotiating and executing additional agreements with the reliability coordinator, as well as inter-control area agreements with neighboring entities and intra-control area agreements with proposed control area participants. In the event that significant changes occur to the operation of the three-line California-Oregon Interconnect (COI) system, it may also be necessary to negotiate modifications to the COI's Coordinated Operations Agreement.

A control area is responsible for matching its internal load and exports with generation and imports on a second-by-second basis, for maintaining adequate reserves to cover its largest hazard, and to assist in maintaining the frequency of the interconnection. The technical requirements of the control area are contained in various NERC and WECC guidelines and standards; as such, these guidelines and standards may change due to industry consensus.

The control area alternative requires SNR to apply to NERC and WECC to become a certified control area. This requires SNR to demonstrate that it can meet all of the NERC and WECC planning and operational standards and requirements. The control area alternative has, as key principles, the following:

1. The proposed transmission system boundaries for the control area are shown at: *http://www.wapa.gov/sn/P04/PDF/SNR-Boundary-06–02–03.PDF* and initially will include those entities directly connected to the Federal transmission system. These loads include the cities of Redding, Roseville, and Shasta Lake; the Lawrence Livermore National Laboratory; Reclamation's Tracy Pumping Plants; the Sutter Energy Center; the East Contra Costa Irrigation District; and the Contra Costa Water District. The Malin-Round Mountain line and the COTP line would also be included in the proposed control area. All CVP hydro-generation directly connected to the Federal transmission system will be located within the control area.

2. Customers located within the control area will receive their allocation through internal control area schedules and will not experience any of the CAISO charges associated with those deliveries. Customers located on the CAISO grid will be assessed charges for delivery of their allocations associated with the use of the CAISO-controlled grid, ancillary services charges, transmission distribution charges, and other CAISO charges.

3. No PG&E UFE charges will apply to deliveries of Federal power to entities within the control area.

4. SNR will only follow the load for entities located within the control area. After becoming more experienced with control area operations, SNR will dynamically schedule generation through the CAISO system for interested entities to provide load following for customers that are not directly connected. This will minimize the CAISO imbalance energy charges for the off-system customers. Entities for which SNR provides load following services should not experience significant imbalance energy charges from the CAISO. These entities will, however, be charged for load following services.

5. Reclamation will have the flexibility to move water releases around their system as needed and will provide the generation levels scheduled for delivery internal to the control area and to the CAISO control area based on preschedules. There will be no uninstructed deviation charges associated with the control area alternative.

6. SNR expects to be the SC for Reclamation generation and for the loads of some of its customers and, therefore, would still participate in the CAISO markets under the control area alternative.

7. Schedules to customers located within the CAISO control area will be performed as SC-to-SC trades no differently than many of the deliveries of Federal power are made today.

8. SNR's reserve obligations will be shared by entities directly connected to the Federal transmission system in proportion to the load of each of these entities within the control area. This is the same approach (the load ratio share) as proposed by the CAISO in the MSS option. Regulation will be provided to the control area by CVP generation with the energy to be returned by those receiving such services.

9. All of the control area services outlined by the CAISO in the MSS alternative proposal will be provided by SNR under the control area alternative to entities within the control area.

SNR would regulate internal generation so that the net actual interchange matches the net scheduled interchange. Under the control area alternative, scheduling over the Malin-Round Mountain and the Captain Jack-Tracy paths would be done by SNR. SNR would begin load following for its internal customers when control area operations begin (January 1, 2005), and would request dynamic scheduling capability for off-system customers through the CAISO approximately 6 months later.

Transmission scheduling for deliveries across the COTP line and for

the Malin-Round Mountain transmission line would continue to be coordinated between CAISO and BPA. Western recommends that under this alternative, the CAISO continue as the path operator for the COI, with full visibility for all the schedules and the ability to curtail schedules if reliability is threatened.

Other Considerations

In determining which alternative to implement, a major consideration for SNR and its customers is the cost of each alternative. Under the Participating TO alternative, customers would be subject to CAISO charges associated with deliveries of Federal power. Under the MSS alternative, certain CAISO charges would be avoided if a customer is included in the MSS. Under the control area alternative, certain CAISO charges would be avoided by customers within the control area and possibly imbalance charges can be avoided through the use of dynamic scheduling for off-system customers. The costs and benefits of each option are being assessed through a study being performed by a consultant for Reclamation. The results of this study are expected to be available by the time the Public Information Forum announced in this notice is held.

Implementing the MSS alternative would result in different cost-of-service rates for transmission service for entities directly connected to the Federal transmission system and those entities served from the CAISO-controlled grid. In some instances, the expected increase in costs, especially for Federal end use loads served on the CAISO-controlled grid, could be substantial. Since the CAISO levies charges based on the net load in its MSS option, there may be certain opportunities to use Federal hydropower resources of the CVP to meet load requirements of the MSS participants and, thus, mitigate any cost increases associated with the use of the CAISO-controlled grid. From the standpoint of the CAISO, implementation of this option would keep most of its existing operating procedures intact and would ensure that its costs are recovered from CVP users.

If the control area formation option is selected, there still could be impacts to others even though mitigation efforts are undertaken. Scheduling and operational complexity associated with management of the three-line COI system could result. SNR recommends that the CAISO continue to serve as the single Path Operator for the COI for operational continuity and to assure that impacts are minimized to the maximum extent possible.

Under the control area formation proposal, differential transmission rates could still accrue between customers directly connected to the Federal transmission system and those who are served by the CAISO-controlled grid. If cost-of-service rates to CAISO-controlled grid users are mitigated, this would result in cost shifts to others. Cost shifts could result to other users connected directly to the Federal transmission system or to entities seeking transmission service either on or through Western's transmission system to the CAISO-controlled grid. Finally, to the extent that a new control area is formed, fixed expenses associated with operation of the CAISO would have to be recovered from a smaller base and, consequently, average unit costs for the remaining participants in the CAISO could increase.

Representatives from SNR will describe the above alternatives and the results of the cost/benefit study at the Public Information Forum. Western will accept public comments on the alternatives presented at the Public Comment Forum. SNR will accept additional written comments until the end of the comment period.

Consistency with Federal Law

Western will evaluate how Federal law will impact each of the alternatives. Western is governed by numerous Federal laws such as the Federal Reclamation Law. The Federal Reclamation Law requires the sale of Federal power be sold to Preference customers. Western implements such sales through a Federal marketing plan under the Administrative Procedure Act. The sale of Federal power must not impair the primary purposes of the CVP. The marketing plans have the full force and effect of law. The alternatives must be consistent with Western's obligations under Federal law including Western's Marketing Plan. For instance, if Western were to become a Participating TO, it is conceivable that situations could arise where Western would be unable to deliver Federal Preference Power to Federal customers even where adequate Federal transmission capability was available to serve the Federal customer. While the CAISO Tariff provides a waiver for Federal entities if a provision of the Tariff conflicts with the Federal law, Western must still work out the specific details on a case-by-case basis whenever such conflicts arise.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving services applicable to public property.

Environmental Compliance

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR part 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), Western completed an environmental impact statement (EIS) on its Energy Planning and Management Program. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995).

Western also completed the 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan. Available reservoir storage and water releases controlled by Reclamation influence marketable CVP and Washoe Project electrical capacity and energy. Reclamation completed a programmatic Environmental Impact Statement (PEIS) under the CVP Improvement Act of 1992 (Pub. L. 102–575, Title 34) on October 1999. Actions based on the PEIS may result in modifications to CVP facilities and operations that would affect timing and quantity of electric power generated by the CVP. Such changes may affect electric power products and services marketed by SNR. The Marketing Plan has the flexibility to accommodate these changes. Western was a cooperating agency in Reclamation's PEIS process.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C.

801 because the action is a rulemaking of particular applicability relating to services and involves matters of procedure.

Dated: June 12, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–15885 Filed 6–23–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7518–3]

Availability of ''Supplemental Allocation of Fiscal Year 2003 Operator Training Grants for Wastewater Security''

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: EPA is announcing the availability of a guidance memorandum entitled ''Supplemental Allocation of Fiscal Year 2003 Operator Training Grants.'' This memorandum provides national guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act. By providing additional funding to the 104(g) environmental training centers throughout the United States, the program will provide on-site security assistance and classroom training security activities to operators at small community wastewater treatment facilities in order to help the facility to become more secure.

ADDRESSES: United States Environmental Protection Agency, EPA East, Municipal Assistance Branch, 1200 Pennsylvania Avenue, NW., (Mail Code 4204–M), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski at (202) 564–0636, or email: *baranowski.curt@epa.gov*.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *www.epa.gov/owm/tomm.htm*, under ''*Supplemental Wastewater Security Grant Guidance*.''

Dated: June 18, 2003.

Peter E. Shanaghan,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–15903 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7517–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held July 15–17, 2003 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Tuesday, July 15 the Science/Regulatory Work Group will meet; plenary sessions will take place Wednesday, July 16 and Thursday, July 17.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet Tuesday, July 15 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, July 16 from 9 a.m. to 5 p.m., with a public comment period at 4:45 p.m., and on Thursday, July 17 from 9 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and reports from the Science and Regulatory Work Group. Other potential agenda items include strategic review of the progress on children's environmental health issues since the CHPAC was formed in 1997, and a panel presentation on the Voluntary Children's Chemical Evaluation Program (VCCEP).

Dated: June 18, 2003.

Joanne K. Rodman,

Designated Federal Official.

[FR Doc. 03–15902 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7518–2]

Science Advisory Board; Notification of Public Advisory Committee Meeting; Executive Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Executive Committee (EC), a Federal Advisory Committee, will hold a public meeting on the date and time given below to obtain briefings on EPA Regional science issues, and to discuss the SAB Operating Plan for FY2004.

DATES: The meeting will take place on Wednesday and Thursday, July 16–17, 2003 beginning 9 a.m. on July 16 and adjourning no later than 12 noon on July 17 (Central Time). Requests for oral comments, as well as submission of written comments must be received by July 8, 2003. Please see further details below.

ADDRESSES: The meeting will be held in the Lake Michigan Conference Room, U.S. EPA Region 5 Headquarters, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois. For meeting location, building access, and visitor information, please see the Region 5 Web site at: *http://www.epa.gov/region5/visitor/index.htm.*

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to present oral comments must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; Fax (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: *Summary:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EC of the U.S. EPA Science Advisory Board (SAB) will hold a public meeting to discuss the following topics:

(a) *EPA Regional Science Issues*—The SAB will receive briefings from, and discuss scientific issues, with Regional senior leadership and scientists. These are designed to: (1) inform the SAB about regional science issues and concerns; (2) identify opportunities for future SAB and Regional office interactions on topics of interest; and (3) provide the regions with insights into the overall SAB role in advising the

Agency on the technical underpinnings of the Agency's science and environmental decisions.

(b) *SAB Operating Plan for FY2004*—The Board will discuss the proposed projects submitted by Agency offices and regions and the self-initiated projects proposed by the SAB during this meeting. These projects are all being considered for inclusion in the SAB's FY2004 Operating Plan (see below for availability of these project summaries).

A meeting agenda will be posted on the SAB Web site (see below) approximately 10 days prior to the meeting. Any additional topics developed for this meeting will be reflected in the agenda.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. General information about the EPA Science Advisory Board, may be found on the SAB Web site (*http://www.epa.gov/sab*).

Requests for Comment: Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Standard Time on July 8, 2003. Written comments should also be sent to Mr. Flaak prior to the meeting. Submission of written comments by e-mail to Mr. Flaak will maximize the time available for review by the EC.

Availability of Review Materials: All preliminary meeting materials will be posted on the SAB Web site at: (*http://www.epa.gov/sab/whatsnew.htm*) approximately ten days prior to the meeting.

General Guidance on Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 16, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–15904 Filed 6–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Privacy Act Notice

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed notice of Privacy Act system amendments.

SUMMARY: The FTC is establishing a Privacy Act system of records that will include telephone numbers and other information of individuals who do not wish to receive telemarketing calls from telemarketers, sellers or agents covered by the FTC's Telemarketing Sales Rule. This notice proposes amendments that describe how the system will apply to personal information, if any, collected from or compiled on telemarketers, sellers, or their agents in order to access the system.

DATES: Comments, if any, must be received July 24, 2003. Unless revisions are made, this system notice shall become final and effective August 8, 2003.

ADDRESSES: Mail comments, if any, to the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, ''Telemarketing Rulemaking—Comment, FTC File No. R411011.'' Please indicate that your comment pertains to ''Privacy Act System Amendments, National Do Not Call Registry—FTC.'' (Alternatively, you may submit your comment by electronic mail to *TSR–PA@ftc.gov,* except as provided below.) The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through its Web site, *http://www.ftc.gov.* If your comment includes information that you believe is confidential, you must send it to the above postal address, not by e-mail, and you must include a specific request for confidential treatment that states the legal or factual basis for your claim and identifies the information you believe is confidential. *See* Commission Rule 4.9(c), 16 CFR 4.9(c). The Commission's General Counsel will grant or deny your request based on applicable law, regulation, and the public interest. *Id.*

FOR FURTHER INFORMATION CONTACT: For information about this Privacy Act notice, contact Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, *atang@ftc.gov.* For information about the National Do Not Call Registry, contact David Torok, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3075, *dtorok@ftc.gov.*

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission is publishing in final form its system notice for a new agency system of records, the ''National Do Not Call Registry System—FTC'' (FTC–IV–3).

The new system will collect and maintain the telephone numbers of individuals who do not wish to receive telemarketing calls from telemarketers, sellers, and agents, pursuant to the Commission's Telemarketing Sales Rule, 16 CFR Part 310, as amended. *See* 68 FR 4580 (Jan. 29, 2003) (final Rule amendments). The system is intended to help the FTC implement and enforce the do-not-call provisions of the Rule.

The Privacy Act notice that the FTC is publishing for this system addresses the privacy of information that is submitted by or generated on individuals who choose to place their telephone numbers in the system so as not to receive telemarketing calls. Telemarketers, sellers, and their agents

will be separately required, however, to provide certain information to establish a payment account before they may access the National Do Not Call Registry to check their do-not-call lists against the list of telephone numbers maintained in the Registry at that time, as the Rule requires.

The information they submit may include, for example, the name of a contact person, that person's telephone number and e-mail address, a credit card or bank account number that, in certain cases, may be assigned to an individual, etc. *See* 68 FR 16238, 16244 (Apr. 3, 2003) (revised user fee proposal). This information may also be associated with and retrieved by other information that the system may automatically generate when the telemarketer, seller, or agent accesses the system, such as the date and time of access, or the area code(s) or group(s) of telephone numbers that the telemarketer, seller, or agent downloads from the system.

Although the information submitted by, or that the system otherwise compiles on, telemarketers, sellers, and their agents may include information about, or could be otherwise associated with, certain individuals, as described above, the information pertains to such individuals only in a non-personal capacity (*e.g.*, as employees, company officials, etc.) acting or designated to act on behalf of a telemarketer, seller, or agent. In the Commission's view, the information does not pertain to such individuals within the meaning of the Privacy Act, but instead pertains to the telemarketer, seller, or agent that was required to submit the information in order to pay for and obtain authorized access to the system.

Nonetheless, to the extent, if any, the Privacy Act applies to this information, the Commission proposes to amend its Privacy Act notice to address the collection, maintenance and use of personal information, if any, compiled from telemarketers, sellers, or agents when they pay for and access the Registry. The proposed amendments are incorporated into the text of the notice below.

Privacy Impact Assessment. Section 208 of the E-Government Act of 2002, Pub. L. No. 107–347, generally requires that agencies assess the privacy impact of collecting personally identifiable information online before initiating such a collection activity or developing or procuring the technology to do so. Section 208 did not take effect until after the Commission initiated and legally adopted the Rule amendments that established the National Do Not Call Registry, and after the Commission started developing and procuring the technology for accepting do-not-call registrations online. Nevertheless, we have assessed the privacy impact of the system as discussed below.

(The Commission's Chief Information Officer or other designated official has reviewed this assessment.)

1. *What information will we be collecting?* See ''Categories of records'' below.

2. *Why are we collecting this information?* See ''Purpose(s),'' ''Routine Uses,'' and ''Disclosure to Consumer Reporting Agencies'' below.

3. *How do we intend to use the information?* See ''Purpose(s),'' ''Routine Uses,'' and ''Disclosure to Consumer Reporting Agencies'' below.

4. *With whom will we share the information?* See ''Purpose(s),'' ''Routine Uses,'' and ''Disclosure to Consumer Reporting Agencies'' below.

5. *What notice or opportunities for consent will individuals have about what information we collect and how we share it?* This notice explains what information we collect from telemarketers, sellers, and their agents, and how we share it.

6. *How will the information be secured?* See ''Safeguards'' below. The Web site through which telemarketers, sellers, and agents will be required to submit information to establish a payment account will use secure socket layer (SSL) encryption. Once they have submitted the required information, telemarketers, sellers, and agents will be assigned account numbers or other identifiers in order to obtain subsequent access to the system.

7. *Does this create a system of records subject to the Privacy Act of 1974, as amended?* As explained above, the information to be collected from telemarketers, sellers, and their agents pertains to them, and not to any individual whose name or other personal identifier may be submitted as part of such information. Therefore, the Commission does not believe the Privacy Act applies to the collection, maintenance or use of the information. Nonetheless, the Commission has proposed to amend its Privacy Act system notice, as set forth below, to the extent, if any, that the Act applies to that information.

FTC–IV–3

SYSTEM NAME:

National Do Not Call Registry System–FTC (FTC–IV–3)

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. System records may be maintained, in whole or part, off-site by contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who notify the Commission that they do not wish to receive telemarketing calls. Individuals whose names or other identifiers (*e.g.*, e-mail addresses) are included in the information that telemarketers, sellers, or their agents must submit to pay for and obtain access to the system are covered by this system only to the extent, if any, that the Privacy Act applies to that information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers of individuals who do not wish to receive telemarketing calls; information automatically generated by the system, including date and/or time that the telephone number was placed on or removed from the Registry; and other information that the individual may be asked to provide voluntarily (such as e-mail address, if the individual registers through the National Do Not Call Registry Web site). Telemarketers, sellers, and their agents are separately required to submit information to pay for and obtain authorized access to the system, including the names of, or other identifiers that may be associated with, individuals (*e.g.*, name of contact person, name of the person to whom the credit card is issued, e-mail address, etc.). Such information is not part of this system except to the extent, if any, that the Privacy Act applies to the agency's collection, maintenance and retrieval of the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 et seq., Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108; Do-Not-Call Implementation Act, Pub. L. No. 108–10 (2003).

PURPOSE(S):

To maintain records of the telephone numbers of individuals who do not wish to receive telemarketing calls; to disclose such records to telemarketers, sellers, and their agents in order for them to reconcile their do-not-call lists with the Registry and comply with the do-not-call provisions of the Commission's Telemarketing Sales Rule, 16 CFR Part 310; to enable the Commission and other law enforcement officials to determine whether a

company is complying with the Rule; to provide statistical data that may lead to or be incorporated into law enforcement investigations and litigation; or for other law enforcement, regulatory or informational purposes. Information submitted by or compiled on telemarketers, sellers, and their agents is used for purposes of fee collection, authorizing their access to the system, and related purposes and uses as described in this notice.

ROUTINE USES OF RECORDS:

Records from this system may be disclosed as permitted by 5 U.S.C. 552a(b), and, as authorized by 5 U.S.C. 552a(b)(3), in accordance with the routine uses announced by the Commission in Appendix I of its system notice applicable to all other agency Privacy Act systems of records (57 FR 45678), as may be revised and updated from time to time. Additional routine uses for records in this system are as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use published for this system: a. Telephone numbers, but not any e-mail addresses, submitted by individuals may be made available or referred on an automatic or other basis to telemarketers, sellers, and their agents for the purpose of determining or verifying that an individual does not wish to receive telemarketing calls;

b. Records may be made available or referred on an automatic or other basis to other federal, state, or local government authorities for regulatory, compliance, or law enforcement purposes.

c. Information submitted by or compiled on telemarketers, sellers, and their agents may be used as described in paragraph b. above, and, to the extent not covered by that paragraph, for payment or billing purposes, including referral to debt collection agencies or other governmental entities for collection, tax reporting, or other related purposes, consistent with the Privacy Act. Information that is submitted by or compiled on telemarketers, sellers, and their agents and that is incorporated into the PAY.GOV system shall also be subject to routine uses, if any, that may be separately published for that system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable, except for information submitted by or otherwise compiled on telemarketers, sellers, and their agents, which may be disclosed as described above.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer database maintained on magnetic disks and tape, or other electronic systems determined by the Commission in consultation with staff or contractors.

RETRIEVABILITY:

Indexed by area code and phone number of individuals who have informed the Commission that they do not wish to receive telemarketing calls. May also be retrieved by other data, if any, compiled or otherwise maintained with the record. For information submitted by or compiled on telemarketers, sellers, or their agents, records may be indexed and retrieved by any category of data that is submitted by or compiled on such telemarketers, sellers, or agents.

SAFEGUARDS:

Access to computerized records by electronic security precautions. Access generally restricted to those agency personnel and contractors whose responsibilities require access, or to approved telemarketers, sellers, and their agents. (See also ''Purposes'' and ''Routine Uses'' above to learn how information may be used or disclosed.)

RETENTION AND DISPOSAL:

Automated information retained indefinitely, until deleted pursuant to request by the subject individual, or deleted automatically after certain period of time, to be determined by the Commission.

SYSTEM MANAGER AND ADDRESS:

National Do Not Call Registry Program Manager, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE:

To obtain notification of whether the system contains a record pertaining to that individual (*i.e.*, the individual's telephone number), individuals may be required to use a dial-in system or a designated Web site that will enable the identification and verification of their telephone numbers. Individuals filing written requests pursuant to 16 CFR 4.13 will be acknowledged and directed to use those automated systems.

To the extent, if any, that the Privacy Act applies to information submitted by or compiled on telemarketers, sellers, or their agents, the system provides notice (*i.e.*, confirms) that the system is maintaining such information when an individual accesses the system using the account number that was previously assigned to the telemarketer, seller, or agent at the time that entity originally entered information into the system to establish the relevant account.

RECORD ACCESS PROCEDURES:

See notification procedures above. To request access to any information maintained with your registration that is not available to you through the automated dial-in system or the designated Web site, you must submit your request in writing under the Commission's Rules to: ''Privacy Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.'' See 16 CFR 4.13. The same access procedure applies to the extent, if any, that the Privacy Act applies to information submitted by or compiled on telemarketers, sellers, or their agents, where that information is not made available for review or amendments when the telemarketer, seller, or agent accesses the system.

CONTESTING RECORD PROCEDURES:

See notification procedures above. Where an individual believes the system has erroneously recorded or omitted information that is collected and maintained by the system, the individual will be afforded the opportunity to register, change, or delete that information after the automated system identifies and verifies the telephone number from which the individual is calling, or provides other requested identifying information if the individual is using the designated Web site. To contest the accuracy of any other information maintained on you that is not accessible to you through the automated dial-in system or Web site, you must submit your request in writing under the Commission's Rules to: ''Privacy Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.'' *See* Commission Rule 4.13, 16 CFR 4.13.

To the extent, if any, that the Privacy Act applies to information submitted by or compiled on telemarketers, sellers, or their agents, individuals are required to send any request to amend or correct records pertaining to them, if any, to the General Counsel at the above address. *See* Commission Rule 4.13, 16 CFR 4.13.

RECORD SOURCE CATEGORIES:

Individuals who inform the Commission through the procedures established by the Commission that they do not wish to receive telemarketing

calls. Some records may come from do-not-call lists that some states or organizations separately maintain. Record sources for this system may also include telemarketers, sellers, and agents, but only to the extent, if any, that the Privacy Act applies to such information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15910 Filed 6–23–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Privacy Act Notice

AGENCY: Federal Trade Commission (FTC).

ACTION: Final notice of new Privacy Act system of records.

SUMMARY: The FTC is establishing a new system of records under the Privacy Act of 1974, as amended. This system will include telephone numbers and other information of individuals who do not wish to receive telemarketing calls from telemarketers, sellers, and agents. These telephone numbers will be disclosed to companies to ensure compliance with the Commission's Telemarketing Sales Rule.

DATES: This system is final and effective as of June 24, 2003.

FOR FURTHER INFORMATION CONTACT: For information about this Privacy Act notice, you may contact Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2447, *atang@ftc.gov*. For information about the National Do Not Call Registry, please contact David Torok, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3075, *dtorok@ftc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, the FTC previously published a notice of its proposal to establish a new agency system of records pertaining to individuals, to be called the ''National Do Not Call Registry System-FTC'' (FTC–IV–3). The FTC published its proposal in the February 27, 2002, edition of the **Federal Register**. *See* 67 FR 8986.

The proposal outlined what personal information the system would collect from individuals, and how we would use, disclose and maintain that information. As explained in the proposal, the new records system is intended to help the FTC implement and enforce the do-not-call requirements of our Telemarketing Sales Rule, 16 CFR Part 310, as recently amended.[1] Once it begins operating, the system, as we explained, will allow you, if you choose, to place your telephone number on our National Do Not Call Registry, so that telemarketers, sellers, and agents will know that you do not want to receive telemarketing calls from them.[2] You will have the option of registering through a dial-in system from the telephone number that you wish to place on the Registry, or through the National Do Not Call Registry Web site that will be linked to our main Web site, *http.//www.ftc.gov*, as described further below. Our Rule will require telemarketers, sellers, and agents that are subject to our Rule to check the Registry at least once every three months to make sure their do-not-call lists are current and consistent with the Registry at that time. This requirement should help ensure that you do not get unwanted telemarketing calls from these telemarketers, sellers, or agents.

Below, in final form, is the system notice that the Privacy Act requires us to publish for the system. Although we received no public comments in response to our proposal, we have taken this opportunity to make a few minor clarifications, which we summarize below.[3]

System name. We have added the word ''National'' to distinguish our Registry from do-not-call lists that some states or other organizations maintain. (We have made the same change in the address of the program manager for the system.)

Categories of records in the system. Our proposal explained that the system would maintain your telephone number, as well as the date and time you place your number in the system or remove it from the system. We also proposed to ask you for your telemarketing preferences, zip code, or other voluntary information. As explained in the final system notice below, the system will still record your telephone number and the relevant date and time, as well as any other information automatically generated by the system, if you call in to register, verify, or delete your telephone number from the system. Our proposal explained that the system will use automatic number identification technology, also known as ''ANI,'' which is similar to ''caller ID,'' to verify your telephone number when you call from that number.

If, however, you use the National Do Not Call Registry Web site to register, the Web site will instead ask you for an e-mail address to validate and confirm your registration, since ANI cannot be used in that case to verify your telephone number. Likewise, the Web site will ask you to supply an e-mail address if you use the Web site to verify that your telephone number is in the Registry, or to delete your number from it. (Of course, you may avoid giving us an e-mail address by using the dial-in method described above.) Thus, in this final system notice, we have clarified that ''other information that the individual may be asked to provide voluntarily'' means we will ask you to provide an e-mail address if you use the Web site to register, or to obtain access to the system to verify or delete your telephone number from the system.[4] We do *not* intend, however, to ask you for your telemarketing preferences, zip code, or other personal information, as our original proposal may suggest.

Authority for maintenance of the system. We have updated this section to include the Do-Not-Call Implementation Act, Pub. L. No. 108–10 (Mar. 11, 2003). Congress passed that law after we published our proposed system notice. The new law allows us to collect fees from telemarketers, sellers, and their agents in order to maintain and operate the system.

Routine uses of your information. We are revising this section to make clear that the ''records'' that we may disclose to telemarketers, sellers, and agents for do-not-call purposes do not include e-mail addresses that we ask from individuals who register through the National Do Not Call Registry Web site. That information is collected only for purposes of registering, verifying, or deleting your telephone number from

[1] The Rule amendments were published earlier this year. *See* 68 FR 4580 (Jan. 29, 2003).

[2] In this document, ''you'' means an individual who places his or her telephone number on the National Do Not Call Registry to indicate that he or she does not wish to receive telemarketing calls from telemarketers, sellers, or agents.

[3] In a separate document published elsewhere in today's **Federal Register**, we are proposing to amend the Privacy Act notice for this system to explain the extent, if any, that it will apply to information that telemarketers, sellers, and their agents separately submit in order to pay for access to the system and check their do-not-call lists against the system. If you are an individual who registers your telephone number in our system, that separate proposed amendment, which would only affect the information that those companies submit, should not affect you.

[4] As described in the notice, the system will maintain system information indefinitely or until it is no longer needed or it is deleted automatically. In the case of e-mail addresses, we anticipate that the information will be retained for no more than a year.

the Registry, as explained earlier, and not for disclosure to telemarketers, sellers, or their agents.

Notification procedure. Our proposal explained that, if you want to learn (*i.e.*, confirm) whether our National Do Not Call Registry contains a record of your telephone number, we would require you to use a dial-in system or ''other system'' to obtain that notification. We are revising the language specifically to mention the National Do Not Call Registry Web site as an option to the dial-in system, as previously discussed.

Record access procedures. Our proposal suggested that we might need to ask for e-mail addresses or other contact information so we could send a written acknowledgment if you ask us to delete your phone number from the Registry. The final version of the system will normally process deletions within 24 hours from when an individual submits such a request by telephone or through the National Do Not Call Registry Web site, so we are not required to send a written acknowledgment to an individual in those situations.[5] The revised notice also clarifies that if you want access to any other information about your registration that the system may maintain, and the information is not available through the automated dial-in system or the Web site, you must submit your request in writing under the Commission's rules. (We are making the same clarification in the ''contesting record procedures'' section discussed below.)

Contesting record procedures. This section of the proposal referred only to the automated dial-in system. We are revising this section to include the National Do Not Call Registry Web site, as described earlier.

Record source categories. In this section, we repeat that the system includes not only the information that you provide (*i.e.*, your telephone number, plus your e-mail address, if you register through the National Do Not Call Registry Web site), but also information that the system itself automatically generates (*e.g.*, the date and time you registered), as discussed earlier. We are also clarifying that some telephone numbers in our Registry may come from do-not-call lists that some states or other organizations separately maintain. *See* 68 FR at 4641.

Other revisions. The final notice also includes some additional cross-references and miscellaneous other revisions (such as the name of the FTC office that will manage the system, and changing ''telemarketers and their agents'' to ''telemarketers, sellers, and their agents''), for clarity and precision.

Privacy Impact Assessment. Section 208 of the E-Government Act of 2002, Pub. L. No. 107–347, generally requires that agencies assess the privacy impact of collecting personally identifiable information online before initiating such a collection activity or developing or procuring the technology to do so. The above requirement did not take effect until after the Commission initiated and legally adopted the Rule amendments that established the National Do Not Call Registry, and after the Commission started developing and procuring the technology for accepting do-not-call registrations online. Nevertheless, we have assessed the privacy impact of the system as discussed below. (The Commission's Chief Information Officer or other designated official has reviewed this assessment.)

1. *What information will we be collecting?* See above, and the discussion of ''Categories of records'' below.

2. *Why are we collecting this information?* See above, and the discussion of ''Purpose(s)'' and ''Routine Uses'' below.

3. *How do we intend to use the information?* See above, and the discussion of ''Purpose(s)'' and ''Routine Uses'' below.

4. *With whom will we share the information?* See above, and the discussion of ''Purpose(s)'' and ''Routine Uses'' below.

5. *What notice or opportunities for consent will individuals have about what information we collect and how we share it?* This notice explains what information we collect and how we share it. Whether you register and submit your information to us is completely up to you. If, however, you do not supply your phone number or other information we may need to process your request, we cannot put your telephone number in our National Do Not Call Registry.

6. *How will the information be secured?* See the discussion of ''Safeguards'' below. Our National Do Not Call Registry Web site will use secure socket layer (SSL) encryption. We also plan to use the same or comparable technology when telemarketers, sellers, and their agents access telephone numbers from the system.

7. *Does this create a system of records subject to the Privacy Act of 1974, as amended?* Yes, as this notice describes.

FTC–IV–3

SYSTEM NAME:

National Do Not Call Registry System–FTC (FTC–IV–3).

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. System records may be maintained, in whole or part, off-site by contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who notify the Commission that they do not wish to receive telemarketing calls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers of individuals who do not wish to receive telemarketing calls; information automatically generated by the system, including date and/or time that the telephone number was placed on or removed from the Registry; and other information that the individual may be asked to provide voluntarily (such as e-mail address, if the individual registers through the National Do Not Call Registry Web site).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108; Do-Not-Call Implementation Act, Pub. L. No. 108–10 (2003).

PURPOSE(S):

To maintain records of the telephone numbers of individuals who do not wish to receive telemarketing calls; to disclose such records to telemarketers, sellers, and their agents in order for them to reconcile their do-not-call lists with the Registry and comply with the do-not-call provisions of the Commission's Telemarketing Sales Rule, 16 CFR Part 310; to enable the Commission and other law enforcement officials to determine whether a company is complying with the Rule; to provide statistical data that may lead to or be incorporated into law enforcement investigations and litigation; or for other

[5] The Privacy Act requires agencies to send a written acknowledgment not later than 10 days after an individual submits a request to amend his or her record, which would include deleting a record from the system. *See* 5 U.S.C. 552a(d)(2)(A). The United States Office of Management and Budget, which is responsible for interpreting the Privacy Act, has explained that this requirement does not apply if the agency processes the request within the 10-day period that the law would allow for acknowledging the request. *See* 40 FR 28948, 28958 (1975). If you use the National Do Not Call Registry Web site to register or to delete your telephone number from the system, however, the system will acknowledge your request by e-mail.

law enforcement, regulatory or informational purposes.

ROUTINE USES OF RECORDS:

Records from this system may be disclosed as permitted by 5 U.S.C. 552a(b), and, as authorized by 5 U.S.C. 552a(b)(3), in accordance with the routine uses announced by the Commission in Appendix I of its system notice applicable to all other agency Privacy Act systems of records (57 FR 45678), as may be revised and updated from time to time. Additional routine uses for records in this system are as follows, provided that no routine use specified either herein or in Appendix I shall be construed to limit or waive any other routine use published for this system:

a. Telephone numbers, but not any e-mail addresses, submitted by individuals may be made available or referred on an automatic or other basis to telemarketers, sellers, and their agents for the purpose of determining or verifying that an individual does not wish to receive telemarketing calls;

b. Records may be made available or referred on an automatic or other basis to other federal, state, or local government authorities for regulatory, compliance, or law enforcement purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer database maintained on magnetic disks and tape, or other electronic systems determined by the Commission in consultation with staff or contractors.

RETRIEVABILITY:

Indexed by area code and phone number of individuals who have informed the Commission that they do not wish to receive telemarketing calls. May also be retrieved by other data, if any, compiled or otherwise maintained with the record.

SAFEGUARDS:

Access to computerized records by electronic security precautions. Access is generally restricted to those agency personnel and contractors whose responsibilities require access, or to approved telemarketers, sellers, and their agents. (See also ''Purposes'' and ''Routine Uses'' above to learn how information may be used or disclosed.)

RETENTION AND DISPOSAL:

Automated information retained indefinitely, until deleted pursuant to request by the subject individual, or deleted automatically after certain period of time, to be determined by the Commission.

SYSTEM MANAGER AND ADDRESS:

National Do Not Call Registry Program Manager, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

NOTIFICATION PROCEDURE:

To obtain notification of whether the system contains a record pertaining to that individual (*i.e.*, the individual's telephone number), individuals may be required to use a dial-in system or a designated Web site that will enable the identification and verification of their telephone numbers. Individuals filing written requests pursuant to 16 CFR 4.13 will be acknowledged and directed to use those automated systems.

RECORD ACCESS PROCEDURES:

See notification procedures above. To request access to any information maintained with your registration that is not available to you through the automated dial-in system or the designated Web site, you must submit your request in writing under the Commission's Rules to: ''Privacy Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.'' *See* 16 CFR 4.13.

CONTESTING RECORD PROCEDURES:

See notification procedures above. Where an individual believes the system has erroneously recorded or omitted information that is collected and maintained by the system, the individual will be afforded the opportunity to register, change, or delete that information after the automated system identifies and verifies the telephone number from which the individual is calling, or the individual provides other requested identifying information if the individual is using the designated Web site. To contest the accuracy of any other information maintained on you that is not accessible to you through the automated dial-in system or Web site, you must submit your request in writing under the Commission's Rules to: ''Privacy Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.'' *See* Commission Rule 4.13, 16 CFR 4.13.

RECORD SOURCE CATEGORIES:

Individuals who inform the Commission through the procedures established by the Commission that they do not wish to receive telemarketing calls. Some records may come from do-not-call lists that some states or other organizations separately maintain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15911 Filed 6–23–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 022 3260]

Guess?, Inc. and Guess.com, inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 18, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30)

days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 18, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Guess?, Inc. and Guess.com, inc. (''Guess'').

The consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Guess is an international company that designs and produces men's, women's, and children's clothing and accessory products. The company's products are marketed, distributed, and sold under various Guess brand names through its own stores, a limited number of independent retailers, and, its online store at *www.guess.com.* This matter concerns alleged false or misleading representations Guess made to consumers about the security of personal information collected online through *www.guess.com,* Guess' online store.

The Commission's proposed complaint alleges that Guess misrepresented that the personal information it obtained from consumers through *www.guess.com* was stored in an unreadable, encrypted format at all times. The complaint alleges that this representation was false because a commonly known attack could and was used to gain access in clear readable text to sensitive personal information, including credit card numbers, that Guess obtained from consumers.

The proposed complaint also alleges that Guess represented that it implemented reasonable and appropriate measures to protect the personal information it obtained from consumers through *www.guess.com* against loss, misuse, or alteration. The complaint alleges this representation was false because Guess did not employ appropriate measures to detect reasonably foreseeable vulnerabilities and prevent their exploitation.

The proposed order applies to Guess' collection and storage of personal information from or about consumers in connection with its online business. It contains provisions designed to prevent Guess from engaging in practices similar to those alleged in the complaint in the future.

Specifically, Part I of the proposed order prohibits Guess, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service, from misrepresenting the extent to which it maintains and protects the security, confidentiality, or integrity of any personal information collected from or about consumers.

Part II of the proposed order requires Guess to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Guess's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Guess to:

- Designate an employee or employees to coordinate and be accountable for the information security program;
- Identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment must include consideration of risks in each area of relevant operation.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that Guess knows or has reason to know may have a material impact on its information security program.

Part III of the proposed order requires that Guess obtain within one year, and on a biannual basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying that: (1) Guess has in place a security program that provides protections that meet or exceed the protections required by Part II of this order; and (2) Guess's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumer's personal information has been protected.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Guess's to retain documents relating to compliance. For most records, the order requires that the documents be retained for a five-year period. For the assessments and supporting documents, Guess must retain the documents for three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Guess submit compliance reports to the FTC. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–15909 Filed 6–23–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0238]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, 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: Patient Follow-up Survey for the Multi-Site Evaluation of the Welfare-to-Work Grant Program;

Form/OMB No.: OS–0990–0238;

Use: This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further documents the status of Welfare-to-Work formula and competitive grantees and provide information on implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-Work grants program;

Frequency: On occasion;

Affected Public: Individuals, State, Local or Tribal Governments, Non-profit Institutions;

Annual Number of Respondents: 4,164;

Total Annual Responses: 4,164;

Average Burden Per Response: 27 minutes;

Total Annual Hours: 1,879.

#2 *Type of Information Collection Request:* New Collection;

Title of Information Collection: National Community Centers of Excellence (CCOE) in Women's Health Evaluation: Survey for CCOE Center Directors, Program Coordinators, and Patients;

Form/OMB No.: OS–0990–OWH–NEW;

Use: This survey will assess the ability of community-based organizations to provide comprehensive, integrated, holistic care to underserved women employing a network of community partners and to assess patient satisfaction with the care received. Results will be used to determine if the CCOE program will be continued and if so, with what modifications. The effort employees four collection instruments, which include; (1) CCOE Center Director and Program Coordinator Survey, (2) CCOE Community Partner Survey, (3) CCOE Patient Survey, and (4) CCOE Site Visit. The numbers referenced below are in aggregate. See the associated supporting statement for individualized burden calculations.

Frequency: One-time;

Affected Public: Individuals and households, Businesses or other for-profit, not-for-profit institutions;

Annual Number of Respondents: 6,210;

Total Annual Responses: 6,210;

Average Burden Per Response: 17 minutes;

Total Annual Hours: 1,711.

#3 *Type of Information Collection Request:* New Collection;

Title of Information Collection National Women's Health Information Center (NWHIC) Customer Satisfaction Questionnaire;

Form/OMB No.: OS–0990–OWH–NEW–CSS;

Use: The OWH plans to send a customer satisfaction questionnaire to users of NWHIC who have called the 1–800 number. Since its launch in 1998, NWHIC's toll-free number and services have not been evaluated to determine how well it has been fulfilling its goals. The survey is intended to assess the effectiveness of OWH in disseminating information through NWHIC. A random sample of 1,556 NWHIC users (with consent) will be mailed a survey and follow-up letter;

Frequency: One Time;

Affected Public: Individuals;

Annual Number of Respondents: 1,245;

Total Annual Responses: 1,245;

Average Burden Per Response: 9 minutes;

Total Annual Hours: 144.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov,* or call the Reports Clearance Office on (202) 690–8356. 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: Allison Eydt (OMB #0990–0238), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 12, 2003.

John P. Burke, III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–15829 Filed 6–23–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Childhood Agricultural Safety and Health Research, Program Announcement Number: OH–03–003

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): Childhood Agricultural Safety and Health Research, Program Announcement Number: OH–03–003.

Times and Dates: 6 p.m.–6:30 p.m., July 9, 2003 (Open); 6:30 p.m.–9 p.m., July 9, 2003 (Closed); 8 a.m.–5 p.m., July 10, 2003 (Closed); 8 a.m.–5 p.m., July 11, 2003 (Closed).

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, GA 30326, Telephone (404) 365–6329.

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 Request for Applications: OH–03–003.

For Further Information Contact: Pervis C. Major, Ph.D., Scientific Review

Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV, 26505, Telephone 304.285.5979.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 18, 2003.

Diane Allen,

Acting Branch Chief, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–15852 Filed 6–23–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 7118–7123, dated February 12, 2003) is amended to reorganize the National Center for HIV, STD, and TB Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Resource Management Office and insert the following:

Financial and Administrative Services Office (CK12). The mission of the Financial and Administrative Services Office (FASO) in the Office of the Director in the National Center for HIV, STD, and TB Prevention (NCHSTP) is to centralize and facilitate the financial and administrative duties required to manage NCHSTP. In carrying out this mission, the Financial and Administrative Services Office: (1) Plans, coordinates, and provides administrative and management advice and guidance for NCHSTP; (2) provides and coordinates Center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (3) coordinates NCHSTP requirements relating to small purchase procurements, VISA procurements, materiel management, and intra-agency agreements/reimbursable agreements; (4) provides lead fiscal management for contracts and supportive fiscal management for grants and cooperative agreements; (5) serves as a liaison for external inquiries of current fiscal year funding expenditures; (6) coordinates facility management issues, problems and changes, physical security issues, and policies regarding telecommunications, office furniture and equipment; (7) provides oversight and management of NCHSTP conference rooms, support and setup of Envision services and assistance with audio-visual equipment; (8) provides meeting planning assistance and services, serves as Project Officer and liaison for any meeting planning contractors, negotiates with vendors for providing conference location, rental of equipment; (9) maintains liaison with CIOs, Staff Offices, Staff Service Offices, and NCHSTP staff. (10) Serves as an initial point of contact between partners and NCHSTP programs; (11) provides guidance and coordination to Divisions on cross-divisional negotiated agreements; (12) facilitates NCHSTP shifts to the administration of non-categorical, cross-cutting grants/cooperative agreements; (13) facilitates state and local cross-divisional issues identification and solutions; (14) advocates for consistent and judicious interpretation and application of established Center-level policy related to cross-divisional issues and field staff management; (15) facilitates and provides consultation on field staff human resource management issues; (16) advocates the use of information technology to strengthen the communications among the divisions, field staff, and partners; (17) develops, reviews, and implements policies, methods, and procedures for NCHSTP extramural assistance programs; (18) provides financial tracking for Center-wide extramural grants and cooperative agreements; (19) provides consultation and technical assistance to NCHSTP program officials in the planning, implementation, and administration of assistance programs; (20) participates in evaluation of project resources and the resolution of audit exceptions; (21) develops and implements objective review processes, including use of special emphasis panels, for competitive application cycles; (22) assures Center-wide consistency in providing review of continuation assistance applications; (23) interprets general policy directives, proposed legislation, and appropriations language for implications on extramural programs; (24) provides Center-wide management training to supervisors, managers and team leaders; (25) facilitates international training through short-term TDYs with international programs; (26) through short-term TDYs provides technical assistance to CDC's international program; (27) provides developmental training to NCHSTP's field staff; and (28) provides liaison with OPS and OD staff offices.

Delete in its entirety the functional statement for the Prevention Support Office (CK16).

After the Planning and Evaluation Office (CK15), insert the following:

Office of Health Disparities (CK17). The mission of the Office of Health Disparities (OHD) in the Office of the Director in the National Center for HIV, STD, and TB Prevention (NCHSTP) is to improve the health of populations disproportionately affected by HIV, STDs, TB and other related diseases and conditions and ultimately to eliminate health disparities. These populations include racial and ethnic minorities, women, persons incarcerated in the correctional system, and other persons disproportionately affected by these conditions. In carrying out this mission, the Office of Health Disparities: (1) Coordinates and tracks health disparity activities within the center; (2) collaborates with the CDC Office of the Director and other CIOs on health disparity activities; (3) develops partnerships with other federal agencies and nongovernmental organizations working on similarly-affected populations; (4) supports research, surveillance, education, training, and program development to reduce health disparities; (5) provides project management, technical support and funding to the Tuskegee University National Center for Bioethics in Research and Health Care; (6) manages the Tuskegee Participants Health Benefits Program; (7) promotes and facilitates collaboration of state and local health department and corresponding correctional systems to build strong systems for screening, testing, surveillance, prevention education, and continuity of care for HIV, STDs, TB, and related conditions for persons incarcerated in correctional systems; (8) sponsors workgroups, meetings, and conferences related to health disparities; (9) promotes a diverse public health workforce through internships, fellowships, training programs, and other activities; (10) works with the CDC Office of Minority Health to monitor progress in meeting the four Executive Orders related to improving minority health.

Dated: June 3, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–15837 Filed 6–23–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 7118–7123, dated February 12, 2003) is amended to reorganize the National Center for HIV, STD, and TB Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Division of Tuberculosis Elimination and insert the following:

Division of Tuberculosis Elimination (CK4). To promote health and quality of life by preventing, controlling, and eventually eliminating tuberculosis from the United States, and by collaborating with other countries and international partners in controlling tuberculosis world-wide. For the purpose of fulfilling the mission, the Division administers and promotes a national program for the prevention, control, and elimination of tuberculosis (TB); provides leadership and formulates national policies and guidelines; conducts behavioral, health systems, and clinical research; supports a nationwide framework for surveillance of tuberculosis and evaluation of national TB prevention and control program performance; provides administrative support for the Federal TB Task Force, and supports and collaborates with the National Tuberculosis Controllers Association to promote effective national communications and coordinated feedback on urgent policy and program performance issues; provides technical supervision and training to Federal assignees working in the state and local tuberculosis control programs; develops training and educational materials, and provides technical assistance on communications and training needs; participates in the development of policies and guidelines for TB prevention and control within populations at high risk, such as persons with human immunodeficiency virus (HIV); provides programmatic consultation, technical assistance, and outbreak response assistance to state and local health departments; and, provides technical assistance to TB programs in other countries by collaborating with international partners.

Office of the Director (CK41). (1) Provides leadership and guidance in program planning and management, policy formulation, and development of training, surveillance, and research programs; (2) directs and evaluates the operations of the Division; (3) establishes contact with, and promotes tuberculosis activities of, other national organizations which have an important role to play in achieving tuberculosis elimination; (4) provides administrative support services for the Division; (5) collaborates and coordinates Division activities with other components of the National Center for HIV, STD, and TB Prevention (NCHSTP) and the Centers for Disease Control and Prevention (CDC); (6) provides administrative and technical support to the Advisory Council for the Elimination of Tuberculosis (ACET); and, (7) provides administrative and technical support for the National Coalition for the Elimination of Tuberculosis (NCET).

Communications, Education, and Behavioral Studies Branch (CK42).

(1) Provides technical assistance to health departments and other health care providers in assessing and meeting their TB training, education, and communication needs and in assessing the impact of their training and education activities; (2) provides technical assistance to health departments and other TB health care providers regarding behavioral studies research and intervention development; (3) collaborates with the World Health Organization (WHO), the World Bank, the International Union Against Tuberculosis and Lung Diseases (IUATLD), and the United States Agency for International Development (USAID), and others, in assessing and meeting TB training, education, and communication needs in other countries; (4) provides consultation and assistance in coordinating TB training, education, behavioral studies and interventions, and communication activities carried out by other CDC programs, Model TB Centers, and NCET members; (5) develops, markets, and maintains a list serve of persons with TB-related education, training, and communication responsibilities; (6) assists in planning and coordinating agendas necessary to conduct tuberculosis conferences and workshops sponsored by the Division; (7) provides coordination and oversight for duty officer functions; (8) organizes and maintains a library of scientific and non-scientific information related to TB; (9) conducts formative research and evaluation on approaches to patient, provider, and public education; (10) conducts research on individuals and social factors affecting health-care seeking and treatment outcomes related to tuberculosis; (11) based on research conducted, develops behavioral interventions targeted to health care providers, persons with or at risk for TB, and other high risk populations; (12) provides consultation to national and international organizations on behavioral research needs and study designs, and on the technical transfer of behavioral research findings into TB program practice and TB training and educational strategies; (13) provides consultation, technical assistance, and coordination to other branches within the division regarding development and implementation of behavioral interventions and training for branch specific activities such as TIMS, ARPE, and surveillance activities; (14) provides consultation and assistance in coordinating the writing of studies for publication of manuscripts in scientific journals; (15) presents findings at national and scientific meetings; (16) develops, produces, disseminates, and evaluates training and educational materials and courses providing tuberculosis information to the scientific and public health communities, as well as the general population; (17) conducts training and education needs assessments and identifies resources available for health department TB control officers and senior managers, TB nurse consultants, TB training and education directors and for senior staff carrying out TB activities in other programs or facilities serving persons at high risk for TB; (18) develops, conducts, and coordinates training courses on tuberculosis for state and big city TB program managers and nurse consultants; (19) based on needs assessments, develops and conducts or coordinates training courses and materials for staff who train and/or supervise front-line TB program staff; (20) plans, coordinates, and maintains the Division's Internet and Intranet Web sites; (21) conducts and/or coordinates communications programs designed to build public support and sustain public

interest and commitment to the elimination of TB; (22) conducts communications and research and identifies communications resources available for health department TB control officers and senior managers, TB nurse consultants, and for senior staff carrying out TB activities in other programs or facilities serving persons at high risk for TB; (23) provides writer/editor support to Division and coordinates and tracks materials for purposes of editing, clearance and approval for publications and presentations; (24) provides graphic support to the Division and senior field staff; (25) provides coordination and oversight for Division responses and relations with the media and public and serves as point of contact for telephonic, written, and electronic (e-mail) requests for information from the media and public; (26) maintains information and procedures for duty officer functions; (27) develops, coordinates, and staffs the Division's exhibit booth at conferences/meetings; (28) develops and provides support for, or coordinates a TB Voice and FAX Information System; (29) assists in developing or coordinating a clearing house of TB training and education resources; (30) maintains inventory of TB training opportunities and coordinates with employees and supervisors for training necessary to carry out their duties; and, (31) presents communication issues to the Advisory Council for the Elimination of Tuberculosis and to Division management staff.

Information Technology and Statistics Branch (CK43). (1) Provides computer programming, systems analysis, information management, and statistical services to the Division; (2) consults and assists in the development and implementation of appropriate data collection and management methods for scientific studies conducted Division-wide; (3) collaborates in the analysis of data and in the preparation of materials for publication; (4) maintains expertise in information science and technology to effect the best use of the Division's resources; (5) provides technical assistance in the selection and use of equipment, systems, and services to process information; (6) manages security for the Division's information systems; (7) maintains computer hardware; (8) provides training and consultation to headquarters and field staff in the use of computer hardware and software; and (9) develops, distributes, provides training for and supports the TB Information Management System (TIMS) to facilitate the collection and analyses of data, both patient and program, to improve the effectiveness of prevention and control activities.

Field Services and Evaluation Branch (CK44). (1) Provides medical and programmatic consultation to assist state and local health departments in developing, implementing and evaluating their activities toward achieving tuberculosis prevention, control, and elimination; (2) promotes adoption of CDC tuberculosis-related policies by national organizations, health departments and health care providers; (3) acts as advocate for health departments when conveying resource needs; (4) participates in development of national policies and guidelines for tuberculosis elimination; (5) evaluates tuberculosis program performance; (6) provides technical assistance to states and localities for improving program operations; (7) develops funding guidelines, assists in application reviews, makes funding recommendations, and monitors performance of programmatic portion of Tuberculosis Cooperative Agreements with state and local health departments; (8) provides supervision to medical staff assigned to state and local health departments; (9) analyzes data to assess progress toward achieving national TB objectives and prepares program management and evaluation reports for publication; (10) supports program consultants in providing technical assistance and recommendations to health departments; (11) encourages and facilitates the transfer of new technology and guidelines into clinical and public health practice; (12) participates in the development of comprehensive evaluation methods for TB prevention and control programs; (13) serves as liaison or focal point to assist TB controllers in linking with proper resource persons and obtaining technical assistance, both within and outside the Division; (14) conducts a continuing analysis of the effectiveness of field personnel and utilization of other resources in relation to the tuberculosis problems; (15) provides consultation and assists state and local health departments in the methodology and application of tuberculosis control techniques recommended by CDC; (16) acts as advocate for state and local health department during needs assessments and requests for resources; (17) provides technical supervision and support for the CDC field staff; (18) identifies specific management, operational, and staff performance problems associated with not achieving TB control objectives or with not implementing essential TB components, and recommends solutions; (19) provides input into the development of Branch and Division policy, priorities and operational procedures; (20) coordinates technical reviews of cooperative agreement applications and makes appropriate funding recommendations; and (21) serves as an agent of technology transfer to ensure that good program methodology in one program is known and made available to other state and local programs.

Clinical and Health Systems Research Branch (CK45). (1)Assesses the need for and conducts studies of new drug regimens used in the prevention and treatment of tuberculosis, including dosage, duration, and toxicity; (2) supports the TB Trials Consortium in the conduct of studies of new drugs, drug delivery systems, immunologic agents and other treatments for active tuberculosis and latent tuberculosis infection; (3) conducts studies to evaluate the safety and efficacy of recommended regimens for the treatment and prevention of tuberculosis; (4) provides clinical support and oversight for the distribution of investigational drugs for the treatment and prevention of tuberculosis by NCID/SR/Drug Service; (5) assesses the need for and conducts clinical and field trials of more specific and rapid tests to diagnose active tuberculosis and latent tuberculosis infection and to identify drug-resistant tuberculosis; (6) collaborates with and provides consultation and technical assistance to national and international organizations on the design and conduct of clinical trials and research needs; (7) conducts multidisciplinary studies (including the analysis of behavioral, economic, and epidemiologic factors) of health care systems to assess the cost, effectiveness, and impact of public health policies, programs, and practices on tuberculosis outcomes to further the goal of tuberculosis elimination in the U.S.; (8) targets these studies toward various populations at high risk for tuberculosis, including persons from high tuberculosis prevalent countries, homeless persons, HIV-infected persons, residents of correctional facilities, substance abusers, and health care workers; (9) provides consultation to local, state, national, and international organizations on health care systems research needs, study designs, and analyses; (10) conducts or facilitates training of tuberculosis program field staff in decision and economic analyses, epidemiology, evaluation techniques, and qualitative research methods; (11) reports study results to public health practitioners through direct

communication, articles in scientific journals and CRC publications, and oral/poster presentations at national and international scientific meetings; (12) provides input into statements and guidelines issued by the CRC, the Advisory Council on the Elimination of Tuberculosis, and other professional organizations.

Surveillance, Epidemiology, and Outbreak Investigations Branch (CK44). (1) Directs national surveillance of tuberculosis to provide accurate and timely national data and to monitor progress toward the elimination of tuberculosis in the United States; (2) conducts analyses of national TB surveillance data to monitor national trends in TB in order to assist in program planning, evaluation, and policy development and to identify areas for further study to guide elimination efforts; (3) conducts surveillance related studies that evaluate current TB surveillance systems and develops new surveillance methods and systems in order to better monitor and accelerate TB elimination efforts; (4) provides technical surveillance expertise to state, local, and international tuberculosis control programs, other federal agencies, and other organizations involved in TB prevention and control; (5) conducts epidemiologic research to assess the characteristics of persons with *M. tuberculosis* disease and infection in the United States; (6) analyzes research findings to develop improved interventions for eliminating tuberculosis and better analytic tools for future studies; (7) provides technical epidemiologic expertise to state, local, and international tuberculosis control programs.; (8) supports the TB Epidemiologic Studies Consortium in the conduct of studies of pro grammatically relevant epidemiologic, behavioral, economic, laboratory, and operational research concerning the identification, diagnosis, prevention and control of TB disease and latent infection; (9) investigates outbreaks of tuberculosis; (10) provides consultation and technical expertise on TB surveillance, epidemiology, and outbreaks to state, local, and international tuberculosis control programs; (11) analyzes TB outbreak investigation findings in order to improve the ability of tuberculosis control programs to detect future outbreaks and respond to them promptly and appropriately to limit transmission; (12) supervises Epidemiologic Intelligence Service (EIS) officers in the conduct of their two year assignments; (13) prepares manuscripts for publication in scientific journals; and, (14) presents findings at national and international scientific meetings.

International Research and Programs Branch (CK47). (1) Coordinates Division and Center international TB activities; (2) coordinates the assessment of immigration and its impact on TB patterns in the United States and assists with the evaluation of overseas TB screening procedures for immigrants and refugees; (3) conducts and coordinates operational research and demonstrations to improve both the overseas screening for tuberculosis of immigrants and refugees and the domestic follow-up those entering with suspected TB (done in collaboration with Division of Global Migration and Quarantine, NCID); (4) promotes the improved recognition and management of tuberculosis among the foreign-born through special studies on the U.S./Mexico border and at other overseas sites; (5) collaborates with the World Health Organization (WHO), the World Bank, the International Union Against Tuberculosis and Lug Diseases (IUATLD), the United States Agency for International Development (USAID), and others to improve the quality of TB programs globally by supporting implementation of the WHO-recommended directly observed therapy, short-course (DOTS) strategy; (6) collaborates with the nation of Botswana, the WHO, the World Bank, the IUATLD, the USAID, and others, to conduct investigations into the diagnosis, management and prevention of tuberculosis in persons with and without HIV infection; (7) collaborates with the Global AIDS Program (GAP) in addressing the AIDS pandemic in countries where both HIV and TB are reported in epidemic proportions; (8) collaborates with the WHO, USAID, and several nations to reduce the impact of multi-drug resistant TB on global TB control; (9) prepares manuscripts for publication in scientific journals; (10) presents findings at national and international scientific meetings; and, (11) supervises Epidemic Intelligence Service (EIS) officers in the conduct of their two year assignments.

Delegations of Authority Statement

All delegations and redelegations of authority remain in effect until otherwise modified, superseded, or cancelled.

Section C–C, Order of Succession

Delete in its entirety Section C–C, Order of Succession, and insert the following:

During the absence or disability of the Director, CDC, or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the Director may specify a different order of succession:

1. Director of CDC
2. Deputy Director for Public Health Science
3. Deputy Director for Public Health Service
4. Chief Operating Officer
5. NCCDPHP Director

Dated: June 3, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–15838 Filed 6–23–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10087]

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.

Type of Information Collection Request: New collection.

Title of Information Collection: Evaluation of the Illinois and Wisconsin State Pharmacy Assistance Waivers.

Form No.: CMS–10087 (OMB# 0938–NEW).

Use: CMS has implemented the Pharmacy Plus Initiative to grant

waivers to states to provide pharmacy benefits to low-income elders with incomes too high to qualify for Medicaid. This study will evaluate the Pharmacy Plus programs initiated in the states of Illinois and Wisconsin using a variety of methods including a descriptive program evaluation, survey of participants, analyses of drug utilization and costs as well as the cost impact to the Medicare and Medicaid programs.

Frequency: Other: one-time only.

Affected Public: Individuals or Households.

Number of Respondents: 2,200.

Total Annual Responses: 2,200.

Total Annual Hours: 550.

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: June 12, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–15827 Filed 6–23–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10094]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), 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.

Type of Information Collection Request: New Collection.

Title of Information Collection: Evaluation of the Medicaid Health Reform Demonstrations.

Form No.: CMS–10094 (OMB# 0938–NEW).

Use: This survey is part of an evaluation of the State of Vermont's pharmacy assistance programs, which principally serve low income Medicare beneficiaries who do not have other coverage for prescription drugs. The surveys will explore the issues of self-selection into the pharmacy programs, motivations for joining or not joining, the extent of pharmacy coverage among low income Medicare beneficiaries who are not enrolled and the impact of coverage on Medicare spending. The Vermont evaluation is part of a larger evaluation of section 1115 Medicaid demonstration programs in five states. (The other states are California, Kentucky, Minnesota and New York. The survey will take place only in Vermont.)

Frequency: Other: One-time.

Affected Public: Individuals or Households.

Number of Respondents: 11,310.

Total Annual Responses: 11,310.

Total Annual Hours: 1,087.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@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 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–15828 Filed 6–23–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 20, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, (301)827-7001, e-mail: *TurnerT@cder.fda.gov*, or FDA Advisory Committee Information Line, 1-800-741-8138 ((301)443-0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss clinical trial design issues in the development of topical microbicides for the reduction of HIV transmission.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 13, 2003. Oral presentations from the public will be

scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited.

Those desiring to make formal oral presentations should notify the contact person before August 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 13, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–15890 Filed 6–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0231]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports.'' This is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. This specific guidance discusses issues related to the electronic submission of postmarketing periodic adverse drug experience reports for drug products marketed for human use with new drug applications (NDAs) and abbreviated new drug applications (ANDAs), and therapeutic and blood products marketed for human use with biologics license applications (BLAs). This guidance does not apply to vaccines, whole blood or components of whole blood. The submission of these reports in electronic format will significantly improve the agency's efficiency in processing, archiving, and reviewing the reports.

DATES: Submit written or electronic comments on the draft guidance by August 25, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, Levinr@cder.fda.gov; or Michael Fauntleroy, Center for Biologics Evaluation and Research (HFM–588), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, (301)827-5132, *Fauntleroy@cber.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports.'' A postmarketing periodic adverse drug experience report includes individual case safety reports (ICSRs), attachments to ICSRs (ICSR attachments), if applicable, and descriptive information. The descriptive information includes the narrative summary and analysis of the information in the report, an analysis of the 15-day alert reports submitted during the reporting interval, and the history of actions taken since the last report because of adverse drug experiences (e.g., labeling changes, studies initiated).

This draft guidance discusses general issues related to the electronic submission of postmarketing periodic adverse drug experience reports. It provides guidance on the submission of periodic ICSRs, ICSR attachments, and descriptive information in electronic format. Applicants are referred to the draft guidance for industry ''Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports'' (May 2001) for details on submitting periodic ICSRs and ICSR attachments to FDA.[1] Applicants are also referred to the guidance for industry ''Providing Regulatory Submissions in Electronic Format—General Considerations'' (January 1999) for details on submitting the descriptive information to FDA on physical media.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing postmarketing periodic adverse drug experience reports in electronic format. 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 statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for marketed human drug and biological products is already covered by the collection of

[1]FDA is considering comments from the public on this draft guidance for industry and plans to issue a final guidance on this topic in the future.

information on postmarketing safety reporting regulations (21 CFR 314.80 and 600.80) submitted to the Office of Management and Budget (OMB) for review and clearance. This notice merely provides applicants with an alternative mechanism for submitting postmarketing periodic adverse drug experience reports to the agency.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB approved the information collection for MedWatch—The FDA Medical Products Reporting Program (Forms FDA 3500 and FDA 3500A) and assigned it OMB control number 0910–0291. The approval for 0910–0291 expires on June 30, 2003; an extension of the approval is pending at OMB. OMB also approved the information collection for adverse experience reporting for marketed drugs and licensed biological products and assigned them OMB control numbers 0910–0230 and 0910–0308, respectively. The approval for 0910–0230 expires on September 30, 2005, and the approval for 0910–0308 expires on May 31, 2005.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/cber/guidelines.htm*.

Dated: June 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–15889 Filed 6–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA Competing Training Grant Application, Instructions and Relating Regulations (OMB No. 0915–0060)—Revision—The Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA) operates and administers training grant programs authorized under Titles VII and VIII of the Public Health Service (PHS) Act. HRSA uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award and to judge the relative merit of applications. The application contains a basic set of general instructions as well as program-specific instructions which includes the detailed description of the project. The budget is negotiated for all years of the project period based on this application.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,805	1	1,805	56.25	101,531

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eyte, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–4650.

Dated: June 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15818 Filed 6–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Sample Survey of Registered Nurses 2004 (OMB No. 0915–0192)—Revision

The National Sample Survey of Registered Nurses (NSSRN) is carried out to assist in fulfilling two Congressional mandates. Section 792 of the Public Health Service Act (42 U.S.C. 295k), calls for the collection and analysis of data on health professions. Section 806 (f) of the Public Health Service Act (42 U.S.C. 296e) requires that discipline specific workforce information and analytical activities are carried out as part of the advanced nursing education, workforce diversity, and basic nursing education and practice programs.

Government agencies, legislative bodies and health professionals used data from previous national sample surveys of registered nurses to inform workforce policies. The information from this survey will continue to serve policy makers, and other consumers. Furthermore data collected in this survey will assist in determining the impact that changes in the health care system are having on employment status of registered nurses (RNs), the setting in which they are employed and the proportion of RNs who are employed full time and part time in nursing. The data will also indicate the number of RNs who are employed in jobs unrelated to nursing.

The proposed survey design for the 2004 NSSRN follows that of the previous seven surveys. A probability sample is selected from a sampling frame compiled from files provided by the State Boards of Nursing in the 50 States and the District of Columbia. These files constitute a multiple sampling frame of all RNs licensed in the 50 States and the District of Columbia. Sampling rates are set for each State based on considerations of statistical precision of the estimates and the costs involved in obtaining reliable national and State level estimates.

Each sampled nurse will be asked to complete a self-administered questionnaire, which includes items on educational background, duties, employment status and setting, geographic mobility, and income.

Estimated burden is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hour
Questionnaires	39,584	1	39,584	.33	13,063

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eyte, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number (202) 395–4650.

Dated: June 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15819 Filed 6–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White CARE Act: Title III Client-level Demonstration Project (CDP)—New

The CDP was originally established in 1994 to collect information from grantees and their subcontracted service providers funded under Titles I and II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 (codified under Title XXVI of the Public Health Service (PHS) Act). This new effort will collect client level data from a sample of Ryan White CARE Act Title III Grantees. The HRSA's HIV/AIDS Bureau administers funds for all titles of the CARE Act. The Title III program is authorized by section 2651 of the PHS Act.

The PHS Act specifies that HRSA is responsible for the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records on the grantees receiving CARE Act funding, the services provided, and the clients served are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities. The information requested is the minimum necessary to perform the evaluation and oversight function.

Client level information will be collected from a sample of Title III CARE Act funded grantees regarding the number of clients served, services provided, demographic information about clients served, and health status of clients served. In addition, client level information will be collected that measures mortality status and additional indicators of health status and whether standards of care are being followed by providers.

The primary purposes of the CDP are to examine client level demographic and service data on HIV/AIDS infected/affected clients being served by the Ryan White CARE Act and demonstrate the usefulness of these data for planning and evaluation purposes at both the local and national levels. Through this system, HRSA seeks to supplement the information collected in the CARE Act Data Report (CADR). Because there is no nationwide acceptance of client level reporting for HIV/AIDS services, the CADR collects data aggregated at the grantee level and contains duplicated counts of clients who have received services from more than one provider during a given reporting period.

Based on data from eligible grantees, the number of clients that a grantee serves would average about 250. About 2 hours is required annually to respond to these questions.

The burden estimate for this project is as follows:

Grantee	Number of respondents	Responses per respondent	Total responses	Burden hour per respondent	Total burden hour
<500 Clients	15	250	3,750	2	7,500
500+ Clients	10	1,232	12,320	2	24,640
Total	25	.....	16,070	.....	32,140

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eyte, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number, (202) 395–6974.

Dated: June 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15820 Filed 6–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Scholarships for Disadvantaged Students Program (0915–0149)—Extension

The Scholarships for Disadvantaged Students (SDS) Program has as its purpose the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the PHS Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who are enrolled and graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the PHS Act).

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
SDS	450	1	25.5	11,475
Total	450			11,475

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 17, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–15821 Filed 6–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council in June 2003.

The agenda will include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, 10(d).

The agenda for the open portion of the meeting will include presentations on SAMHSA's Strategic Vision and SAMHSA's Science to Services Initiative, Standard Funding Mechanism and Outsourcing and Changes for the Agency, Building the components of a Prevention Framework, the Faith Initiative, and an update on the National Registry of Effective Programs. Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting, a roster of committee members and substantive program information may be obtained from Carol Watkins, Executive Secretary, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–9542.

Committee Name: SAMHSA Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: Monday, June 24, 2003, 8:30 a.m.–3 p.m. (Open Session). Monday, June 24, 2003, 3 p.m.–5 p.m. (Closed Session). Tuesday, June 25, 2003, 8:30 a.m.–12:30 p.m. (Open Session).

Meeting Place: Center for Substance Abuse Prevention, 5515 Security Lane, Rockwall II Building, Director's Conference Room, Room 900, Rockville, Maryland, Telephone (301) 443–0365.

Contact: Carol D. Watkins, Executive Secretary, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857, Telephone: (301) 443–9542.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing

limitations imposed by the review and funding cycle.

Dated: June 16, 2003.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–15822 Filed 6–23–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2268–03]

Implementation of Class Action Judgment in Proyecto San Pablo v. INS; Revised Form

AGENCY: Bureau of Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: On January 29, 2003, the former Immigration and Naturalization Service published a notice of the **Federal Register** at 68 FR 4518 notifying aliens who applied for legalization under section 245A of the Immigration and Nationality Act (Act) of their rights under the class action judgment in *Proyecto San Pablo* v. *INS.* The notice also included a Freedom of Information Act (FOIA) Request Form to be used by aliens under the *Proyecto San Pablo* judgment to request documents pursuant to FOIA to help in their effort to obtain a new decision on their legalization application. However, the form that was included in the notice and approved by the Federal District Court for requesting documents pursuant to FOIA, did not meet FOIA standards. Accordingly, this Notice provides for the use of an appended form that may be used under the *Proyecto San Pablo* judgment, to request documents pursuant to FOIA.

EFFECTIVE DATES: The notice is effective June 24, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Raymond, Office of the General Counsel, Bureau of Citizenship and Immigration Services, 4251 I Street NW., Room 6109, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: The appendix to this notice provides the FOIA Request Form that may be used in the *Proyecto San Pablo* Judgment for obtaining documents pursuant to FOIA. This appended form has been approved by the Federal District Court under the *Proyecto San Pablo* judgment.

Dated: May 15, 2003.

Eduardo Aguirre,

Acting Director, Bureau of Citizenship and Immigration Services.

Note: The appendix to this notice contains the FOIA request form provided for in the Proyecto judgment.

BILLING CODE 4410–10–M

THE FOLLOWING IS THE FOIA REQUEST FORM PROVIDED FOR IN THE PROYECTO JUDGMENT

PROYECTO SAN PABLO V. INS, 89-456 WDB (D. AZ.)
FREEDOM OF INFORMATION ACT FILE REQUEST FORM

(1) For a copy of your A-File, send this form to:

Department of Homeland Security
Nebraska Service Center
ATTN: FOIA/PA Unit
PO Box 82521
Lincoln NE 68501-2521

(2) For a copy of your immigration court records, send this form to:

Office of General Counsel
Executive Office of Immigration Review
FOIA/PA Requests
5107 Leesburg Pike, Suite 2400
Falls Church, VA 22041

Dear Sir or Madam:

Pursuant to the Court order in Proyecto San Pablo v. DHS, Civ. No. 89-456 WDB (D. Az.), I request that you send me a complete copy of any and all documents contained in immigration files relating to me. Please include copies of all prior A-files under any A-number assigned to me, any prior deportation or exclusion files, and any immigration court files. Please provide me with a copy of the tape and/or transcript of any deportation or exclusion hearings.

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely, _____
(Your Signature Is Required)

Executed on (Date): _____

Name _____
Address _____
_____
A-Number (if known) _____
(List all A-numbers) _____
Date and Place of Birth _____

Instruction to applicant: Send one of these requests to the Nebraska Service Center for immigration records and another to the Executive Office of Immigration Review for records of a prior deportation or exclusion hearing. You should send these letters by certified mail, return receipt requested, and keep copies for your own records.

[FR Doc. 03–15848 Filed 6–23–03; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for Three New Public Collections of Information; Transportation Worker Identification Credential (TWIC); Transportation Worker Survey; Lead Stakeholder Port Security Interviews

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on three new information collection requirements abstracted below that will be submitted to OMB in compliance with the Paperwork Reduction Act.

DATES: Send your comments by August 25, 2003.

ADDRESSES: Comments may be mailed or delivered to Elaine Charney, TWIC Program Office, TSA Headquarters, West Tower, Floor 9, TSA–8, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA Headquarters, West Tower, Floor 4, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of the specified information collection, TSA solicits comments in order to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology where appropriate.

Purpose of Data Collection

The information collected for the TWIC program will be used as a means to enhance access control for individuals requiring unescorted access to secure areas of the national transportation system. TSA intends to evaluate and test certain technologies and business processes in the Technology Evaluation and Prototype Phases of TSA's pilot project to fully develop the program, measure credential performance and effectiveness, collect user feedback, and provide data analysis prior to proceeding to full-scale deployment.

Description of Data Collection

TSA, through a contractor, will issue credentials to a select group of transportation workers and then administer two instruments to collect data on the effectiveness of the TWIC program as well as the satisfaction of the transportation workers who will be using these credentials. TSA intends to collect data via the following instruments:

(1) *Transportation Worker Identification Credential (TWIC).* The following information will be collected from individual transportation workers and facility operators to create the credential: (a) Individual's name, (b) other identifying data to include address, phone number, social security number, date of birth, and place of birth, (c) company, organization or affiliation, (d) biometric data and digital photograph, and (e) access level information. We estimate a total of 30,000 respondents and, based on an estimate of a ten-minute burden per respondent, a maximum total burden program-wide of approximately 5,000 hours.

(2) *Transportation Worker Survey.* TSA next intends to conduct a transportation worker survey at each site that is part of the Technology Evaluation and Prototype Phases. The survey will be administered using an intercept methodology in which workers will be provided survey forms either during or after the TWIC is issued. Workers who receive surveys will be selected randomly. The sample of workers receiving surveys at each site will be representative of the demographics of all the workers who are participating in the pilot programs, including workers who access facilities on a 24-hour, 7-day basis.

Participation by workers in the survey will be voluntary. The TSA contractor will administer the survey independent of TSA. The survey will include up to 30 questions about the workers' experience as well as the effectiveness of the TWIC.

Dates, times, and locations will be selected within each site to provide a representation of worker satisfaction and credential effectiveness over the survey period. TSA intends to conduct one survey at each site during each phase of the program, with a target of 5 percent of card population measured at each site during Technology Evaluation and 2 percent during Prototype, and no fewer than 10 workers tested at any given site or card population. We estimate a total of 750 respondents and, based on an estimate of a fifteen-minute burden per respondent, estimate a maximum total burden program-wide of approximately 187.5 hours. There will not be a burden on workers who choose not to respond.

(3) *Lead Stakeholder Port Security Interviews.* Finally, TSA will have a contractor conduct personal interviews of the lead stakeholder at each site participating in the Technology Evaluation and Prototype Phases. The purpose of the interview will be to record observations on operational impact, system performance and utility, and identify problems that may have arisen in each phase. The results of these interviews will not be as statistically rigorous as the intercept surveys described above, but will be focused on the site's performance perception. The results of these interviews will not be used for any formal performance measurement nor published outside of TSA, but will enable service improvement at each site. Participation by stakeholders will be voluntary. The interview format will come from a list of approximately 30 questions and will be limited to fifteen minutes per respondent. Based on a projected total of 30 respondents, there will be an estimated aggregate system-wide burden of 7.5 hours. There will be no burden on stakeholders who choose not to respond.

Use of Results

TSA Headquarters will use the results to evaluate the performance and effectiveness of the TWIC. The results will also be analyzed to support future implementation and program decisions. TSA will further use this data to evaluate the impact of policy or process changes on customer satisfaction, public confidence, and overall security.

Issued in Arlington, Virginia, on June 17, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–15927 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4816–N–03]

Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program Application; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Surrell S. Silverman, Reports Liaison Officer, Office of Fair Housing and Equal Opportunity (FHEO), 451 7th Street, SW., Room 5124, Washington, DC 20410; e-mail *Surrell_S._Silverman@hud.gov;* fax: 202–708–6211.

FOR FURTHER INFORMATION CONTACT: Melody Taylor-Blancher, FHIP/FHAP Support Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Melody_C._Taylor-Blancher@HUD.GOV.* Copies of available documents submitted to OMB may be obtained from Mrs. Taylor-Blancher. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free number Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, revisions to the currently approved information collection for selecting applicants for the Fair Housing Initiatives Program (FHIP) grants. These forms were approved under emergency request and are being resubmitted for public comment for extension of approval period.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Program Application.

Description of Information Collection: This is a revision to the currently approved information collection for selecting applicants for the Fair Housing Initiatives Program (FHIP) grants which will be part of the Notice of Funding Availability (NOFA). These grants are to fund fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement; Private Enforcement; Education and Outreach; and Fair Housing Organizations. Proposed revisions to the currently approved information collection would include: descriptions of how program activities will support HUD goals, identify performance measures/outcomes in support of these goals, and identify baseline conditions and target levels of the performance measures that each applicant plans to achieve in reports submitted to HUD.

OMB Control Number: 2529–0033.

Agency Form Numbers: HUD forms 40076–FHIP, 424, 424B, 424C, 424CB, 424CBW, 2880, 2990, 2991, 2993, 2994, and OMB SF LLL.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, and frequency of responses, and the total hours per respondent: An estimation of the total number of hours needed to prepare the information collection is 28,410, number of respondents is 400, frequency response is 1 per annum, and the total hours per respondent is 100 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 12, 2003.

Carolyn Y. Peoples,

Assistant Secretary for the Office of Fair Housing and Equal Opportunity.

[FR Doc. 03–15816 Filed 6–23–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Guidance for Distributing Fiscal Year 2003 Contract Support Funds and Indian Self-Determination Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of methodology for distribution and use of FY 2003 Contract Support Funds and Indian Self-Determination Funds.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing this notice to inform the public, the tribes, and Federal staff of the methodology that we will use in distributing Contract Support Funds (CSF) and Indian Self-Determination Funds (ISDF) for FY 2003. We distribute these funds as authorized by the Indian Self-Determination and Education Assistance Act of 1975, and financed by funds appropriated by the Snyder Act. We are publishing the methodology to ensure that eligible recipients and responsible federal employees are aware of program operations for this fiscal year. We are not establishing regulations.

DATES: The ''FY 2003 CSF Needs Report'' is due July 15, 2003. Final distribution of Contract Support Funds will occur on or about July 31, 2003. We will distribute ISDF on a first-come first-serve basis until funds are depleted.

ADDRESSES: Submit the ''FY 2003 CSF Needs Report'' to: Harry Rainbolt, Bureau of Indian Affairs, Office of Tribal Services, 1951 Constitution Avenue NW., MS 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Harry Rainbolt, (202) 513–7030.

SUPPLEMENTARY INFORMATION: Title I and Title IV of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act of 1975, authorizes BIA to distribute annually CSF and ISDF. In making these distributions for FY 2003,

BIA will follow the procedures in this notice.

The FY 2003 ISDF requirements for new and expanded contracts and self-governance funding agreements may be submitted to BIA throughout the year as the need arises.

Part 1—Contract Support Funds

1.1 What Is the Purpose of Contract Support Funds (CSF)?

BIA provides CSF to meet the indirect cost need identified for ongoing/existing self-determination contracts and self-governance compacts that are financed with funds appropriated to us under the Snyder Act.

1.2 What Is Designated as an Ongoing/Existing Contract or Funding Agreement?

An ongoing/existing contract or annual funding agreement is a BIA program operated under a self-determination contract or self-governance compact on an ongoing basis, which was entered into before the current fiscal year.

1.3 What Criteria Does BIA Use To Determine CSF Amounts for Existing Contracts and Annual Funding Agreements?

(1) All contracted or compacted programs, functions, services or activities included in annual funding agreements in the previous fiscal year and continued in the current fiscal year that are financed with funds appropriated to BIA;

(2) Direct funding increases because of inflation adjustments and general budget increases for programs financed with funds appropriated to BIA;

(3) Programs, functions, services, or activities started or expanded in the current fiscal year that are a result of a change in priorities from other already contracted, annual funding agreement programs, functions, services, or activities financed with funds appropriated to BIA;

(4) CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials must be calculated under the criteria prescribed in the ''Choctaw'' decision dated September 18, 1992, issued by the contracting officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in the **FOR FURTHER INFORMATION CONTACT** section. Tribes that received differential funding under this category in the past are eligible to receive funding from this account. Tribes that did not receive differential funding under this category in the past may be eligible for funding from the ISDF;

(5) Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA programs to other programs will be considered ongoing for purposes of payment of contract support costs; and

(6) Programs, functions, services, or activities funded from sources other than those listed above that were contracted in the previous year and are to be continued under contract in the current year are considered ongoing.

1.4 Does an Increase or Decrease in the Level of Funding From Year to Year Affect the Designation of an Ongoing/Existing Contract or Annual Funding Agreement?

No.

1.5 How Does BIA Determine Eligibility for CSF?

All self-determination contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost rate proposal, or an approved current lump sum agreement are eligible to receive CSF.

1.6 Can I Use Current Fiscal Year CSF To Pay Prior Year Indirect Cost Shortfalls?

No. The use of current CSF to pay prior year indirect cost shortfalls is not authorized.

1.7 Are There Any Restrictions on Distributing CSF for Indirect Costs?

Yes. The following conditions must be met before BIA distributes CSF to pay indirect costs:

(1) Programs, functions, services, activities, or portions thereof, must be financed with funds appropriated to BIA under the Snyder Act; and

(2) Programs, functions, services, activities, or portions thereof, must be included in a self-determination contract or a self-governance funding agreement with BIA.

1.8 Is There Any Other Restriction on Distributing CSF for Indirect Costs?

Yes. Self-determination contracts or self-governance agreements that receive appropriated funds from other Federal agencies, the Department of the Interior bureaus, offices, or other sources are not eligible to receive CSF.

1.9 How Can Tribes or Tribal Organizations Find Funding To Pay for Their Indirect Cost Needs for Programs That Are Excluded From Receiving CSF?

Those programs that are not eligible to receive CSF or IDSF to cover indirect cost needs must use program-appropriated funds to cover their indirect cost needs. For example, funding for Indian Reservation Roads construction is transferred to BIA from the Federal Highway Trust Fund by the Department of Transportation. Therefore, this program is excluded from receiving CSF and must use allowable program funds to cover indirect cost needs.

1.10 How Does BIA Determine the Amount of CSF a Tribe or Tribal Organization Is Eligible To Receive?

BIA determines the amount of CSF a tribe or tribal organization is eligible to receive by taking the tribe's or tribal organization's direct cost base (DCB) and multiplying it by the indirect cost rate (ICR).

(DCB × ICR = 100 percent CSF need)

1.11 How Does BIA Decide What Direct Cost Base To Use To Determine CSF Need?

BIA uses the following procedures to determine the direct cost base:

If a tribe's direct cost base is . . .	Then BIA will make the following adjustments . . .
(1) Total direct cost, less capital expenditures and pass-through	(1) Total direct cost × indirect cost rate = 100 percent CSF need.
(2) Total salaries and wages	(2) Funding amounts for everything except salaries and wages will be excluded. (Total salaries and wages × indirect cost rate = 100 percent CSF need.)
(3) A negotiated lump sum, which is the total current year program funds, less capital expenditures and pass-through	(3) Capital expenditures and pass-through funds will be excluded. (Total direct cost × lump sum rate = 100 percent CSF need.)

1.12 How Does BIA Determine What Indirect Cost Rate To Use When Calculating the Amount of CSF That Eligible Tribes or Tribal Organizations Will Receive?

When calculating the amount of CSF that eligible tribes or tribal organizations will receive, BIA uses the following procedures:

If . . .	Then . . .
(1) The tribe or tribal organization has an approved indirect cost rate or an indirect cost proposal currently under consideration by the National Business Center (NBC)	(1) The Regional Director or Office of Self-Governance Director must use the tribe's or tribal organization's current indirect cost.
(2) The tribe or tribal organization proposes to use the prior-year approved rate or the rate that is in the current proposal under consideration by the NBC*	(2) The most current of the two rates must be used in determining the amount to award.
(3) The tribe or tribal organization can document that it is unable to negotiate an indirect cost rate because of circumstances beyond its control and requests a lump sum amount	(3) The Awarding Officials may negotiate a reasonable lump sum amount with the tribe or tribal organization for FY 2003.**

*This rate is temporary and subject to finalization through negotiation with NBC and may result in actual over- or under-recovery of indirect costs.

**Beginning with 2004 enacted appropriations, a reasonable lump sum amount must not exceed 15 percent of total current-year program funds, less capital expenditures and pass-through.

1.13 What Happens if the ''CSF Needs Report'' Identifies an Overall BIA CSF Need That Exceeds Available CSF?

The CSF distribution will be made on a pro rata basis so that all eligible tribes and tribal organizations receive the same percentage of their reported need. For example, if the pro rata amount is 92 percent, each tribe or tribal organization will receive 92 percent of its identified indirect cost need.

1.14 How Does BIA Compute the Indirect Cost Need?

BIA uses one of the following formulas when determining a tribe's or tribal organization's CSF need:

(1) Total direct cost × indirect cost rate = Indirect cost need.

(2) Total salaries and wages × indirect cost rate = Indirect cost need.

(3) Direct cost base × lump sum rate = Indirect cost need.

1.15 Are Construction Contracts Eligible for CSF?

No additional CSF funds are authorized to meet these costs. All administrative or indirect costs must come from the total funding provided for the construction project.

1.16 Who Is Responsible for Submitting the ''CSF Needs Report'' to the Office of Tribal Services (OTS)?

Each regional office and the Office of Self-Governance must submit a ''CSF Needs Report'' for ongoing/existing contracts and annual funding agreements.

1.17 How Does BIA Distribute CSF to Tribes and Tribal Organizations?

(1) In the initial distribution of CSF, BIA will distribute to each regional office and the Office of Self-Governance 85 percent of the total amount of CSF provided in the previous fiscal year. From this 85 percent, the regional office will award 75 percent of the CSF need identified for each contract or annual funding agreement that meets the established criteria.

(2) In the second or final allotment of CSF, all tribal contractors and self-governance tribes/consortia will receive a pro-rated share of the CSF, based on the program funds in the contract or annual funding agreement at that time.

1.18 What Can a Contractor Do To Cover Its Total CSF Needs if the CSF Provided Are Insufficient?

If your CSF funds are insufficient, you may reprogram funds to make up deficiencies to recover your full indirect cost need. This reprogramming authority is limited to funds in the Tribal Priority Allocation (TPA) portion of the BIA budget or annual funding agreement.

1.19 Can Funds From Other BIA Programs That Are Not in the TPA Be Used To Meet a CSF Shortfall?

No. Congressional appropriation language does not provide authority for BIA to reprogram funds from other Bureau programs to meet any CSF shortfall. However, appropriation language provides individual tribes authority to reprogram funds from within its total TPA base to meet any CSF shortfalls.

Part 2—Indian Self-Determination Funds

2.1 What Are Indian Self-Determination Funds (ISDF)?

The ISDF are funds that pay the CSF and start-up costs for new or expanded contracts or annual funding agreements.

2.2 What Are the Definitions of the Terms ''New Contract or Annual Funding Agreement'' and ''Expanded Contract or Annual Funding Agreement''?

(a) A new contract or annual funding agreement is defined as the initial transfer of a program, function, service, or activity previously operated by BIA to a tribe, tribal organization or consortium.

(b) An expanded contract or annual funding agreement is defined as a contract or annual funding agreement which has become enlarged, during the current fiscal year, through the assumption of additional programs, functions, services, or activities (or portion thereof) previously operated by BIA.

2.3 How Are ISDF Distributed?

BIA provides ISDF on a ''first-come, first-served'' basis. BIA funds requests at 100 percent of the ''identified need'' until the ISDF are depleted.

2.4 How Does BIA Distribute ISDF for a New and Expanded Contract or Annual Funding Agreement?

Each regional office or the Office of Self-Governance must submit an ''ISDF Needs Report'' to the Office of Tribal Services when a new contract or annual funding agreement is awarded, or when existing contracts or annual funding agreements are expanded.

2.5 What Must a Complete ''ISDF Request Package'' for New and Expanded Contracts/Annual Funding Agreements Contain?

A complete request package for a new/expanded annual funding agreement must contain:

(1) Indirect cost needs; and

(2) Startup cost needs.

2.6 What Happens if Requests Are Received After the ISDF Have Been Depleted?

The ISDF request will not be funded for the fiscal year. However, requests received after the ISDF have been depleted will be considered first for ISDF funding in the following fiscal year.

2.7 How Does BIA Compute the Indirect Cost Need?

We compute the indirect cost need following the indirect cost base computation methodology provided in this announcement.

2.8 How Does BIA Determine What Indirect Cost Rate To Use When Calculating the Amount of ISDF That Eligible Tribes or Tribal Organizations Will Receive?

When calculating the amount of ISDF that eligible tribes or tribal organizations will receive, BIA uses the following procedures:

If . . .	Then . . .
(1) The tribe or tribal organization has an approved indirect cost rate or an indirect cost proposal currently under consideration by the National Business Center (NBC).	(1) The Regional Director or Office of Self-Governance Director must use the tribe's or tribal organization's current indirect cost.
(2) The tribe or tribal organization proposes to use the prior-year approved rate or the rate that is in the current proposdal under consideration by the NBC*.	(2) The most current of the two rates must be used in determining the amount to award.
(3) The tribe or tribal organization can document that it is unable to negotiate an indirect cost rate because of circumstances beyond its control and requests a lump sum amount.	(3) The Awarding Officials may negotiate a reasonable lump sum amount (not to exceed 10 percent) with the tribe or tribal organization for FY 2003.**

*This rate is temporary and subject to finalization through negotiation with NBC and may result in actual over- or under-recovery of indirect cost.

**Beginning with 2004 enacted appropriations, a reasonable lump sum amount must not exceed 15 percent of total current-year program funds, less capital expenditure and pass-through.

2.9 What Are Considered ''Startup Costs''?

Startup costs are direct costs for items that are identified in the program operational budget for the new or expanded contract/annual funding agreements. These costs must be allowable costs, allocable to the new or expanded program, reasonable, and a one-time cost only within the context of the operational budget.

2.10 What Information for a ''Startup Cost'' Request Must I Include in the ISDF Request Package?

The request must contain:

(1) A copy of the program operational budget for the new or expanded contract/annual funding agreement activity, with the startup cost items identified;

(2) A copy of the program operational budget narrative; and

(3) Documentation of the provision of technical assistance and negotiation in regard to the startup cost items.

2.11 Will BIA Consider Funding Requests That Do Not Meet the Requirements of 2.10?

No. BIA will not consider funding ISDF requests that do not contain the items in section 2.10 of this notice.

2.12 Are There Any Contracts or Agreements That Cannot Receive ISDF?

Yes. Self-determination contracts or self-governance agreements that receive appropriated funds from Department of the Interior bureaus, offices, or other sources other than BIA are not eligible to receive ISDF.

2.13 Are There Any Guidelines That Can Be Used To Help Provide Technical Assistance?

Yes. Use the ''Guidance for Contract Support Costs'' handbook to assist in negotiating and providing technical assistance for startup costs.

2.14 What Happens to an Incomplete ISDF Request?

OTS will return the request to the office of origin for proper completion and re-submission.

Dated: June 13, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–15814 Filed 6–23–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

OMB Control Number 1004–0121; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 30, 2002, the BLM published a notice in the **Federal Register** (67 FR 49371) requesting comment on this information collection. The comment period ended on September 30, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed to the Office of Management and Budget, Interior Department Desk Officer (1004–0121), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Leasing of solid Minerals Other Than Coal and Oil Shale (43 CFR 3500—3590).

OMB Control Number: 1004–0121.

Bureau Form Numbers: 3504–1, 3504–3, 3504–4, 3510–1, 3510–2, 3520–7.

Abstract: We use the information to determine whether an applicant, permittee, or lessee is qualified to hold an interest under the terms of the implementing regulations at 43 CFR 3500.

Frequency: On occasion.

Description of Respondents: Entities seeking to lease and develop solid minerals other than coal or oil shale.

Estimated Completion Time:

Type of application	Number of responses	Hrs. per response	Total hours
Prospecting Permit	22	1	22
Exploration Plan for Prospecting Permit	19	80	1,520

Type of application	Number of responses	Hrs. per response	Total hours
Prospecting Permit Extension	5	1	5
Preference Right Lease	2	100	200
Competitive Lease Bid	5	40	200
Fringe Acreage Lease or Lease Modification	5	40	200
Assignment or Sublease	38	2	76
Lease Renewals or Adjustments	14	1	14
Use Permit	1	1	1
Exploration License	1	3	3
Exploration Plan for Exploration License	1	80	80
Development Contract	1	1	1
Bond	145	4	580
Mine Plan5	150	750	
Total	264	.....	3,652

Annual Responses: 264.
Application Fee Per Response: $25.
Annual Burden Hours: 3,652.
Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: April 14, 03.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–15888 Filed 6–23–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0129).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of this paperwork requirement. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled ''Royalty-in-Kind Pilot Program—Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas.''

DATES: Submit written comments on or before July 24, 2003.

ADDRESSES: Submit written comments either by fax (202) 395–5806 or email (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0129). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* ''Royalty-in-Kind Pilot Program—Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas.''

OMB Control Number: 1010–0129.
Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (MLA) (30 U.S.C. 1923) and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

Taking and selling of the Government's royalty share in the form of production or ''in kind'' (RIK) is authorized by the MLA, 30 U.S.C. 192, for onshore leases and the OCS Lands Act, 43 U.S.C. 1353, for offshore leases. Recommendations in an MMS 1997 Feasibility Study concluded that, under the right conditions, RIK could be workable, revenue positive, and administratively more efficient for Government and industry. Pursuant to the 1997 study's recommendations, MMS is conducting the following pilots:

- For oil from Federal leases in Wyoming which began October 1, 1998;
- For gas from Federal leases offshore the State of Texas (Texas 8(g)) which began December 1, 1998;
- For gas from Federal offshore leases in the Gulf of Mexico (GOM) Region which began in October 1999. This involves the largest production volumes; and
- For oil from Federal offshore leases in the GOM Region which began in October 2000.

In addition to the above pilots, on November 6, 2001, President Bush announced an initiative to refill the Strategic Petroleum Reserve (SPR). MMS, in coordination with the Department of Energy (DOE), entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the GOM will deliver royalty oil to MMS's exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for exchange or direct movement of exchange oil to the SPR.

The feasibility and cost-effectiveness of MMS providing RIK production direct to other Federal agencies for their consumption is also being investigated in conjunction with the pilots.

MMS, as the responsible steward of Federal mineral revenues, is conducting the pilot programs of oil and gas RIK sales and investigation of direct Federal consumption to show conclusively whether or not RIK is viable for the Federal Government, and, if so, how, when, and where it makes sense to exercise the RIK option.

Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas

The collections of information addressed in this ICR are necessary because the Secretary of the Interior is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale, and obtain a fair return on royalty production sold. MMS must fulfill those obligations for the Secretary. The reporting requirements are as follows:

a. The actual offers that potential purchasers will submit when MMS offers production for competitive sales;

b. Offerors' statements of financial qualification; and

c. Surety Instruments, such as a Letter of Credit (LOC), bond, prepayment, or Parent Guaranty.

MMS has also re-evaluated the need for two reporting requirements that were approved by OMB in the last ICR submission and has decided that this information is no longer needed. These reporting requirements are (1) Form MMS–4440, Summary of Receipt and Delivery Volumes, and (2) Report of Gas Analysis. Also, the subject heading ''LOC'' has been changed to the more generic heading ''Surety Instruments'' to capture the broader field of financial instruments that may be collected under this ICR, such as Bonds, prepayments, and Parent Guarantees. That is, an LOC is just one of the many types of surety instruments used by MMS that provide a safeguard against non-payment by a respondent under an RIK contract.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from ''Bids and Financial Statements for Sale of Royalty Oil and Gas'' (RIK Pilots) (Form MMS–4440) to ''Royalty-in-Kind Pilot Program—Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas'' to clarify the regulatory language.

Frequency: On occasion.

Estimated Number and Description of Respondents: 80 oil and gas companies.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 940 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART—ROYALTY-IN-KIND PILOT PROJECTS

Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
Offers	1	840	840
Financial Statements	1	20	20
Surety Instruments	4	20	80
Total	.....	880	940

Note: A respondent is counted each time they respond. Unsuccessful offerors will submit only 2 responses.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * .'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 8, 2003 (68 FR 17075), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 24, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 11, 2003.

Jan Bigelow,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–15891 Filed 6–23–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Evaluation of the NIC Institutional Culture Initiative

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY2003 for a cooperative agreement to develop and implement an evaluation design to assess the effectiveness of the National Institute of Corrections Institutional Culture Initiative (ICI). The ICI includes a prison culture assessment instrument as well as a protocol for assessing prison culture. The ICI also includes the following projects: Strategic Planning, Management and Response; and Leading and Sustaining Change as well as a wide spectrum of additional interventions which will be provided through NIC under the heading of Intensive Technical Assistance.

A Cooperative Agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award will be made to an organization that will, in collaboration with the Institute, design and implement an evaluation process to determine if the projects in NIC's ICI have positively impacted the culture of the prisons in the project.

DATES: Application must be received by 4 p.m. on Wednesday, July 23, 2003.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is still being delayed due to decontamination procedures.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202)307–3106, extension 0 for pickup. Faxes or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web site at *www.nicic.org.* Hard copies of the announcement can be obtained by calling Rita Rippetoe at 1–800–995–6423, extension 44222 or e-mail: *rrippetoe@bop.gov.* Additionally, you may request packets of information on Institutional Culture Assessment Protocol and the Organizational Culture Assessment Instrument; Strategic Planning, Management and Response; and Leading and Sustaining Change from Sharon Floyd, 320 First Street, NW., Room 5007, Washington, DC 20534. At your discretion you may purchase the Cameron and Quinn book cited in this Request for Proposal (RFP) through Prentice Hall.

All technical or programmatic questions concerning this announcement should be directed to Randy Corcoran, Correctional Program Specialist, National Institute of Corrections. He can be reached by calling 1–800–995–6423, extension 40058 or by e-mail at *tcorcoran@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Over the last several years, the NIC Prisons Division has responded to requests from prisons for assistance in addressing problems of staff sexual misconduct, excessive violence, high staff turnover rates and other types of problems. NIC's approach to assisting agencies with these problems has included on-site technical assistance, training programs and dissemination of information. Throughout the extensive work with institutions in addressing these problems, consistent themes from correctional staff and the offender population emerged, underscoring the importance of the institutional environment. Staff and inmate relations, consistent and fair supervisors, well trained staff, and strong institutional and agency leadership teams are some of the components critical to a healthy environment as highlighted by these projects. Other work done at NIC in the area of mission change of institutions and in identifying the challenges of keeping an effective workforce have also provided background for NIC's interest in institutional culture. The reoccurrence of many of these problems after traditional interventions has prompted NIC to examine more thoroughly the underlying causes of the presenting problems.

Through a cooperative agreement, NIC developed an instrument and protocol for assessing organizational culture in prisons. The assessment instrument originated from the works of Kim S. Cameron and Robert E. Quinn in their book Diagnosing and Changing Organizational Culture which they based on the competing values framework. The instrument resulting from their work published in 1999 is called the Organizational Culture Assessment Instrument (OCAI). The OCAI was modified, with their approval, to be applied in prisons and is called the Organizational Culture Assessment Instrument-Prisons (OCAI–P). The protocol and instrument have been applied in 12 prisons. NIC has concurrently been working on the development of intervention strategies intended to assist prisons in changing their cultures following the application of OCAI–P and Institutional Culture Assessment Protocol under the direction of NIC's existing Cooperative Agreement vendor.

The three main intervention strategies being planned for utilization are: Strategic Planning, Management and Response; Leading and Sustaining Change and Intensive Technical Assistance which will provide a wide spectrum of additional interventions. The interventions strategies are being developed and are generally described below.

1. *Strategic Planning, Management and Response:* A cooperative agreement was awarded in September 2002 to review Strategic Planning models being used by state departments of corrections and other public sector agencies and to select one Strategic Planning model that would be of greatest benefit to state departments of corrections and state prisons. The selected model, which is 50% complete, will be fully developed with all relevant materials that would be required for implementation in an operating correctional agency by the fall of 2003. A supplement to this cooperative agreement will test the model as well as develop and conduct a training program. In the training program twelve correctional professionals will learn how to facilitate use of the model in selected sites to improve prison culture.

2. *Leading and Sustaining Change:* This cooperative agreement (the RFP will be announced in the Federal Register and on NIC's Web site shortly)

will provide for the implementation of a Change Leadership developmental process. This process will prepare/train the wardens and other correctional leaders who will be instrumental in changing the culture of the prisons participating in this initiative. In addition, it will provide for professional Change Advisors who will work with the wardens and other correctional leaders to determine the various strategies which will be implemented to effectively change the culture of the prison. The process will also provide options for assessing an institution's Readiness for Change and provide documentation of the stages of change for all the institutions. A final document summarizing ''Lessons Learned'' about changing the culture of a state prison will be produced.

3. *Intensive Technical Assistance:* This intervention category may cover a wide spectrum of assistance to prisons following an Institutional Culture Assessment. This assistance can take the form of training or consultation and may cover topics such as: management training, supervisor training as well as training in communications, diversity, sexual misconduct and use of force.

Purpose: To design and implement an evaluation process to determine if the projects comprising the NIC Institutional Culture Initiative have positively impacted the culture of the prisons in the project.

Scope of Project: 1. Develop an evaluation design which will determine whether the following projects positively impacted the culture of the prisons involved in the project: Institutional Culture Assessment, Leading and Sustaining Change, Strategic Planning and Response, and intensive technical assistance. The evaluation design should clearly identify all information/data/processes which need to be implemented at the beginning of each project in order to ultimately assess the project outcomes.

2. Identify or develop all criteria, materials and instruments which will be utilized in the evaluation of each project.

3. Discuss and defend the final decision regarding whether individual projects will need individual evaluation tools or whether common evaluation criteria/tools will be used on all the projects. Regardless of the decision, address how all of the projects will relate to the final outcome.

4. Discuss the feasibility of determining the impact individual projects have on any institutional culture changes (for example, does having the warden and executive staff trained in Change Leadership contribute most significantly to changing the culture or are all interventions too integrated to isolate individual project contributions to the change in prison culture).

5. Implement all aspects of the evaluation design on all projects and prison sites in the Institutional Culture initiative. Address how to implement the evaluation design in the projects which have been in progress for one or more years.

6. Document the research design and data/information which is obtained in order to evaluate whether there has been a positive impact on the prison culture. Provide a Final Report and Executive Summary of the work completed in this phase of the evaluation project.

Specific Requirements: 1. The awardee is required to become familiar with the materials, history, goals and results to date of NIC's work in the entire Institutional Culture Initiative to include all assessment and intervention efforts.

2. An assessment of the prison culture in eight (8) correctional facilities was completed in 2002–2003, using the Organizational Culture Assessment Instrument—Prisons (OCAI–P). Four (4) additional prisons will receive assessments within the next few months. A professional Change Advisor/consultant will begin working with the wardens of these prisons to change the prison culture in September 2003. The awardee of this evaluation cooperative agreement will need to be prepared to identify and collect any baseline information which will be necessary for the successful evaluation of these projects and prisons.

3. The Institutional Culture Assessment information (collected by a separate vendor) for each prison in the Institutional Culture Initiative will be made available to the awardee for the purposes of evaluating the impact of the projects. The applicant is encouraged to use this extensive information in the evaluation design. A modified version of the Assessment Protocol may be proposed as a means of measuring the impact of all the work done to change the culture or another means of measuring the impact may be proposed.

4. The successful applicant will propose a project approach that will ensure accomplishment of each of the stated objectives of this project. The applicant will ensure that the project team is comprised of persons with technical expertise in the area of research and evaluation methods as well as persons with familiarity with the correctional environment.

5. With satisfactory performance, it is assumed that there will be some additional funds each year for the awardee to collect information which will be necessary for the final impact evaluation. At that point in time, the awardee will be asked to provide a Final Report with an Executive Summary. They will also be asked to produce a camera-ready monograph on Lessons Learned about changing prison culture. Funds will be provided in subsequent years and should not be requested in the current application. The purpose of adding this information is to inform the applicant regarding the expected outputs to assure the research design addresses all requirements.

6. Since the goal of the Institutional Culture initiative is to change the culture (not the climate) of a prison, there is the expectation that various interventions (strategic planing, intensive TA, etc.) may be utilized and may extend over a period of several years. The applicant should reflect the possibly longer time frame which will be required to measure the impact of the interventions in the evaluation design.

7. The selected applicant will be required to attend a preliminary meeting for the purpose of getting an overview of the current NIC work in the Institutional Culture Initiative as well as a refinement of the project work plan. The applicant is also required to attend two (2) coordinating meetings each year with all the other project staff from the ICI.

8. Coordinate with the NIC project manager extensively and routinely throughout the length of the project. The person designated as project director is required to be the person who will manage the project on a day-to-day basis and who has full decision-making authority to work with the NIC project manager. This person must have enough time dedicated to the project to assure they are available to direct day to day activities of the project and to be available for collaboration with the NIC project manager. Applicants may use whatever position titles they wish with other project staff, but the position of project director must be as described in this paragraph.

9. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC.

Application Requirements: Applications must be submitted using OMB Standard Form 424, Federal Assistance and attachments. (Copies can be downloaded from the NIC Web site at *www.nicic.org*. The applications should be concisely written, typed double spaced and referenced to the project by the ''NIC Application

Number'' and Title referenced in this announcement.

Submit an original and five copies. The original should have the applicant's signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

The narrative portion of this cooperative agreement application should include, at a minimum.

1. A brief paragraph that indicates the applicant's understanding of the purpose of this cooperative agreement;
2. One or more paragraphs to detail the applicants understanding of Impact Evaluation;
3. A brief paragraph that summarizes the project goals and objectives;
4. A clear description of the methodology that will be used to complete the project and achieve its goals;
5. A clearly developed and detailed Project Plan which demonstrates how the various goals and objectives of the project will be achieved through its various activities so as to produce the required results;
6. A chart of measurable project milestones and time lines for the completion of each milestone;
7. A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and a signed statement from individual staff that they will be available to work on this project;
8. A description of the qualifications of the applicant organization and documentation of each project staff's knowledge, skills and abilities to carry out their assigned project responsibilities;
9. A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A). A budget narrative must be included which explains how all costs were determined.

The project must be completed within one year of its award date.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum of $150,000.00 (direct and indirect costs). Funds may be used only for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. Additional funding will be requested in subsequent years. Future award decisions will be based upon satisfactory performance of the awarded and upon the availability of funding.

This project will be a collaborative venture with the NIC Prisons Divisions.

Eligibility of Applicants: An eligible applicant in any state or general unit of local government, private agency, educational institution, or organization, individual or team with expertise in the described areas.

Review considerations: Applications received under this announcement will be subject to a 3 to 5 person NIC Peer Review Process. One of the reviewers will be from Bureau of Prisons staff. No companies, project staff or consultants who are working on any of the projects within the Institutional Culture Initiative as identified in the RFP, may participate in the evaluation which will be proposed in response to this RFP. The purpose for this restriction is to assure that the evaluation team is totally separate from any of the projects which will be evaluated.

Numbers of Awards: 1.

NIC Application Number: 03P23. This number should appear as a reference line in the cover letter, in box 11 of Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

This announcement is expected to be awarded by August 27, 2003.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 03–15882 Filed 6–23–03; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2003–15; [Exemption Application No. D–11111, 11112, and 11113] *et al.* Grant of Individual Exemptions; Dupont Capital Management Corporation, (DCMC)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

DuPont Capital Management Corporation, (DCMC) Located in Wilmington, DE

[Prohibited Transaction Exemption 2003–15; Exemption Application Nos. D–11111, 11112, and 11113]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and

Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, and the Protein Technologies International Retirement Plan (collectively, the Plans) [1] to the Dow Chemical Company (Dow), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Dow, for the period from October 25, 2000 until July 10, 2001; provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by a reputable, independent, third party market source;

(c) The Bonds were sold on July 10, 2001 for $2,101,900 at a profit of $126,580 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Dow or any other party in interest with respect to the Plans; and

(e) The transaction represented less than .02% of each Plan's total assets.

Effective Date of Exemption

The exemption is effective for the period from October 25, 2000 (the date of the acquisition of the Bonds by the Plans) until July 10, 2001 (the date the Bonds were sold).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2003, at 68 FR 3047.

Written Comments: The applicant (*i.e.*, DCMC) submitted a written comment with respect to the notice of proposed exemption (the Proposal). The comment is summarized below.

The applicant noted that in the operative language section of the Proposal, paragraph (c), it was erroneously indicated that the Bonds were sold for $1,975,320 (rather than for $2,101,900, as correctly stated in Item 5 of the Summary of Facts and Representations in the Proposal). Therefore, the Department has modified the language in paragraph (c) of the exemption to state that the Bonds were sold for $2,101,900.

The Department also received over one hundred telephone calls from interested persons concerning the Proposal. In addition, the Department received seven written inquiries from interested persons. All of the telephone calls and written inquiries requested additional information regarding the transactions and their possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the concerns that were raised. None of the additional comments made to the Department offered any suggestions for changes to the Proposal.

No other comments were received by the Department. Accordingly, the Department has determined to grant the exemption, as clarified above.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation, (DCMC) Located in Wilmington, DE

[Prohibited Transaction Exemption 2003–16; Exemption Application Nos. D–11114, 11115, 11116, 11117, 11118]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the DuPont Dow Elastomers Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, the Protein Technologies International Retirement Plan, and the DuPont Savings and Investment Plan (collectively, the Plans) to ConAgra Foods, Inc. (ConAgra), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by ConAgra, for the period from September 5, 2001 until October 17, 2001; provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on October 17, 2001 for $4,234,531 at a profit of $185,638 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The exemption is effective for the period from September 5, 2001 (the date of the acquisition of the Bonds by the Plans) until October 17, 2001 (the date the Bonds were sold).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2003, at 68 FR 3048.

Written Comments: The applicant (*i.e.*, DCMC) submitted written comments with respect to the notice of the proposed exemption (the Proposal). The comments are summarized below.

The applicant states that the DuPont Dow Elastomers Pension and Retirement Plan was not included in the list of ''Plans'' in the Proposal.

Based on this comment, the Department has revised the appropriate language in the Proposal to include the DuPont Dow Elastomers Pension and Retirement Plan.

In addition, the applicant states that the information concerning the plan sponsor of, and number of participants covered under, the DuPont Dow Elastomers Pension and Retirement Plan was not included in Item 2 of the Summary of Facts and Representations contained in the Proposal (the Summary).

The applicant also noted that footnote 12 in the Proposal indicates that ''the Plans are funded through the same trust'' and should have indicated that the Dupont Savings and Investment Plan is funded through a separate trust. The Department acknowledges the applicant's clarifications to the information contained in the Summary.

The Department received seven written inquiries and over one hundred telephone calls concerning the Proposal from interested persons. All of the telephone calls and written inquiries requested additional information regarding the transactions and their possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the concerns that were raised. None of the additional comments made to the Department offered specific suggestions for changes to the Proposal.

No other comments were received by the Department. Accordingly, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at

[1] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this exemption treats the purchase of the Bonds by the Plans as a single transaction and information concerning such purchase is referred to on an aggregate basis.

(202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation, (DCMC) Located in Wilmington, DE

[Prohibited Transaction Exemption 2003–17; Exemption Application Nos. D–11119 and 11120]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Plans (collectively, the Plans)[2] to Conoco Inc. (Conoco), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Conoco, for the period from December 29, 1999 through August 16, 2001; provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on August 16, 2001 for $816,641 at a profit of $61,858 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The exemption is effective for the period from December 29, 1999 (the date of the acquisition of the Bonds by the Plans) until August 16, 2001 (the date the Bonds were sold).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2003, at 68 FR 3050.

Written Comments: The applicant (*i.e.*, DCMC) submitted written comments with respect to the notice of the proposed exemption (the Proposal). The comments are summarized below.

First, the applicant states that in Item 1 of the Summary of Facts and Representations (the Summary), a reference was made to the DuPont Pension Trust Fund (the DuPont Trust). In this regard, the applicant notes that CONSOL, Inc., (CONSOL) was a member of a controlled group of corporations that were subsidiaries of the E.I. duPont de Nemours and Company (the DuPont Group) prior to November 1998. However, after such date, CONSOL was no longer a member of the DuPont Group. Therefore, the applicant wishes to clarify that the assets of the Plans are no longer held in the DuPont Trust. In addition, the applicant notes that DCMC's investment management services to employee benefit plans that are sponsored by corporations that are part of the DuPont Group is not relevant to CONSOL and the subject transactions described in the proposal.

Second, the applicant notes that footnote 14 in the Summary, reference is made to PTE 2001–05, 66 FR 7789 (January 25, 2001). The information therein states that PTE 2001–05 was not effective at the time of the subject transactions. The applicant represents that if PTE 2001–05 had been in effect at the time of the subject transactions the exemption would not have provided relief. In this regard, the applicant notes that PTE 2001–05 only provides relief for prohibited transactions where the counterparty's party in interest status results solely from being a service provider to the Plan. In the present case, the counterparty's status as a party in interest results from an ownership affiliation with an employer whose employees are covered by the Plan.

The Department acknowledges all of the applicant's comments and clarifications to the information contained in the Summary.

Finally, the Department also received seven written inquiries and over one hundred telephone calls from interested persons concerning the Proposal. All of the telephone calls and written inquiries requested additional information regarding the transactions and their possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the concerns that were raised. None of the additional comments made to the Department offered any specific suggestions for changes to the Proposal.

No other comments were received by the Department. Accordingly, the Department has determined to grant the exemption, as clarified herein.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

Skandinaviska Enskilda Banken AB (SEB) Located in Stockholm, Sweden

[Prohibited Transaction Exemption 2003–18; Exemption Application No. D–11133]

Exemption

Section I. *Covered Transactions*

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[3] shall not apply, effective October 23, 2002, to: (1) the lending of securities that are assets of a plan (the Plan) to SEB's head office in Stockholm (the Borrower or the Applicant) in accordance with the conditions set forth below(the foregoing being Part One of this exemption); and (2) the lending of securities, under certain exclusive borrowing arrangements, to the Borrower by Plans, including commingled investment funds holding assets of such Plans with respect to which SEB or any of its affiliates is a party in interest; and (3) the receipt of compensation by SEB or any of its affiliates in connection with these exclusive borrowing transactions (the foregoing being Part Two of this exemption).

This exemption is subject to the conditions contained below in Sections II, III, and IV.

Section II. *Conditions Applicable to Part One of the Exemption—Securities Lending Between Plans and the Borrower*

(a) Neither the Borrower nor any of its affiliates shall have discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets.

(b) Each Plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States

[2] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this exemption treats the purchase of the Bonds by the Plans as a single transaction and information concerning such purchase is referred to on an aggregate basis.

[3] For the purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by persons other than the Borrower (or any of its affiliates), or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this exemption, shall in all cases, be in U.S. dollars or dollar-denominated securities or United States bank letters of credit and must be held in the United States.

(c) Each loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

(d) In return for lending securities, each Plan either (1) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party.

(e) Each Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)[4] had it remained the record owner of such securities.

(f) If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower delivers additional collateral, by the close of business on the following business day to bring the level of the collateral back to at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities.

(g) Prior to entering into a Loan Agreement, the Borrower furnishes to the independent fiduciary for the Plan who is making decisions on behalf of the Plan with respect to the lending of securities: (1) the most recently available audited and unaudited statements of its financial condition; (2) the most recent available unaudited statement of the Borrower's financial condition; and (3) a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary.

Such representation may be made by the Borrowers' agreeing that each loan shall constitute a representation by the Borrower that there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(h) Each Loan Agreement and any securities loan outstanding may be terminated by the applicable Plan at any time, whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (1) the customary delivery period for such securities; (2) five business days; or (3) the time negotiated for such delivery by the Plan and the Borrower, whichever is lesser, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTE) 81–6 (43 FR 7527, January 23, 1981), as it may be amended or superseded.[5]

(i) In the event that a loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (h) above, then the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the Loan Agreement, and any expenses associated with any such sale and/or purchase. The Borrower indemnifies the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate. Notwithstanding the foregoing, the Borrower, may, in the event it fails to return borrowed securities ad described above, replace non-cash collateral with an amount of cash not less than the then-current market value of the collateral, provided that such replacement is approved by the independent plan fiduciary.

(j) Each Plan maintains the situs of any Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, the Borrower shall not be subject to the civil penalty, which may be assessed pursuant to section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)-1.

If the Borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of the Borrower to comply with the conditions of the exemption.

(k) Prior to any Plan's approval of any transaction with the Borrower, the Plan is provided copies of the proposed and final exemptions covering the exemptive relief described herein.

SECTION III. Conditions Applicable to Part Two of the Exemption—Exclusive Borrowing Arrangements Between Plans and the Borrower

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The Borrower is a party in interest with respect to each Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

[4] The Department notes that the Applicants representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Borrower will always put the Plan in at least as good a position as it would have been in had it not loaned the securities.

[5] PTE 81–6, as amended at 52 FR 18754, May 19, 1987, provides an exemption under conditions from section 406(a)(1)(A), through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, each Plan will receive from the Borrower either (1) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time); (2) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities; or (3) any combination of (1) and (2) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the applicable Plan that a percentage of the earnings on the collateral may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the applicable Plan a lending fee (the Lending Fee, together with the Shared Earnings Compensation, the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to each Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, each Plan shall receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than SEB or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6, as amended or superseded. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of a Plan by an affiliate of the Borrower that is the trustee or custodian of such Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the day of the loan, and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of a Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by each Plan or its designee, which may be SEB or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the applicable Borrowing Agreement. Such Borrowing Agreement shall give the applicable Plan title to the collateral until such collateral is redelivered to SEB pursuant to the terms of the Borrowing Agreement.

(i) Before entering into any Borrowing Agreement, the Borrower furnishes to the applicable Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) Each Borrowing Agreement contains a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) Each Plan receives at least the equivalent of all distributions made during the applicable loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[6] had it remained the record owner of the securities.

(l) Each Borrowing Agreement and any outstanding securities loans with respect thereto may be terminated by either party at any time without penalty (except for, if a Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro rata portion of the Exclusive Fee paid by the Borrower to the Plan), whereupon the Borrower returns any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the applicable Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with a Borrowing Agreement, the applicable Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly

[6] See Footnote 4, *infra.*

indemnify the Plan, except to the extent that such losses or damages are caused by the Plan's own negligence.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States and Sweden, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption and the notice of pendency is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[7]

(q) The independent fiduciary of each Plan shall receive monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the relevant Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of a Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of a Plan, the relevant Borrower will provide the Plan with daily confirmations of securities lending transactions. SECTION IV.

General Conditions

(a) In addition to the above conditions, all loans involving the Borrower must satisfy the following supplemental requirements:

(1) The Borrower is a bank which is subject to regulation by the Swedish Financial Supervisory Authority (Finansin-spektionen).

(2) The Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934, as amended which provides foreign broker-dealers a limited exception from United States registration requirements.

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded).

(4) All collateral is held in the United States and the situs of the applicable Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

(5) Prior to entering into a transaction involving the Borrower, the Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Borrower will occur in the United States courts.

(b) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records are necessary to enable the persons described in paragraph (c)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEB and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (c)(1).

(c)(1) Except as provided in subparagraph (c)(2) of this paragraph and not withstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) are unconditionally available at their customary location or

[7] The Department notes SEB's representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, SEB will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to either a general securities lending arrangement or an exclusive borrowing arrangement. However, SEB or its affiliates may monitor the level of collateral and the value of the loaned securities.

examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (c)(1)(ii)-(t)(1)(iv) of this paragraph (c)(1) are authorized to examine the trade secrets of SEB or its affiliates or commercial or financial information which is privileged or confidential.

Section V. Definitions

(a) An ''affiliate'' of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term ''borrower'' includes SEB and any other affiliate of SEB that now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or U.S. bank.

Effective Date: This exemption is effective as of October 23, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on May 5, 2003 at 68 FR 23768.

Written Comments

The Department received one written comment with respect to the Notice. The comment letter, which was submitted on behalf of SEB by its outside legal counsel, is intended to modify the Summary of Facts and Representations (the Summary) of the Notice, as discussed below.

1. *Footnote 6.* On page 23770 of the Notice, SEB states that Footnote 6 of the Summary contains a reference to a non-existent ''Footnote 2.'' SEB explains that the correct reference should have been to another footnote, *i.e.*, ''Footnote 4,'' which describes the tax implications of foreign securities lending on an investing Plan.

2. *Representation 18.* On page 23374 of the Notice, the first sentence of Representation 18 of the Summary states, in part, that ''in the event a loan is terminated and the Borrower fails to return the borrowed securities, or the equivalent thereof, within the time described in Representation 18 above, the Plan may purchase securities identical to the borrowed securities * * *'' SEB notes that the reference should be to ''Representation 17'' rather than to ''Representation 18.''

3. *Representation 32.* On page 23777 of the Notice, in Representation 32 of the Summary, the last sentence of the fourth paragraph states, that ''the Applicant concludes that a Plan can bring an enforcement action, under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York.'' For purposes of clarification, SEB suggests that the word ''often'' be inserted before the phrase ''under an expedited procedure.'' As a result, the sentence would now read as follows:

> * * * Thus, the Applicant concludes that the Plan can bring an enforcement action, often under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York.

The Department concurs with SEB's comments and suggested changes, and it takes note of the foregoing revisions to the Notice. In addition, the Department has revised Footnote 4 of the operative language to reflect the correct footnote reference.

Accordingly, after giving full consideration to the entire record, including SEB's written comment, the Department has decided to grant the exemption, as modified herein.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11133) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For Further Information Contact: Ms. Blessed Chuksorji of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 19th day of June, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–15929 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–19 Application No. D–11122]

Grant of Individual Exemption To Replace Prohibited Transaction Exemption 97–63 (PTE 97–63) Involving State Street Bank and Trust Company (State Street) Located in Boston, MA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption to replace PTE 97–63.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which replaces PTE 97–63 (62 FR 66689, December 19, 1997). This exemption permits securities lending transactions between State Street, its United States (U.S.) domiciled affiliates, and certain employee benefit plans (the Client Plan(s)) and/or commingled investment funds holding plan assets (CIF(s)); provided State Street, through any division or U.S. affiliate of State Street or of its parent acts as securities lending agent (or sub-agent). This exemption also permits receipt of compensation by a U.S. registered introducing broker affiliated with State Street (the Introducing Broker) in connection with an arrangement whereby securities are lent to an unrelated U.S. registered broker-dealer (the Clearing Broker) who in turn lends such securities to clients of the Introducing Broker; provided that certain conditions are satisfied.

In addition, this exemption incorporates various modifications to specific terms and conditions of PTE 97–63. The replacement of PTE 97–63 affects the participants and beneficiaries of the Client Plans participating in securities lending transactions and the fiduciaries with respect to such Client Plans.

EFFECTIVE DATE: This exemption is effective as of February 6, 2003, the date when the Notice of Proposed Exemption (the Notice) was published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone number (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 6, 2003, the Department published in the **Federal Register** the notification that it was considering replacing PTE 97–63.

PTE 97–63 provides an exemption from certain prohibited transaction restrictions of section 406 of the Act and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–63 provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for:

(1) The lending of securities to State Street, acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and for the lending of securities to any U.S. registered broker-dealer affiliated with State Street (the Affiliated Broker Dealer(s)) by certain Client Plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets, for which State Street, through its Master Trust Services Division, acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent), and (2) the receipt of compensation by GSL in connection with such securities lending transactions; provided that certain conditions are satisfied.

The exemption was requested in an application filed on behalf of State Street and its U.S. affiliates (the Applicants), pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

In the notice, the Department invited all interested persons to submit written comments and/or requests for hearing on the proposed replacement of PTE 97–63 within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on February 6, 2003. All comments and/or requests for a hearing were due by March 24, 2003.

By letter dated April 30, 2003, the Applicants confirmed that a copy of a cover letter, a copy of the Notice, and a copy of the Supplemental Statement (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations, were delivered by first class mail on or before February 21, 2003, to each known sponsor of a Client Plan that on that date was a direct client of GSL, informing the sponsors of such Client Plans of the right to comment and/or request a hearing by March 24, 2003. Such Client Plans are interested persons with respect to the transactions which are the subject of this exemption.

In a telephone conversation on February 20, 2003, the Applicants identified other interested persons with respect to the transactions which are the subject of this exemption. In this regard, the Applicants informed the Department that a Client Plan which participates in an index fund (the Index Fund(s)) or a model-driven fund (the Model-Driven Fund(s)) managed by State Street or any division or U.S. affiliate of State Street would also be an interested person. The Applicants further indicated that notification to Client Plans that participate in Index Funds or Model-Driven Funds, including a copy of the cover letter, a copy of the Notice, and a copy of the Supplemental Statement, would not be mailed until March 6, 2003. In light of the fact that the notification to the Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street would not be provided until March 6, 2003, and in order to give all interested persons the benefit of the full thirty (30) day comment period the Department required, and the Applicants agreed to, an extension until April 10, 2003, of the deadline when comments and/or requests for hearing would be due on the proposed exemption.

In a telephone conversation on April 3, 2003, the Applicants informed the Department that: (1) The notification to some Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street was mailed on March 7, 2003, rather than on March 6, 2003; (2) the notification indicated that the comment period would close on April 7, 2003, rather than April 10, 2003, as agreed to by the Applicants; and (3) a cover letter attached to the notification included a few sentences that deviated from the form of the cover letter that had been previously approved by the Department.

In light of the above, and in order to give all interested persons an opportunity to comment and/or request

a hearing on the proposed exemption, the Department required, and the Applicants agreed, that the Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street would again be notified of the pendency of the Notice in the **Federal Register.** It was agreed that: (1) Such notification would be sent by a first class mailing to the fiduciary of each Client Plan that participates in an Index Fund or a Model-Driven Fund managed by State Street or any division or U.S. affiliate of State Street; (2) such mailing would contain a copy of a cover letter the contents of which was approved by the Department in advance; and (3) such mailing would contain a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2). The Department determined that, as the Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street had already received a copy of the Notice in the mailing on March 6, or March 7, 2003, that it was not necessary for the Applicants to include an additional copy of the Notice in this second mailing; provided that the cover letter included: (1) An offer from the Applicants to provide another copy of the Notice upon request; and (2) a website address where a copy of the Notice could be found.

In order to give all interested persons the benefit of the full thirty (30) day comment period the Department required, and the Applicants agreed to, an extension until May 15, 2003, of the deadline when comments and/or requests for hearing would be due on the proposed exemption.

The Applicants confirmed by letter dated April 30, 2003, that a copy of the cover letter and a copy of the Supplemental Statement were delivered by first class mail on or before April 15, 2003, to each known sponsor of a Client Plan that on that date was invested in an Index Fund or Model-Driven Fund that was authorized to engage in securities lending activities and was managed by State Street or any division or U.S. affiliate of State Street. The sponsors of such Client Plans were informed of the right to comment and/or request a hearing by May 15, 2003.

During the comment period the Department received no requests for a hearing. However, the Department did receive several comment letters from the Applicants. In this regard, in a letter dated March 7, 2003, the Applicants requested certain changes to the operant language of the exemption, as published in the Notice. Subsequently, in letters dated April 1, April 30, and May 21, 2003, the Applicants clarified the position taken in their March 7, 2003, comment letter.

A discussion of the points raised in the Applicants' comment letters, as clarified, and the Department's response, thereto are set forth in the numbered paragraphs below.

1. The Applicants requested an amendment to the language of section II(e) of the exemption. In this regard, the Applicants asked that the words, ''on the following day,'' as set forth in the Notice, on page 6202, column 3, line 20, be revised to read ''on the following business day.'' The Applicants maintain that this change would be consistent with both the corresponding references to ''business day,'' in section II(e) of the Notice, on page 6202, column 3, on lines 8 and 13, and consistent with the practical realities of operating a securities lending program.

The Department concurs and in the final exemption has amended the language of section II(e), accordingly.

2. The Applicants requested that the exemption be modified to permit the indemnification required by section II(g) of the exemption to be provided by State Street's parent corporation. In this regard, the Applicants asked that the phrase, ''State Street will agree to indemnify,'' as set forth in section II(g) of the notice, on page 6202, column 3, line 41, be revised to read ''State Street or its parent corporation will agree to indemnify.'' Subsequently, in a letter, dated April 1, 2003, State Street withdrew the request.

The Department concurs with the withdrawal of the Applicants' request.

3. The Applicants requested a change in the language of section II(j)(1) and section II(j)(2), as set forth in the notice, in the following locations:

(a) In section II(j)(1) on page 6203, column 1, lines 39–40;

(b) in section II(j)(2) on page 6203, column 1, lines 64–66; and

(c) in section II(j)(2) on page 6203, column 2, lines 4–6. In this regard, the Applicants, asked that in each of these locations the phrase, ''the fiduciary responsible for making the investment decision,'' be revised in the final exemption to read, ''the fiduciary responsible for making the decision to authorize the Client Plan to engage in securities lending.'' In the opinion of the Applicants, this change would more accurately describe the appropriate fiduciary contemplated in these sections and would also cause the fiduciary referred to in these provisions to be the same as the fiduciary referred to in other sections of the exemption (*e.g.,* the fiduciary described in section II(b) of the exemption).

In a letter dated, April 30, 2003, the Applicants submitted a revision of their requested wording of section II(j)(1) and (j)(2). In this regard, the Applicants believe that in the context of securities lending the revised wording would be consistent with the actual operation of entities (the Entities), as described in section II(j), including a master trust, a group trust, or other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 of the Department's regulations. In particular, the Applicants believe that the language of section II(j) of the notice, as drafted, incorrectly focuses on the fiduciary who is responsible for making investment decisions on behalf of such Entities. In the opinion of the Applicants, the focus should be on the fiduciary who is making the decision to authorize such Entities to engage in securities lending, to retain GSL as the lending agent, and to authorize the loans made pursuant to the subject exemption, whether or not such fiduciary makes ''investment decisions'' with respect to the assets involved in the securities lending program. Accordingly, the Applicants propose that the language of section II(j), as set forth in the notice on page 6203, column 1, lines 40, 44, 47, 65–66; and on page 6203, column 2, lines 4–6, 8–11, and 14–15, be revised as set forth below. Words that have been stricken from the text of the notice appear in closed brackets, and additions to the text of the notice appear in bold italics.

(j) Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group or to the Clearing Broker, as applicable; provided, however that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement shall be deemed satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for [making the investment decision] ***authorizing the securities lending arrangement with GSL*** on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its overall management and control, exclusive of the $50 million threshold amount attributable to plan investment in [the] ***such*** commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same

employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement is satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for [making the investment decision] ***authorizing the securities lending arrangement with GSL*** on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan) [. However], ***provided*** that the fiduciary responsible for [making] ***authorizing*** the [investment decision] ***securities lending arrangement*** on behalf of such group trust or other entity—

[(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has] ***has*** total assets under its ***overall*** management and control, exclusive of the $50 million threshold amount attributable to plan investment in [the] ***such*** commingled entity ***and the assets referred to in the foregoing parenthetical,*** which are in excess of $100 million.

The Department continues to believe that the appropriate focus in section II(j) is the investment manager of the Entities described therein, including a master trust, a group trust, or other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 of the Department's regulations. Accordingly, the Department has not changed the language, section II(j), as set forth in the final exemption, with the exception that throughout section II(j), the terms, ''Client Plan(s),'' ''employee benefit plan(s)'' or ''plan(s),'' have been used where appropriate.

4. The Applicants have requested an amendment of the language of section II(p). Section II(p), as set forth in the notice, on page 6204, column 1, lines 8–28, reads as follows:

If an independent fiduciary of a Client Plan has given the initial affirmative authorization and approval for such plan to engage in securities lending transactions, pursuant to the terms of PTE 97–63, or pursuant to section II(b), above, of this exemption, then any subsequent authorization or approval contemplated under this exemption shall be deemed to have been given, if such independent fiduciary has not objected in writing to GSL within 30 days following disclosure to the independent fiduciary of all material information required in connection with said authorization or approval, a statement apprizing the independent fiduciary that PTE 97–63 has been replaced by this exemption, and a copy of this Notice, and a copy of the final exemption, if granted.

In this regard, the Applicants wish to clarify what information must be provided to independent fiduciaries in connection with any subsequent authorization or approval, pursuant to section II(p) of the subject exemption. It is the Applicants' view that only in the case of an independent fiduciary whose initial authorization was obtained pursuant to PTE 97–63 that the provision of the statement apprizing the independent fiduciary that PTE 97–63 has been replaced by the subject exemption and the disclosure of the additional information (*i.e.*, a copy of the notice and a copy of the final exemption) would be relevant. In this regard, the Applicants maintain that any independent fiduciary whose initial authorization was given pursuant to the subject exemption would have already been provided a copy of the Notice and a copy of the final exemption, in accordance with section II(i). In addition, the statement indicating that PTE 97–63 has been replaced would be irrelevant to any independent fiduciary whose initial authorization was given pursuant to the subject exemption.

Accordingly, the Applicants requested that the language of section II(p), as set forth in the Notice, on page 6204, column 1, lines 23–28 be amended: (1) To insert a period between the word, ''approval,'' and the words, ''a statement;'' (2) to delete the phrase:

A statement apprizing the independent fiduciary that PTE 97–63 has been replaced by this exemption, and a copy of this Notice, and a copy of the final exemption, if granted;

and (3) to substitute the following phrase:

In the case of an independent fiduciary whose initial authorization was pursuant to PTE 97–63, the independent fiduciary should, in connection with its initial authorization to lend securities pursuant to this exemption, be provided a statement indicating that PTE 97–63 has been replaced by this exemption, a copy of this notice, and a copy of the final exemption, if granted.

Subsequently, based upon a conversation with the Department, the Applicants in a letter dated April 1, 2003, substituted the following revised wording for the language quoted in item (3), above:

In addition, before an independent fiduciary, whose initial authorization was given pursuant to PTE 97–63, may give its first subsequent authorization or approval under this exemption in accordance with the procedures contained in this section II(p), such independent fiduciary must be provided with a statement indicating that PTE 97–63 has been replaced by this exemption, a copy of this Notice, and a copy of the final exemption, if granted.

In order to maintain consistent language throughout the exemption, the Department has determined in the final exemption to adopt the following wording for section II(p):

In addition, before an independent fiduciary of a Client Plan (and/or the independent fiduciary of a CIF, as applicable), whose initial authorization was given pursuant to PTE 97–63, may give its first subsequent authorization or approval under this exemption in accordance with the procedures contained in this section II(p), such independent fiduciary must be provided with a statement indicating that PTE 97–63 has been replaced by this exemption, and a copy of the Notice, and a copy of the final exemption.

5. The Applicants requested amendment of the language of section II(a), section III(d), and section III(e), as set forth in the Notice, in the following locations:

(a) In section II(a) on page 6202, column 1, line 9;

(b) In section III(d) on page 6205, column 2, line 11; and

(c) In section III(e) on page 6205, column 2, line 43.

Specifically, the Applicants requested that the phrase, ''managed by,'' in section II(a) be revised to read ''trusteed, managed, or advised by.'' Further, in section III(d) and in section III(e), the Applicants requested the phrase, ''trusteed, or managed by'' should be revised (in both instances) to read, ''trusteed, managed, or advised by.'' As support for the requested changes, the Applicants point out that State Street would have even less discretionary authority with respect to an Index Fund or a Model-Driven Fund that is ''advised by'' State Street, as compared to the minimal degree of discretionary authority that State Street has with respect to such a fund that is ''managed by'' State Street.

Subsequently, in a letter dated, May 21, 2003, the Applicants withdrew their previous request and proposed that the language of section II(a), as set forth in the Notice on page 6201, column 3, lines 57–59 and on page 6202, column 1, lines 1–11, be revised as set forth below. Words that have been stricken from the text of the Notice appear in closed brackets, and additions to the text of the notice appear in bold italics.

Section II(a) of this exemption will be deemed satisfied notwithstanding the fact that State Street or any division or affiliate of State Street has or exercises discretionary authority or control [or renders investment advice] in connection with an index fund (the Index Fund(s)), as defined, below, in section III(d) of this exemption, or a model-driven fund (the Model-Driven Fund(s)), as defined, below, in section III(e) of this exemption, [managed by] ***as to which*** State

Street or any division or U.S. affiliate of State Street ***serves as discretionary trustee or manager and*** * * *.

The Department concurs and in the final exemption has amended the language of section II(a), as requested in the May 21, 2003, letter from the Applicants. In addition, in order to maintain consistent language throughout the exemption, the Department has determined to make a conforming changes to the definition of the term, ''Index Fund(s),'' as set forth in the notice in section III(d) on page 6205, column 2, line 11; and in the definition of the term, ''Model-Driven Fund(s),'' as set forth in the notice in section III(e) on page 6205, column 2, line 43. Accordingly, in the final exemption, the Department has adopted the following language for section III(d) and section III(e). Words that have been stricken from the text of the notice appear in closed brackets, and additions to the text of the notice appear in bold italics.

II(d) The term, ''Index Fund(s),'' refers to any investment fund, account or portfolio [sponsored, maintained, trusteed, or managed by] ***as to which*** State Street or a U.S. affiliate ***serves as discretionary trustee or manager and*** in which one or more investors invest, and

(1) which is designed to track the rate of return, risk profile, and other characteristics of an Index, as defined, below, in section III(f) of this exemption, by either:

(A) replicating the same combination of securities which compose such Index, or

(B) sampling the securities which compose such Index based on objective criteria and data;

(2) for which State Street or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund which is intended to benefit State Street or its affiliate or any party in which State Street or its affiliate may have an interest;

II(e) The term, ''Model-Driven Fund(s),'' refers to any investment fund, account, or portfolio [sponsored, maintained, trusteed, or managed by] ***as to which*** State Street or a U.S. affiliate ***serves as discretionary trustee or manager and*** in which one or more investors invest, and

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of State Street or an affiliate, to transform an Index;

(2) which contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit State Street, any affiliate of State Street, or any party in which State Street or any affiliate may have an interest;

6. The Department notes that the subject exemption provides relief for the lending of securities by a Client Plan or Client Plans (and/or by a CIF or CIFs, as applicable); provided State Street, through GSL, acts as securities lending agent. In order to describe the subject transaction with more clarity, the Department has decided to change the language of section I, as set forth in the notice at the following locations: (a) In section I(a)(2) on page 6201, column 2, line 58; (b) in section I(a)(2) on page 6201, column 3, line 2; and (c) in section I(c) on page 6201, column 3, lines 31–32. Accordingly, in the final exemption, the Department has adopted the following language for section I(a)(2)) and section I(c). Words that have been stricken from the text of the notice appear in closed brackets, and additions to the text of the notice appear in bold italics.

I(a)(2) to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s)); by an employee benefit plan (the Client Plan(s)),[including any] ***and/or by a*** commingled investment fund holding plan assets [for which] ***(the CIF(s)); provided*** State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent);

I(c) the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1) of the Code shall not apply to an arrangement whereby a U.S. registered broker-dealer affiliated with State Street (the Introducing Broker) receives compensation from ***a clearing broker*** (the Clearing Broker), ***as defined in section III(g),*** in connection with, or as a direct or indirect result of, the lending of securities to the Clearing Broker by [an employee benefit plan] ***a Client Plan (and/or a CIF, as applicable),*** for which GSL acts as securities lending agent; provided that the conditions, set forth in section II, below, are satisfied.

Further, throughout the notice, many references are made to the term, ''Client Plan(s).'' For some such references, the Department intended the term to include both a Client Plan and a CIF. For other such references, the Department intended the term only to refer to a Client Plan and not to a CIF. To eliminate ambiguity, the Department has determined to change the language, as set forth in the notice. Accordingly, throughout the final exemption, the Department has used the phrase, ''a Client Plan (and/or a CIF, as applicable).''

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11122) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received from the Applicants by the Department are made available for public inspection in the Public Disclosure Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to replace PTE 97–63, as amended.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This exemption is subject to the express condition that the Summary of Facts and Representations, as set forth in the notice, and the Summary of Facts and Representations, as set forth in the notice of Proposed Exemption relating to PTE 97–63, accurately describe the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department of Labor (the Department) hereby replaces Prohibited Transaction Exemption 97–63 (PTE 97–63), as set forth below.

I. Transactions

(a) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the lending of securities:

(1) to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or United States (U.S.) domiciled affiliate, as defined in this exemption in section III(a)(1), below, of State Street that is a successor to the activities of FMG; or

(2) to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s)); [2] by an employee benefit plan (the Client Plan(s)), and/or by a commingled investment fund holding plan assets (the CIF(s)); provided State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); [3]

(b) the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section of 4975 of the Code, by reason of 4975(c)(1)(A) through (E) of the Code, shall not apply to the receipt of compensation by GSL in connection with any securities lending transaction, as described, above, in section I(a) of this exemption; and

(c) the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1) of the Code shall not apply to an arrangement whereby a U.S. registered broker-dealer affiliated with State Street (the Introducing Broker) receives compensation from a clearing broker (the Clearing Broker), as defined in section III(g), in connection with, or as a direct or indirect result of, the lending of securities to the Clearing Broker by a Client Plan (and/or a CIF, as applicable), for which GSL acts as securities lending agent; provided that the conditions, set forth in section II, below, are satisfied.

II. Conditions

Section I of this exemption applies only if the conditions of Section II of this exemption are satisfied.

(a) Neither State Street, the SSB Group, GSL, the Clearing Broker, nor any other division or U.S. affiliate of State Street or of the Clearing Broker has or exercises discretionary authority or control with respect to the investment of the assets of a Client Plan (and/or a CIF, as applicable), involved in the transactions which are the subject of this exemption (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning the acquisition or disposition of securities available for loan by a Client Plan (and/or a CIF, as applicable).

Section II(a) of this exemption will be deemed satisfied notwithstanding the fact that State Street or any division or affiliate of State Street has or exercises discretionary authority or control in connection with an index fund (the Index Fund(s)), as defined, below, in section III(d) of this exemption, or a model-driven fund (the Model-Driven Fund(s)), as defined, below, in section III(e) of this exemption, as to which State Street or any division or U.S. affiliate of State Street serves as discretionary trustee or manager and in which Client Plans (and/or CIFs, as applicable) invest. An Index Fund or a Model-Driven Fund with multiple Client Plan (and/or CIF, as applicable) investors is referred to herein as a commingled Index Fund or a commingled Model-Driven Fund (the Commingled Index Fund(s) or the Commingled Model-Driven Fund(s));

(b) Except as otherwise provided, below, in section II(q) of this exemption with respect to Commingled Index Funds or Commingled Model-Driven Funds, before a Client Plan (and/or a CIF, as applicable) participates in a securities lending program, and before any loan of securities to the SSB Group or the Clearing Broker is effected, pursuant to this exemption, the fiduciary of the Client Plan (and/or the fiduciary of the CIF, as applicable) who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent; [4] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan (and/or CIF, as applicable) and the SSB Group or the Clearing Broker, as applicable, the specific terms of which are negotiated and entered into by GSL;

(c)(1) Each Client Plan (and/or CIF, as applicable) may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such Client Plan (and/or CIF, as applicable), on five (5) business days notice, whereupon the borrower shall deliver certificates for securities

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as ''the SSB Group.''

[3] For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent, and references to Client Plans (and/or CIFs, as applicable) should be deemed to refer to Client Plans (and/or CIFs, as applicable) for which GSL is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of reference.

[4] The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided, pursuant to Prohibited Transaction Exemption 81–6 (PTE 81–6) (46 FR 7527, January 23, 1981, *as amended* at 52 FR 18754, May 19, 1987) and Prohibited Transaction Exemption 82–63 (PTE 82–63)(47 FR 14804, April 6, 1982).

identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan (and/or CIF, as applicable) within: (A) The customary delivery period for such securities, (B) five (5) business days, or (C) the time negotiated for such delivery by the Client Plan (and/or CIF, as applicable) and the borrower, whichever is lesser. With respect to a Commingled Index Fund or a Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, termination is pursuant to the procedure, as set forth, below, in section II(q) of this exemption;

(2) If any event of default occurs (*e.g.*, a loan is terminated and the borrower fails to return the borrowed securities or the equivalent thereof within the time described, above, in section II(c)(1) of this exemption), to the extent that (A) liquidation of the pledged collateral, or (B) additional cash received from the SSB Group or the Clearing Broker, as applicable, does not provide sufficient funds on a timely basis, a Client Plan (and/or CIF, as applicable), including a Commingled Index Fund, or a Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, will have the right under the terms of the Loan Agreement to purchase securities identical to the borrowed securities (or their equivalent as discussed above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase. If the collateral is insufficient to accomplish such purchase, State Street will indemnify the Client Plan (and/or CIF, as applicable), including a Client Plan (and/or CIF, as applicable) invested a Commingled Index Fund or Commingled Model-Driven Fund, pursuant to section II(g) of this exemption;

(d) Each Client Plan (and/or CIF, as applicable), including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests will receive from the SSB Group or the Clearing Broker, as applicable, (either by physical delivery, or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group or the Clearing Broker, as applicable, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, an irrevocable bank letter of credit issued by a person other than State Street, the Clearing Broker, or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans). The collateral will be held on behalf of such Client Plan (and/or CIF, as applicable) in a manner that causes such collateral to be (i) segregated from and not commingled with the general assets of State Street, the Clearing Broker, or any of their affiliates, and (ii) identifiable and reachable by such Client Plan (and/or CIF, as applicable);

(e) The market value of the collateral (or in the case of a letter of credit the stated amount) must, as of the close of business on the preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (100%) (or such greater percentage as agreed to by the parties) of the market value of the loaned securities at the close of business on that day, the SSB Group or the Clearing Broker, as applicable, is required to deliver by the close of business on the following business day sufficient additional collateral such that the market value of the collateral will again equal at least 102 percent (102%). The applicable Loan Agreement will give Client Plans (and/or CIFs, as applicable), including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

(f) All GSL's procedures regarding securities lending activities will at a minimum conform to PTE 81–6 and PTE 82–63 (as amended from time to time or, alternatively, any superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(g) State Street will agree to indemnify and hold harmless each lending Client Plan (and/or CIF, as applicable) (including the sponsor and fiduciaries of each such Client Plan (and/or CIF, as applicable), and any Client Plan (and/or CIF, as applicable) invested in a Commingled Index Fund or Commingled Model-Driven Fund) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which such Client Plan (and/or CIF, as applicable) may incur or suffer directly arising out of the lending of the securities to the SSB Group or the Clearing Broker, as applicable; provided that this condition does not require State Street to indemnify a Client Plan (and/or CIF, as applicable) against any potential investment losses associated with the investment of cash collateral received by such Client Plan (and/or CIF, as applicable) in connection with such securities lending transactions;

(h) Each Client Plan (and/or CIF, as applicable), including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

(i) Each Client Plan (and/or CIF, as applicable), including a Client Plan (and/or CIF, as applicable) invested in a Commingled Index Fund or Commingled Model-Driven Fund, will receive prior to any approval of the lending of securities to the SSB Group or the Clearing Broker, as applicable, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, a copy of PTE 97–63, and a copy of the Notice of Proposed Exemption related to PTE 97–63 (the Previous Notice);

(j) Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group or to the Clearing Broker, as applicable; provided, however that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement shall be deemed satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client

Plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in a securities lending arrangement with GSL, the foregoing $50 million requirement is satisfied, if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any employee benefit plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such plan or an employee organization whose members are covered by such plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

(3) In the case of two or more Client Plans whose assets are commingled for investment purposes in an entity, whether or not through an entity described, above, in section II(j)(1) or (j)(2) of this exemption, the $50 million requirement shall be deemed satisfied if 50 percent (50%) or more of the units of beneficial interest in such entity are held by investors each having total net assets of at least $50 million. Such investors may include employee benefit plans, entities described, above, in section II(j)(1) or (j)(2) of this exemption, or other investors that are not employee benefit plans covered by section 406 of the Act, or section 4975 of the Code.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities;

(k) The terms of each loan of securities by a Client Plan (and/or by a CIF, as applicable), including by a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, to the SSB Group or the Clearing Broker, as applicable, will be at least as favorable to such Client Plan (and/or CIF, as applicable) or to the Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, as those of a comparable arm's-length transaction between unrelated parties;

(l) Each Client Plan (and/or CIF, as applicable), including a Client Plan (and/or CIF, as applicable) invested in a Commingled Index Fund or Commingled Model-Driven Fund, will receive quarterly reports with respect to the securities lending transactions which are the subject of this exemption, including but not limited to the information described in paragraph 26 of the Previous Notice, so that an independent fiduciary of the Client Plan (and/or CIF, as applicable) may monitor the securities lending transactions with the SSB Group and, if applicable, the Clearing Broker. In the event the identity of the Clearing Broker has changed since the issuance of the report for the immediately preceding calendar quarter, the report for the current calendar quarter must contain the name of the new Clearing Broker and the most recently available audited and unaudited financial statements of such Clearing Broker;

(m) Except in the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements, as set forth, below, in section II(q) of this exemption, before entering into the Loan Agreement and before a Client Plan (and/or a CIF, as applicable) lends any securities to the SSB Group or to the Clearing Broker, as applicable, an independent fiduciary of the Client Plan (and/or the independent fiduciary of the CIF, as applicable) will receive sufficient information, concerning the financial condition of State Street and, if applicable, the Clearing Broker, including but not limited to the most recently available audited and unaudited financial statements of State Street's parent corporation and, if applicable, the Clearing Broker. In the event of a change in the identity of the Clearing Broker, the name of such Clearing Broker and the information required by this section (m) with respect to the new Clearing Broker must be provided to the independent fiduciary of the Client Plan (and/or the independent fiduciary of the CIF, as applicable) before such Client Plan (and/or CIF, as applicable) lends any securities to the new Clearing Broker;

(n) Except in the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements, as set forth, below, in section II(q) of this exemption, the SSB Group and, if applicable, the Clearing Broker, will provide to a Client Plan (and/or to a CIF, as applicable) prompt notice at the time of each loan by such Client Plan (and/or CIF, as applicable) of any material adverse changes in State Street's and, if applicable, the Clearing Broker's financial condition, since the date of the most recently furnished financial statements.

If any such material adverse changes have taken place, GSL will not make any further loans to the Affiliated Broker Dealers and, if applicable, the Clearing Broker, unless an independent fiduciary of the Client Plan (and/or the independent fiduciary of the CIF, as applicable) is provided notice of the material change and approves the continuation of the lending arrangement in view of the changed financial condition.

In the case of a Client Plan (and/or CIF, as applicable) which is not invested in a Commingled Index Fund or Commingled Model-Driven Fund, if the independent fiduciary of the Client Plan (and/or the independent fiduciary of the CIF, as applicable), objects to any material adverse change, as disclosed pursuant to section II(n) of this exemption, such Client Plan (and/or CIF, as applicable) may terminate its participation in the Agency Agreement or the Primary Lending Agreement, without penalty to such Client Plan (and/or CIF, as applicable), pursuant to section II(c), above, of this exemption. In the case of a Client Plan (and/or CIF, as applicable) invested in a Commingled Index Fund or Commingled Model-Driven Fund, termination is pursuant to the procedure described, below, in section II(q)(2), of this exemption;

(o) With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of all securities lending clients of GSL will be to borrowers unrelated to both State Street and the Clearing Broker;

(p) If an independent fiduciary of a Client Plan (and/or an independent fiduciary of a CIF, as applicable) has given the initial affirmative authorization and approval for such Client Plan (and/or CIF, as applicable) to engage in securities lending transactions, pursuant to the terms of PTE 97–63, or pursuant to section II(b), above, of this exemption, then any subsequent authorization or approval contemplated under this exemption shall be deemed to have been given, if such independent fiduciary has not objected in writing to GSL within 30 days following disclosure to such independent fiduciary of all material

information required in connection with said authorization or approval. In addition, before an independent fiduciary of a Client Plan (and/or an independent fiduciary of a CIF, as applicable), whose initial authorization was given pursuant to PTE 97–63, may give its first subsequent authorization under this exemption in accordance with the procedures contained in this section II(p), such independent fiduciary must be provided with a statement indicating that PTE 97–63 has been replaced by this exemption, and a copy of the Notice, and a copy of the final exemption;

(q) In the case of a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or a CIF, as applicable) invests:

(1) The requirement, as set forth, above, in section II(b) of this exemption, shall not apply, provided that the information described in sections II(b), II(i), and II(m), above, of this exemption, including a description of the proposed securities lending arrangement, shall be furnished by GSL to a fiduciary who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker with respect to each Client Plan (and/or each CIF, as applicable) whose assets are invested in the Commingled Index Fund or Commingled Model-Driven Fund, not less than 30 days prior to implementation of any such securities lending arrangement, or any material changes thereto, and, thereafter, upon the reasonable request of the independent fiduciary of the Client Plan (and/or the independent fiduciary of the CIF, as applicable) whose assets are invested in the Commingled Index Fund or Commingled Model-Driven Fund.

In the event of a material adverse change in the financial condition of the SSB Group, or the Clearing Broker, as applicable, GSL will make a decision, using the same standards of credit analysis GSL would use in evaluating unrelated borrowers, whether to terminate existing loans and whether to continue making additional loans to the SSB Group, or the Clearing Broker, as applicable.

For purposes of section II(q) of this exemption, any requirement that the fiduciary be independent of State Street and its affiliates shall not apply in the case of an employee benefit plan sponsored and maintained by State Street and/or an affiliate for its own employees (the State Street Plan(s)), as defined, below, in section III(c) of this exemption; provided such State Street Plan is invested in a Commingled Index Fund or Commingled Model-Driven Fund, and provided further that at all times the value of the aggregate holdings of all State Street Plans in such fund comprises less than 10% of the value of the total assets of such fund;

(2) In the event that the independent fiduciary of a Client Plan (and/or the independent fiduciary of a CIF, as applicable) whose assets are invested in a Commingled Index Fund or Commingled Model-Driven Fund submits a notice in writing within 30 days after receipt of notification of implementation of any such securities lending arrangement, or any material changes thereto, to GSL, as securities lending agent to the Commingled Index Fund or Commingled Model-Driven Fund, objecting to the implementation of, material change in, or continuation of the securities lending arrangement, the Client Plan (and/or CIF, as applicable) on whose behalf the objection was tended is given the opportunity to terminate its investment in the Commingled Index Fund or Commingled Model-Driven Fund, without penalty to such Client Plan (and/or CIF, as applicable), no later than 35 days after the notice of withdrawal is received.

In the case of a Client Plan (and/or CIF, as applicable) that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the securities lending arrangement; but an existing securities lending arrangement need not be discontinued by reason of such Client Plan (and/or CIF, as applicable) electing to withdraw. If a Client Plan's (and/or CIF's, as applicable) withdrawal necessitates a return of securities to the Commingled Index Fund or Commingled Model-Driven Fund, the SSB Group or the Clearing Broker, as applicable, will transfer securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, or merger of the issuer of the borrowed securities) to the Commingled Index Fund or Commingled Model-Driven Fund within:

(A) The customary delivery period for such securities;

(B) five (5) business days; or

(C) the time negotiated for such delivery by GSL, as lending agent to the Commingled Index Fund or Commingled Model-Driven Fund, and the SSB Group or Clearing Broker, as applicable, whichever is least; and

(3) In the case of a Client Plan (and/or CIF, as applicable) whose assets are proposed to be invested in a Commingled Index Fund or Commingled Model-Driven Fund subsequent to the implementation of the securities lending arrangement, the Client Plan's (and/or CIF's, as applicable) investment in the Commingled Index Fund or Commingled Model-Driven Fund shall be authorized in the manner described, above, in section II(b) of this exemption;

(4) The provisions of section II(q) of this exemption shall not apply to a Commingled Index Fund or Commingled Model-Driven Fund, if more than ten percent (10%) of the ownership interests in such fund are held by State Street Plans;

(5) In the case of a Commingled Index Fund or Commingled Model-Driven Fund subject to the requirements of section II(q) of this exemption, GSL will furnish upon reasonable request to the independent fiduciary of any Client Plan (and/or to the independent fiduciary of any CIF, as applicable) invested in such fund,[5] the most recently available audited and unaudited financial statements of the parent corporation of State Street and, if applicable, the Clearing Broker (or any new Clearing Broker) prior to the authorization of the securities lending program, and annually after such authorization;

(r) In return for lending securities, a Client Plan (and/or CIF, as applicable), including a Commingled Index Fund or Commingled Model-Driven Fund in which a Client Plan (and/or CIF, as applicable) invests, either—

(1) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, such Client Plan (and/or CIF, as applicable) may pay a loan rebate or similar fee to the SSB Group or the Clearing Broker, as applicable, if such fee is not greater than the fee such Client Plan (and/or CIF, as applicable), would pay in a comparable arm's length transaction with an unrelated party);

(s) State Street and/or its affiliates maintain, or cause to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and

[5] The Department notes that it is the responsibility of the independent fiduciary for the Client Plan (and/or the independent fiduciary of the CIF, as applicable) to periodically monitor any material changes in the securities lending program, including but not limited to a change in the Clearing Broker or in the Clearing Broker's financial status, that may occur after an initial authorization to participate in the program, pursuant to this exemption.

examination, such records as are necessary to enable the persons described, below, in section II(t)(1), to determine whether the conditions of this exemption have been met, except that—

(1) This record-keeping condition shall not be violated if, due to circumstances beyond the control of State Street and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Street and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section II(t)(1) of this exemption; and

(t)(1) Except as provided in section II(t)(2), below, of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(s) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan, (and/or a CIF, as applicable), or a State Street Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, State Street Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, State Street Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in section II(t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of State Street or its affiliates or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this exemption, the following definitions shall apply:

(a) The term, ''affiliate'' or ''affiliates,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee;

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, ''State Street Plan(s),'' refer to employee benefit plans covered by the Act sponsored and maintained by State Street and/or an affiliate for its own employees;

(d) The term, ''Index Fund(s),'' refers to any investment fund, account or portfolio as to which State Street or a U.S. affiliate serves as discretionary trustee or manager and in which one or more investors invest, and

(1) which is designed to track the rate of return, risk profile, and other characteristics of an Index, as defined, below, in section III(f) of this exemption, by either:

(A) Replicating the same combination of securities which compose such Index, or

(B) sampling the securities which compose such Index based on objective criteria and data;

(2) for which State Street or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund which is intended to benefit State Street or its affiliate or any party in which State Street or its affiliate may have an interest;

(e) The term, ''Model-Driven Fund(s),'' refers to any investment fund, account, or portfolio as to which State Street or a U.S. affiliate serves as discretionary trustee or manager and in which one or more investors invest, and

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of State Street or an affiliate, to transform an Index;

(2) which contains ''plan assets'' subject to the Act, pursuant to the Plan Asset Regulation; and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit State Street, any affiliate of State Street, or any party in which State Street or any affiliate may have an interest;

(f) The term, ''Index,'' refers to a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers;

(2) the index is created and maintained by an organization independent of State Street; and

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of State Street; and

(g) The term, ''Clearing Broker,'' means a U.S. broker-dealer registered under the Securities Exchange Act of 1934 that is unrelated to State Street or its affiliates, that has net capital equal to at least $10 million and that regularly serves as a clearing broker for introducing brokers in the ordinary course of its business, but only in the context, and to the extent, of its service as a clearing broker for an Affiliated Broker Dealer that is acting as introducing broker.

For a complete statement of the facts and representations supporting the Department's decision to grant PTE 97–63, refer to the proposed exemption (62 FR 51684, October 2, 1997) and the final exemption (62 FR 66689, December 19, 1997). For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption replacing PTE 97–63, refer to the notice (68 FR 6197, February 6, 2003).

Signed at Washington, DC, this 19th day of June, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–15930 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11079, et al.]

Proposed Exemptions; Kinder Morgan, Inc.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. __, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffitt.betty@dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kinder Morgan, Inc., Located in Houston, Texas

[Exemption Application Number D–11079]

Proposed Exemption

The Department is considering the grant of the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions Involving Contributions In-Kind

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to: (1) The acquisition of publicly traded Employer Stock by the Trusts through the voluntary in-kind contribution (the Contribution) of such Stock by the Employer for the purpose of pre-funding welfare benefits provided by the Plans; and (2) the holding by the Trusts of Employer Stock acquired pursuant to a Contribution, provided that:

(a) Each Contribution is authorized pursuant to, and made in conformity with, all relevant provisions of each affected Plan;

(b) The Plans and/or Trusts do not pay any amount or type of consideration whether in cash or other property (including the diminution of any Employer obligation to fund a Plan) for Employer Stock contributed in-kind by the Employer;

(c) Each Contribution is voluntary and unrelated to any Employer obligation to fund a Plan;

(d) The Plans do not cede any right to receive a cash contribution from the Employer as a result of any Contribution made to any Plan;

(e) The Plans and/or Trusts do not pay any fees or commissions in connection with any Contribution; and

(f) Each condition set forth below in Section II is satisfied.

Section II—Conditions

The exemption is conditioned upon the adherence by the Employer to the material facts and representations described in this notice of proposed exemption and upon the satisfaction of the following requirements:

(a) Only Employer Stock that constitutes ''qualifying employer securities'' (QES), as such term is set forth in section 407(d)(5) of the Act, will be transferred by the Employer to a Trust pursuant to a Contribution; [1]

(b) Employer Stock transferred by the Employer on behalf of a Plan will thereafter be held by the Trust (or Trusts) for the purpose of funding welfare benefits for the participants and beneficiaries of such Plan;

(c) Employer Stock contributed to, or otherwise acquired by, a Trust will be held in a separate account (an Account) under such Trust;

(d) The appropriate fair market value of any Employer Stock contributed by the Employer to a Trust will be established by an Independent Fiduciary, as such term is defined in section III(c) of this proposed exemption;

(e) The Independent Fiduciary will represent the interests of the Plans for all purposes related to each Contribution for the duration of the Trust's holding of such Employer Stock, and will authorize the trustee of each Trust to accept Employer Stock pursuant to a Contribution only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans;

[1] Section 407(d)(5) of the Act provides that the term ''qualifying employer security'' means an employer security that is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan other than an individual account plan, stock is considered a ''qualifying employer security'' only if such stock satisfies the requirements of subsection 407(f)(1) of the Act. Section 407(f)(1) of the Act provides that stock satisfies such requirement if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

(f) The Independent Fiduciary will: (1) Verify that the price of Employer Stock contributed by the Employer is appropriate and, thereafter, monitor the Employer Stock and have sole responsibility for the ongoing management of the Accounts; and (2) take whatever action is necessary to protect the rights of the Plans funded by the Trusts, including, but not limited to, the making of all decisions regarding the acceptance and acquisition of Employer Stock contributed by the Employer, the retention and any disposition of such Stock, and the exercise of any voting rights associated with such Stock;

(g) With certain exceptions described in paragraphs (h) and (i) below, the total amount of: (1) Employer Stock; (2) qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act; and (3) QES other than the Employer Stock (collectively, the Limited Assets) held by each Plan shall not comprise more than twenty-five percent (25%) of the fair market value of the assets held by such Plan as determined on the date of each such transaction;

(h) For purposes of calculating the percentage limitation described in paragraph (g) of this section, and to the extent the conditions of Prohibited Transaction Exemption (PTE) 91–38 have been met,[2] Employer Stock will not constitute a ''Limited Asset'' to the extent that such Employer Stock:

(1) Is held by an unrelated common or collective trust fund maintained by an independent bank in which any of the Plans through the Trusts may invest; and

(2) Has a total fair market value that does not exceed five percent (5%) of the fair market value of each such common or collective trust fund;

(i) Notwithstanding the requirement set forth in paragraph (g) above, the amount of Limited Assets held by a Plan may exceed 25% of the total assets held by such Plan solely by reason of:

(1) The Limited Assets appreciate in value at a rate that is greater than the rate attributable to the Plan's non-Limited Assets, and such difference in rates causes the value of the Limited Assets to exceed 25% of the Plan's total asset value; or

(2) The non-Limited Assets have declined in value at a rate that is greater than the rate attributable to the Plan's Limited Assets, and such difference in rates causes the value of the Limited Assets to exceed 25% of the Plan's total asset value; and

(j) At no time will any of the assets of the Trusts revert to the use or benefit of the Employer.

Section III. Definitions

(a) The term ''Employer'' means Kinder Morgan, Inc., any successor to Kinder Morgan, Inc., and/or any affiliates of Kinder Morgan, Inc.;

(b) The term ''Employer Stock'' means shares of publicly traded common stock of the Employer and includes any replacement publicly traded shares of such stock;

(c) The term ''Independent Fiduciary'' means a fiduciary with respect to a Plan who is: (1) Qualified as an investment manager; (2) independent of and unrelated to the Employer; and (3) appointed to act on behalf of the Plans with respect to each Contribution. For purposes of this exemption, if granted, a fiduciary will not be deemed to be independent of and unrelated to the Employer if (i) such fiduciary directly or indirectly controls, is controlled by or is under common control with the Employer; or (ii) the Employer pays such fiduciary an amount of income during the fiduciary's current tax year that exceeds one percent (1%) of such fiduciary's gross income (for federal income tax purposes) over its prior tax year;

(d) The term ''Plan'' means an employee welfare benefit plan maintained by the Employer; and

(e) The term ''Trust'' means a trust which is qualified under Section 501(c)(9) of the Code, and established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans.

Summary of Facts and Representations

1. Kinder Morgan, Inc. (hereinafter, either the Employer or the Applicant) is an energy company that operates more than 30,000 miles of natural gas and products pipelines in various states. The Employer is the sole owner of Natural Gas Pipeline Company of America (NGPL), KN Energy Retail Division, Kinder Morgan Power Company, and KM International Services, Inc. The Employer also owns Kinder Morgan G.P., Inc., the general partner of Kinder Morgan Energy Partners, L.P. (KMP). The Employer had annual operating revenues of $1,054,918,000 in 2001 and the book value of the Employer's assets as of December 31, 2001 was $9,533,085,000.

The Employer Stock is common stock issued by the Employer. The Applicant represents that the Employer Stock is widely held, publicly traded, and may be freely exchanged on the New York Stock Exchange (NYSE symbol: KMI). The applicant states further that the Employer Stock qualifies as a ''qualifying employer security'', as defined by section 407(d)(5) of the Act, and also satisfies the requirements of section 407(f)(1) of the Act.

2. The Employer sponsors the Plans. The Plans provide various types of welfare benefits to current and/or former employees of the Employer.[3] Included in the Plans is the Retiree Plan, a welfare benefit plan that provides health, life, and disability benefits to all full-time salaried, non-union hourly, and union hourly retirees of the Employer.[4] In addition, the Retiree Plan provides disability benefits and life insurance benefits for a small, closed group of individuals currently employed by the Employer. The Applicant estimates that, as of March 1, 2002, the Retiree Plan had 4,891 participants and beneficiaries and $67,268,272 in net assets as of January 31, 2002. The Applicant represents that any of the assets held by the Trusts on behalf of the Retiree Plan may be used to support any of the payments made in connection with the benefits provided by the Retiree Plan.

According to the Applicant, the assets of the Retiree Plan are not invested in loans to any party in interest involved in the transactions described herein. However, the Applicant notes that less than one-half of one percent of the Retiree Plan's assets held in the Trusts

[2] PTE 91–38 (56 FR 31966 (July 12, 1991)) requires, among other things, that the interests of a plan in an unrelated common or collective trust fund may not exceed ten percent (10%) of the total of all assets in such common or collective trust fund.

[3] Currently, the Plans are: (1) The Retiree Medical Plan covering the United Mine Workers of America; (2) Western Alfalfa Corporation Retiree Medical Plan; (3) Kinder Morgan, Inc. Medical Plan; (4) Kinder Morgan Bulk Terminals, Inc. Health Benefit Plan; (5) Kinder Morgan, Inc. for Elizabeth River Terminals Employees; (6) Kaiser Foundation Health Plans, Inc. (Northern-Southern California); (7) Mountain Medical Affiliates (Colorado) Plan; (8) Health Net of California; (9) Kinder Morgan, Inc. Master Employee Welfare Benefit Plan; (10) Kinder Morgan, Inc. Dental Plan; (11) Kinder Morgan, Inc. Life Insurance Plan; (12) Kinder Morgan, Inc. Group Business Travel Insurance Plan; (13) Kinder Morgan, Inc. Accidental Death & Dismemberment Insurance Plan; (14) Kinder Morgan, Inc. Long Term Disability Insurance Plan; (15) Kinder Morgan, Inc. Flexible Spending Account Plan; (16) Kinder Morgan, Inc. Weekly Accident and Sickness Plan for Liquid Terminals Employees; (17) Kinder Morgan, Inc. Life Insurance Plan for Elizabeth River Terminals Employees; (18) Kinder Morgan, Inc. Weekly Accident and Sickness and Accidental Death and Dismemberment Insurance Plan for Elizabeth River Terminals Employees; (19) Kinder Morgan, Inc. Long Term Disability Insurance Plan for Elizabeth River Terminals Employees; (20) Kinder Morgan, Inc. Dental Expense Insurance Benefit Plan for Elizabeth River Terminals Employees; (21) Kinder Morgan, Inc. Severance Plan; and (22) Kinder Morgan, Inc. Vision Plan.

[4] The Employer currently anticipates pre-funding only the Retiree Plan to the extent this proposed exemption is granted.

may be invested indirectly (through certain funds maintained by an independent bank) in securities of the Employer that constitute QES. The Applicant represents that such investment is permitted by section 407(a) and 408(e) of the Act.[5]

3. The Trusts are voluntary employees' beneficiary association trusts (VEBAs). The following Trusts are used to fund the Retiree Plan (the Retiree Plan Trusts): (1) The KMI Post-Retirement VEBA Trust (Bargained VEBA); (2) the KMI Post-Retirement Non-Bargaining VEBA Trust (Nonbargained Medical VEBA); (3) the KMI Retiree Life Insurance VEBA Trust (Life Insurance VEBA); and (4) the KMI Retiree Contributions VEBA Trust (Retiree Contribution Funding VEBA). The Applicant states that each Trust is intended to meet the requirements of section 501(c)(9) of the Code. As such, the trust agreement with respect to each Retiree Plan Trust or any other Trust prohibits the reversion to the Employer of the assets held by such Trust.

The Applicant states that the assets held by the Bargained VEBA are used to provide benefits to participants in the Retiree Plan that are covered under collective bargaining agreements. The assets held by the Nonbargained Medical VEBA, meanwhile, are used to provide benefits to participants in the Retiree Plan that are not covered under a collective bargaining agreement. The assets held by the Life Insurance VEBA are used to provide death benefits to both bargained and nonbargained Retiree Plan participants. The assets held by the Retiree Contribution Funding VEBA are used to provide certain benefits to former bargained and nonbargained employees of the Employer and their dependents.

4. The transactions described in this proposed exemption involve the pre-funding of the Retiree Plan by the Employer.[6] The Applicant states that the Employer is not required to make minimum contributions to the Retiree Plan other than the contributions required under certain rate agreements (discussed below). Nevertheless, the Employer now seeks to pre-fund the Retiree Plan Trusts to a combined level of 100% of the accumulated post-retirement benefit obligation of the Retiree Plan, which is an amount redetermined annually by the third-party administrator of the Retiree Plan, based on the Retiree Plan's future obligations (determined in accordance with Financial Accounting Statement 106).

The Applicant believes that the Retiree Plan, and any other affected Plan, will benefit from the proposed Contributions. In this regard, the Applicant represents that certain opportunities for expansion, acquisition, and debt reduction in the energy industry has re-prioritized the use of cash available to the employer. At no time in the foreseeable future does the Employer anticipate the future funding of retiree welfare benefits through the making of substantial cash contributions to its Retiree Plan (other than those amounts as required under the Rate Agreements). Rather, the Applicant states that the Contributions offer a practical means of pre-funding the Retiree Plan and will make the benefits offered by such Plan more secure.

Initially, the Contributions will involve the transfer of specific amounts of Employer Stock to the Retiree Plan Trusts. With respect to the Bargained VEBA, the Employer seeks to contribute approximately $3,882,358 in Employer Stock and $3,430,041 in cash. To the extent this proposed exemption is granted, approximately 50% of the total assets held by the Bargained VEBA will be in the form of Employer Stock. Additionally, with respect to the Nonbargained Medical VEBA, the Employer intends to contribute approximately $11,920,891 in Employer Stock and approximately $767,457 in cash. To the extent this proposed exemption is granted, approximately 15.8% of the total assets held by the Nonbargained Medical VEBA will be in the form of Employer Stock. Further, with respect to the Life Insurance VEBA, the Employer intends to contribute approximately $4,480,667 in Employer Stock and approximately $2,037,024 in cash. To the extent this proposed exemption is granted, approximately 50% of the total assets held by the Life Insurance VEBA will be in the form of Employer Stock.[7]

Thereafter, if granted, the proposed exemption could affect other Plans that provide welfare benefits. In this regard, the Applicant states that Plans other than the Retiree Plan may prospectively hold Employer Stock contributed by the Employer. The Applicant notes that any Contribution to a Plan other than the Retiree Plan and/or any holding of Employer Stock by such Plan will be subject to the same conditions as those applicable to the Retiree Plan.

5. The Applicant states that each Contribution will be voluntary. In this regard, the Applicant represents that the receipt by a Plan of Employer Stock pursuant to a Contribution will not affect the right of such Plan to receive cash contributions from the Employer. The Applicant notes that the Employer is currently subject to two rate agreements (the Rate Agreements) entered into between the Federal Energy Regulatory Commission and NGPL and Kinder Morgan Interstate Gas Transmission LLC. Both Rate Agreements require the Employer to contribute a specified amount annually to a Trust for an indefinite period of time. The Applicant states that all of the contributions made by the Employer to satisfy the funding requirements under the Rate Agreements will be accounted for separately, and only cash contributions by the Employer will be used to satisfy the funding requirements under the Rate Agreements.

The Applicant notes that subsequent to the contribution of cash to the Retiree Plan pursuant to any Rate Agreement, such cash is not thereafter segregated from any of the assets held under the Retiree Plan. Therefore, the collective assets of the Retiree Plan are used to pay all Retiree Plan participant benefits as they become due. The Applicant represents that to the extent the Retiree Plan is not sufficiently funded at the time a participant's benefits are due, regardless of the reason for the insufficient funding, the Employer will pay from its general assets the benefits owed to such participant.

6. Each Contribution will be subject to several conditions designed to protect the Retiree Plan and any other affected Plans (hereinafter, either, a Plan). In this regard, Employer Stock transferred to a Trust will be held in the Accounts, which are separate accounts under such Trust, for the sole purpose of funding benefits provided by the Plan. Accordingly, at no time will such Employer Stock revert to the use or benefit of the Employer. In addition, each Contribution must be authorized by the appropriate Plan and made in conformity with the terms of such Plan. Further, no Plan will pay any

[5] The Department is expressing no opinion herein as to whether the securities of the Employer held by the Trusts constitute ''qualifying employer securities'', as defined in section 407(d)(5) of the Act. The Department is also expressing no opinion herein as to whether the acquisition or holding of such securities is permitted by section 407(a) of the Act or covered by the statutory exemption provided by section 408(e) of the Act. Further, the Department is offering no relief herein for transactions other than those described in section I of this proposed exemption.

[6] However, the Applicant notes that other Plans may be affected since the manner in which welfare benefits are provided to the Employer's current and former employees is subject to periodic restructuring.

[7] The Retiree Contribution Funding VEBA is funded through contributions derived from participants in the Retiree Plan. As such, this VEBA will not receive any Employer Stock pursuant to the Contribution.

consideration for the Employer Stock nor any fees or commissions that arise in connection with the Contributions.

The Applicant notes that the transactions described herein require the oversight of an Independent Fiduciary. In this regard, a Plan fiduciary who is independent of the Employer and qualified as an investment manager must authorize each contribution of Employer Stock only after such Independent Fiduciary determines at the time of the transaction that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans. The Applicant represents that, to date, no Independent Fiduciary has been chosen. However, the Applicant states that the Employer may not pay any Independent Fiduciary that is chosen, or any successor thereto, an amount of income during the fiduciary's current tax year that exceeds one percent (1%) of such fiduciary's gross income (for federal income tax purposes) over its prior tax year. In addition, any Independent Fiduciary chosen by the Employer will acknowledge, in writing, that it: (1) Will act prudently and in the interest of the Plan's participants and beneficiaries with respect to the proposed transactions; and (2) fully understands that risks and benefits associated with the transactions discussed herein. The Applicant represents that any fees or costs associated with the Independent Fiduciary will be borne, either directly or indirectly, by the Trusts.

The Applicant represents that the Independent Fiduciary will establish the appropriate fair market value for the Employer Stock. In this regard, the Independent Fiduciary will: (1) Determine the recorded New York Stock Exchange closing price (the Closing Price) for the Employer Stock for the day on which such Employer Stock is contributed to a Trust; and (2) determine whether to discount the Closing Price by analyzing the percentage of issued and outstanding Employer Stock represented by the Contribution.[8]

Prior to approving any Contribution, the Independent Fiduciary will evaluate the appropriateness of the Trust(s)' acceptance of such Contribution given the investment needs of the affected Plan, the nature of the Contribution, and the impact of the Contribution on the risk and return characteristics of such Plan's portfolio.[9] With respect to the nature of the Contribution, the Applicant states that the Independent Fiduciary will perform an analysis of both the Employer Stock and the Employer for the purpose of: (1) Valuing such Employer Stock; and (2) analyzing the acquisition of such Employer Stock in light of the overall portfolio of the affected Plan. The Employer will provide the Independent Fiduciary with access to all information on the Employer that the Independent Fiduciary reasonably requires to make these analyses, including financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports.

The Applicant represents that the Independent Fiduciary will also have full discretion to accept or reject any Contribution, and to otherwise manage the Accounts subject to the specific investment allocation policies and guidelines of the Plan (the Investment Guidelines) as mutually agreed between the Employer and the Independent Fiduciary. These Guidelines will be re-evaluated at least annually by the Independent Fiduciary and the Employer. The Investment Guidelines may prohibit investment of assets in certain types of investments. Notwithstanding the Investment Guidelines mutually agreed to by the parties, the Independent Fiduciary and any successor Independent Fiduciary will remain subject to the fiduciary responsibility provisions of Section 404 of ERISA.

The Applicant represents that the Independent Fiduciary will analyze the impact of the Contribution on the risk and return characteristics of the affected Plan's portfolio. In analyzing such impact, the Independent Fiduciary will review: The expected return of the portfolio; the overall volatility of the portfolio; and the beta risk level or market risk of the portfolio. The Independent Fiduciary will compare the performance of modeled portfolios that include the Employer Stock with the performance of comparable portfolios that do not include the Employer Stock. Based on the results of the Independent Fiduciary's analysis, the Independent Fiduciary must determine, prior to its authorization of a Contribution, that the risk/return tradeoff of accepting the Contribution would be at least as favorable, if not more favorable, to the affected Plan(s) than without such Contribution.

The Applicant notes that subsequent to a Contribution, the Independent Fiduciary will periodically monitor, and have the ability to so monitor, the Employer Stock. Accordingly, the ongoing management of the Employer Stock will be subject to the sole discretion of the Independent Fiduciary. Finally, the Independent Fiduciary will make all of the decisions regarding the retention and any disposition of the Employer Stock, and the exercise of any voting rights associated with such Stock.

7. The amount of Employer Stock contributed to the Trusts will be limited. In this regard, with limited exceptions, the aggregate fair market value of the Employer Stock will not exceed 25% of the fair market value of the assets of an affected Plan.[10] A Plan may hold and continue to hold Employer Stock in excess of 25% solely in situations where the Employer Stock: Appreciates at a greater rate than that of the other assets held under the Plan (*i.e.,* other than the Employer Stock); or depreciates at a rate that is less than that of the other assets held under the Plan. However, in no case will a Contribution be made to a Plan that contemporaneously holds an amount of Employer Stock that exceeds 25% of its total assets at the time of the Contribution.

The Applicant states that the Contributions will benefit the Retiree Plan, and any other Plan so affected. In this regard, the Applicant states that, subsequent to a Contribution, the Employer Stock will not be subject to any restrictions with respect to its marketability. Accordingly, the Employer Stock will be fully transferable at the discretion of the Independent Fiduciary. Further, the

[8] According to the Applicant, the Independent Fiduciary will discount the Closing Price of the Employer Stock contributed by the Employer to the Trusts if the Independent Fiduciary determines that such amount of Stock may not be sold at the Closing Price within a reasonable period of time from the date of the Contribution.

[9] This analysis will include: (1) A review the Investment Guidelines to determine whether investment in Employer Stock is appropriate; (2) a determination as to whether acceptance of the Employer Stock is within the Investment Guidelines with respect to the percentage of Plan assets that may be committed to Employer Stock; (3) a determination as to the value of the Plan's assets committed to equities at the time of the proposed Contribution; (4) a determination as to whether the Plan can accept the proposed Contribution without exceeding the Investment Guidelines relating to equity investments; (5) a determination as to whether the proposed Contribution would have a detrimental effect on the ability of the Retiree Plan to meet its liquidity needs; and (6) a confirmation that the proposed Contribution would not be in lieu of any required asset or cash contributions.

[10] This percentage limitation will generally be applied without regard to amounts of Employer Stock held by unrelated common or collective trust funds maintained by independent managers, so long as the Employer Stock held in such unrelated fund does not exceed five percent (5%) of the value of each such common or collective trust fund, and the Plan's interest in such fund does not exceed ten percent (10%) of the total assets in such common or collective trust fund.

Applicant anticipates that Employer Stock contributed by the Employer will appreciate in value and, therefore, will provide security to current and former employees of the Employer with respect to their receipt of welfare benefits through an affected Plan.

9. In summary, the Applicant represents that with respect to the transactions described herein, the requirements of section 408(a) of the Act have been met since, among other things:

(a) Each Contribution will be authorized pursuant to, and made in conformity with, all relevant provisions of each affected Plan;

(b) The Plans and/or Trusts will not pay any amount or type of consideration whether in cash or other property (including the diminution of any Plan funding obligation of the Employer) for Employer Stock contributed in-kind by the Employer;

(c) Each Contribution will be voluntary and unrelated to any current or future Employer obligation to fund a Plan;

(d) The Plans will not cede any right to receive a cash contribution from the Employer in connection with any Contribution made to any Plan;

(e) The Plans and/or Trusts do not pay any fees or commissions in connection with any Contribution;

(f) Only Employer Stock that constitutes QES will be transferred by the Employer to a Trust pursuant to a Contribution;

(g) The appropriate fair market value of any Employer Stock contributed by the Employer to a Trust will be established by an Independent Fiduciary;

(h) An Independent Fiduciary will represent the interests of the Plans for all purposes related to each Contribution for the duration of the Trust's holding of such Employer Stock and will authorize the trustee of each Trust to accept Employer Stock pursuant to a Contribution only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans;

(i) The Independent Fiduciary will: (1) Monitor the Employer Stock and have sole responsibility for the ongoing management of the Accounts; and (2) take whatever action is necessary to protect the rights of the Plans funded by the Trusts, including, but not limited to, the making of all decisions regarding the acceptance and acquisition of Employer Stock contributed by the Employer, the retention and any disposition of such Stock, and the exercise of any voting rights associated with such Stock;

(j) With certain exceptions, the total amount of the Limited Assets held by each Plan shall not comprise more than 25% of the fair market value of the assets held by such Plan; and

(k) At no time will any of the assets of the Trusts revert to the use or benefit of the Employer.

Notice to Interested Persons: The applicant represents that notice will be provided within sixty (60) calendar days from the date of publication of this Notice in the **Federal Register** to all active employees of the Employer by means of a posting at those locations within the principal places of employment of the Employer which are customarily used for notices regarding labor-management matters for review and by an electronic mailing (*i.e.*, e-mail) to all active employees. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, and a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interest persons of their right to comment and to request a hearing. All retirees of the Employer (including both those retirees who participate in a Plan and those terminated participants in a Plan who are not yet receiving retirement benefits) will be notified in a separate first class mailing by Silverstone Group, Inc., within sixty (60) calendar days of the date of publication of the notice of the proposed exemption in the **Federal Register**. Such newsletter will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, and a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Fifth Third Bank, Located in Grand Rapids, Michigan

[Application No. D–11101]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Old Kent Bank and Trust Company and its affiliates previously received the approval of the Department to engage in similar transactions (October 15, 1999) (FAN 99–25E) pursuant to PTE 96–62 (61 FR 39988, July 31, 1996) (EXPRO).

Section I—Proposed Exemption for Receipt of Fees

If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply effective on or after April 2, 2001, to: the receipt of fees by Fifth Third Bank, a Michigan banking corporation, and its affiliates (Fifth Third), from the Kent Funds prior to October 26, 2001 or from the Fifth Third Funds on or after October 26, 2001 (the Funds), open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser for the Funds, as well as for acting as administrator, custodian, accountant, transfer agent, and provider of other services to the Funds (including brokerage services in the future) which are not advisory services (collectively referred to as ''Secondary Services'' as defined in Section III(h) below), in connection with the purchase and sale of shares of the Funds by certain employee benefit plans and individual retirement accounts (the Plans) for which Fifth Third serves as fiduciary with investment discretion; provided that the conditions set forth in Section II are met.

Section II—Conditions

(a) No sales commissions, redemption fees, or other fees are paid by the Plans in connection with the purchase or sale of shares of the Funds.

(b) The price paid or received by a Plan for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction, and is the same price that would have been paid or received for the shares by any other investor at that time.

(c) Fifth Third, including any officer or director of Fifth Third, does not purchase or sell shares of the Funds from or to any Plan.

(d) Each Plan receives a credit, through a cash rebate that will be accrued daily and, if the Plan so elects, will be automatically invested in shares of the money market funds selected by the Plan, of such Plan's proportionate share of all fees charged to the Funds by

Fifth Third for investment advisory services, including any investment advisory fee paid to third-party subadvisors, not later than two business days (or, prior to the date this final exemption is published in the **Federal Register**, one business day) after receipt of such fees by Fifth Third. The crediting of all investment advisory fees to the Plans by Fifth Third is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

(e) The combined total of all fees received by Fifth Third for the provision of services to a Plan, and in connection with the provision of services to the Funds in which the Plan may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of ERISA.

(f) Fifth Third does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Plans are not employee benefit plans sponsored or maintained by Fifth Third.

(h) A second fiduciary acting for the Plan, who is independent of and unrelated to Fifth Third (the Second Fiduciary), receives, in advance of any initial investment by the Plan in a Fund, full and detailed written disclosure of information concerning the Fund, including, but not limited to:

(1) A current prospectus for each Fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services and any Secondary Services and all other fees to be charged to or paid by the Plan and by the Fund, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Fifth Third may consider such investment to be appropriate for the Plan;

(4) A statement describing whether there are any limitations applicable to Fifth Third with respect to which assets of the Plan may be invested in the Fund, and, if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) After consideration of the information described in paragraph (h) above, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by such Fund to Fifth Third (including fees for investment advisory services), and the cash rebate to the Plan of fees received by Fifth Third from the Fund for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Fifth Third (including fees for investment advisory services) are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) above shall be terminable at will by the Plan, without penalty to the Plan, upon receipt by Fifth Third of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the ''Termination Form'') with instructions on the use of the form must be provided to the Second Fiduciary at least annually. However, if the Termination Form has been provided to the Second Fiduciary pursuant to paragraph (k) or paragraph (l) below, then the Termination Form need not be provided again for an annual reauthorization pursuant to this paragraph unless at least six months have elapsed since the form was provided in connection with the additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by Fifth Third's investment services group of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Fifth Third to engage in the transactions described above on behalf of the Plan.

(k) The Second Fiduciary of each Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by Fifth Third to the Fund for Secondary Services at least 30 days prior to the implementation of such increase in fees. The disclosure will be accompanied by a copy of the Termination Form, with instructions as described in paragraph (j) above. The Second Fiduciary will also receive full written disclosure, prior to the effective date, in a Fund prospectus or otherwise, of any increases in the rates of fees charged by Fifth Third to the Fund for investment advisory services even though such fees will be rebated as required by paragraph (d) above.

(l) In the event that Fifth Third provides an additional Secondary Service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Fund to Fifth Third for any Secondary Services resulting from a decrease in the number of services performed by Fifth Third for such fees in connection with a previously authorized Secondary Service, Fifth Third will, at least 30 days in advance of the implementation of such additional service or effective fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of such services or of the effective increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form.

(m) On an annual basis, Fifth Third provides the Second Fiduciary of a Plan investing in the Fund with:

(1) A copy of the current prospectus for the Fund and, upon such Second Fiduciary's request, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by the Fund to Fifth Third (including fees for investment advisory services);

(2) A copy of the annual financial disclosure report of the Fund in which such Plan is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor, within 60 days of the preparation of the report;

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise; and

(4) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with Fifth Third, a statement specifying:

(i) The total (expressed in dollars) of brokerage commissions of each Fund's investment portfolio that are paid to Fifth Third by such Fund;

(ii) The total (expressed in dollars) of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Fifth Third;

(iii) The average brokerage commissions per share (expressed as cents per share) paid to Fifth Third by each investment portfolio of a Fund; and

(iv) The average brokerage commissions per share (expressed as cents per share) paid by each investment portfolio of a Fund to brokerage firms unrelated to Fifth Third.

(o) All dealings between the Plans and the Fund are on a basis no less favorable to the Plans than dealings with other shareholders of the Fund.

(p) Fifth Third maintains for a period of six years the records necessary to enable the persons described in paragraph (q) below to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fifth Third, the records are lost or

destroyed prior to the end of the six-year period, and (ii) no party in interest other than Fifth Third shall be subject to the civil penalty that may be assessed under section 502(i) of ERISA or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in paragraph (p) above and notwithstanding any provisions of section 504(a)(2) and (b) of ERISA, the records referred to in paragraph (p) above are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any fiduciary of a Plan who has authority to acquire or dispose of shares of the Funds owned by the Plans, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraph (1)(ii) and (iii) above shall be authorized to examine trade secrets of Fifth Third, commercial or financial information which is privileged or confidential, or records that are unrelated to the Plan(s) that the fiduciary serves or under which the participant or beneficiary is entitled to receive benefits.

(r) Within sixty (60) days of June 24, 2003, Fifth Third will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code in connection with the error in processing rebates of investment advisory fees during the period beginning October 26, 2001 and ending on March 1, 2003.

Section III—Definitions

For purposes of this exemption:

(a) ''Fifth Third'' means Fifth Third Bank, a Michigan banking corporation, and any affiliate thereof (as affiliate is defined below in paragraph (b) of this section).

(b) An affiliate of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) ''Fund'' or ''Funds'' means the Kent Funds prior to October 26, 2001, the Fifth Third Funds on and after October 26, 2001, and each separate investment portfolio thereof, or any other diversified open-end investment company registered under the 1940 Act for which Fifth Third serves as investment advisor and may also serve (or may in the future serve) as administrator, custodian, accountant, or transfer agent, or provide some other Secondary Service (as defined in paragraph (h) below) which has been approved by the Funds.

(e) ''Net asset value'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) ''Relative'' means a relative as that term is defined in section 3(15) of ERISA (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to Fifth Third. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Fifth Third if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Fifth Third;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of Fifth Third (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of Fifth Third (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment advisor, (ii) the approval of such purchase or sale between the Plan and a Fund, and (iii) the approval of any change in fees charged to or paid by the Plan in connection with any of the transactions described in Section II above, then subparagraph (2) above shall not apply.

(h) ''Secondary Service'' means a service other than an investment management, investment advisory, or similar service that is (or will in the future be) provided by Fifth Third to a Fund, including (but not limited to) brokerage services, custodian services, transfer and dividend disbursing agent services, administrator or sub-administrator services, accounting services, and shareholder servicing agent services.

(i) ''Termination Form'' means the form supplied to the Second Fiduciary that expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (i) of Section II above. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Plan and to notify Fifth Third in writing to effect a termination by selling the shares of the Fund held by the Plan requesting such termination within one business day following receipt by Fifth Third of the form; provided that if, due to circumstances beyond the control of Fifth Third, the sale cannot be executed within one business day, Fifth Third shall have one additional business day to complete such sale.

Effective Date: The proposed exemption, if granted, will be effective as of April 2, 2001, the date that Old Kent Financial Corporation, the holding company of Fifth Third, merged with and into Fifth Third Financial Corporation, a newly formed, wholly-owned subsidiary of Fifth Third Bancorp.

Summary of Facts and Representations

1. Fifth Third (formerly Old Kent Bank and Trust Company), a state-chartered Michigan banking corporation (Fifth Third or the Applicant) with its principal offices in Grand Rapids, Michigan, is a subsidiary of Fifth Third Financial Corporation (FTFC) which is itself a wholly-owned subsidiary of Fifth Third Bancorp (FT Bancorp), a regional bank holding company headquartered in Cincinnati, Ohio. As of December 31, 2002, the total assets of Fifth Third were approximately $81 billion. Fifth Third serves as a fiduciary with investment discretion to various employee benefit plans.

Fifth Third Bank, an Ohio banking corporation (FTB (Ohio)), a wholly-owned subsidiary of FT Bancorp, provides Secondary Services to the Funds, and provided investment advisory services to the Kent Funds from April 2, 2001, through April 30,

2001. Its principal offices are in Cincinnati, Ohio. Fifth Third Asset Management Inc. (FTAM), a registered investment advisor and wholly owned subsidiary of FTB (Ohio), serves as investment advisor to the Funds, with the exception of the Fifth Third Pinnacle Funds. FTAM's principal offices are in Cincinnati, Ohio. Heartland Capital Management, Inc. (Heartland), a registered investment advisor and wholly owned subsidiary of FTFC, serves as investment advisor to the Fifth Third Pinnacle Funds, an investment portfolio of the Funds. Heartland's principal offices are in Indianapolis, Indiana. BISYS Fund Services, Inc. (BISYS) is a Delaware corporation, which provides certain Secondary Services to the Funds on behalf of Fifth Third. Its principal offices are in Columbus, Ohio. The parties involved in the transactions described in this proposed exemption include Fifth Third (the Applicant), FTB (Ohio), FTAM, Heartland, BISYS, the Funds, and the Plans. The proposed exemption would also cover other Fifth Third affiliates which serve or may in the future serve as fiduciaries with investment discretion to employee benefit plans.

2. The Funds include the Kent Funds and the Fifth Third Funds (the Funds).[11] The Kent Funds, (established on May 9, 1986) merged into the Fifth Third Funds (established on September 15, 1988) effective October 26, 2001. The Funds are Massachusetts business trusts organized as open-end, diversified investment management companies registered under the Investment Company Act of 1940, as amended, consisting of a number of separate investment portfolios (Portfolios), each with a different investment objective.

The Fifth Third Funds had combined assets as of December 31, 2002 of $11,714,062,533.77. This proposed exemption relates to all of the Portfolios of the Funds in existence on or after April 2, 2001, including future Portfolios, and to any other investment company for which Fifth Third may provide investment advisory services and/or Secondary Services and which may be made available for investment to the Plans. The Plans involved in the proposed transactions are employee benefit plans (as defined in section 3(3) of ERISA) for which Fifth Third serves as fiduciary with discretionary authority over the investment of their assets, as well as individual retirement accounts with respect to which Fifth Third exercises investment discretion. The Plans include pension, profit sharing, and stock bonus plans of various sizes, as well as thrift and section 401(k) plans. However, Fifth Third's records are kept in terms of retirement accounts rather than plans. (There are typically multiple retirement accounts set up for a single plan.)

As of December 31, 2002, Fifth Third served as fiduciary for 17,336 retirement accounts, with assets ranging from approximately $30,000 to $1 billion. Of these, 1,271 were defined benefit and 16,065 were defined contribution retirement accounts. Of the defined contribution retirement accounts, 12,850 were related to cash or deferred arrangements (*i.e.*, section 401(k) plans). Fifth Third had full investment discretion with respect to 10,054 retirement accounts and was the directed trustee of 7,282 retirement accounts.

3. Fifth Third seeks retroactive and prospective relief to permit the Applicant and its affiliates, as fiduciaries exercising investment discretion over the assets of the Plans, to cause the Plans to purchase and sell shares of the Kent Funds (prior to October 26, 2001) or the Fifth Third Funds (on and after October 26, 2001), open-end, registered investment companies from which Fifth Third receives fees for the provision of investment advisory services and certain Secondary Services. Fifth Third, formerly known as Old Kent Bank and Trust Co. (Old Kent Bank), sought and received PTE 92–67, 57 FR 38859 (Aug. 27, 1992) on behalf of itself, affiliates, and subsidiaries. PTE 92–67 related to the cash rebate to the Plans of investment advisory fees paid to Old Kent Bank by the Funds. PTE 77–4 provides a class exemption from section 406 of the Act and section 4975 of the Code for a plan's purchases or sales of mutual fund shares, subject to certain conditions, where the fund's investment advisor is a plan fiduciary or affiliated with a plan fiduciary and not an employer of employees covered by the plan. Prior to April 2, 2001, Lyon Street Asset Management (''LSAM''), a subsidiary of the Applicant, served as investment advisor to the Kent Funds. Old Kent Bank subsequently obtained relief under EXPRO for transactions substantially similar to those which are the subject of this application, the receipt of fees by Old Kent Bank and its affiliates from the Funds for investment advisory services and for Secondary Services (provided to the Kent Funds by Old Kent Bank and its affiliates, as well as by BISYS, an unrelated party to such Funds). This relief under FAN 99–25E replaced the exemptive relief under PTE 92–67.

4. The Applicant states that effective April 2, 2001, Old Kent Financial Corporation (OKFC), the holding company of the Applicant, merged with and into FTFC, a newly formed wholly-owned subsidiary of FT Bancorp, the holding company of FTB (Ohio), and other entities. OKFC was acquired by FT Bancorp in a stock transaction and as a result of the merger, Old Kent Bank became and remains a wholly owned subsidiary of FTFC.[12] Old Kent Bank was renamed Fifth Third Bank and continues to be a Michigan banking corporation. Its Board of Directors remains substantially unchanged, and it is the legal entity that operates all of the ongoing former Old Kent Bank banking and trust business locations. There was no transfer of ownership of the banking and trust operations of Old Kent Bank to any unrelated entity, except that some duplicate branch locations were divested and certain nonbanking lines of business were sold.

5. In FAN 99–25E, LSAM, a subsidiary of Old Kent Bank (now Fifth Third Bank), was described as the investment advisor to the Kent Funds, an open-end, registered investment company. Following the merger, the Applicant states that FTB(Ohio) created a new asset management subsidiary, FTAM. FTAM began advising the Kent Funds as of April 30, 2001.[13] FTAM

[11] Where applicable, the term ''Funds'' as used herein also refers to any other diversified open-end investment company registered under the 1940 Act for which Fifth Third may in the future serve as investment advisor. Where required by the context, the term ''Fund'' when used herein in the singular refers both to the Kent Funds prior to October 26, 2001, and to the Fifth Third Funds on and after October 26, 2001.

[12] The Applicant states that FT Bancorp and OKFC had initially entered into an Agreement and Plan of Merger dated as of November 20, 2000 (the Original Merger Agreement). The Original Merger Agreement was amended and restated as of January 16, 2001 (the Restated Merger Agreement). FTFC was also a party to the Restated Merger Agreement. Old Kent Bank was a wholly owned subsidiary of OKFC with business locations throughout Michigan and in Illinois. Upon consummation of the merger pursuant to the Restated Merger Agreement, OKFC merged with and into FTFC, so that FTFC was the surviving corporation. The merger was intended and consummated as a reorganization under the provisions of section 368 of the Code, as well as a plan of reorganization for purposes of sections 354, 361, and 368 of the Code. The merger was consummated in accordance with the Michigan Business Corporation Act and the Ohio General Corporation Law. The surviving corporation, FTFC, continues its corporate existence under the laws of the state of Ohio. Subject to normal exclusions and adjustments, at the effective time of the merger, each outstanding share of common stock of OKFC was exchanged for a fractional share of the common stock of FT Bancorp. The exchange ratio was 0.74, so that each share of common stock of OKFC became a 0.74 fractional share of common stock of FT Bancorp. The merger was effective at 12:01 a.m. on April 2, 2001.

[13] See below, during the period from April 2, 2001 (the date of the merger) through April 30,

employed many of the same individuals who staffed LSAM, and those individuals continued to advise the Kent Funds after the merger. Thus, the Applicant represents that the change to FTAM did not involve a change in actual control or management of the Kent Funds. Further, the investment advisory fees paid by the Kent Funds to FTB(Ohio) for April 2001 and to FTAM thereafter were identical to the fees that the Kent Funds previously paid to LSAM. Also in FAN 99–25E, Old Kent Bank, Old Kent Securities Corporation, and other affiliates of Old Kent Bank were described as performing secondary services for the Kent Funds. Old Kent Securities Corporation merged with and into Fifth Third Securities Corporation, a subsidiary of FTFC. Fifth Third Securities Corporation employed many of the same individuals who staffed Old Kent Securities Corporation. However, after the merger, secondary services were provided to the Kent Funds by FTB(Ohio) under substantially identical fee arrangements. Additionally, FAN 99–25E mentioned BISYS, an unrelated entity, as a provider of secondary services to the Kent Funds. After the merger, BISYS continued to provide secondary services to the Kent Funds as FTB(Ohio)'s agent.

LSAM ceased to serve as investment advisor to the Kent Funds effective April 2, 2001. From April 2, 2001, through April 30, 2001, the Kent Funds were advised directly by FTB (Ohio) pursuant to an Interim Advisory Agreement. Effective April 30, 2001, the Interim Advisory Agreement was assumed by FTAM, a subsidiary of FTB (Ohio), which provided investment advisory services to the Kent Funds from April 30, 2001, through October 26, 2001. Secondary Services were provided to the Kent Funds between April 2, 2001, and October 26, 2001, by affiliates of the Applicant, including FTB (Ohio), and by BISYS. Effective October 26, 2001, the Kent Funds were merged with and into the Fifth Third Funds. All of the assets in each of the portfolios of the Kent Funds were transferred to newly created shell portfolios under the Fifth Third Funds, and shareholders of the Kent Funds became shareholders of the Fifth Third Funds. FTAM serves as investment advisor to the Fifth Third Funds, with the exception of the Fifth Third Pinnacle Funds, which is advised by Heartland. Secondary Services are provided to the Fifth Third Funds by FTB (Ohio) and by BISYS. Other Fifth Third affiliates may in the future also provide investment advisory services and Secondary Services to the Fifth Third Funds.

The Kent Funds themselves continued until October 26, 2001. On that date, all of the assets in each of the portfolios of the Kent Funds were transferred to newly created shell portfolios under the Fifth Third Funds, an open-end, registered investment company. The Applicant represents that (1) the roles of all service providers, including FTAM, FTB(Ohio), and BISYS, are the same with respect to the Fifth Third Funds as they had been with respect to the Kent Funds prior to October 26, 2001; (2) the fees paid by the new portfolios of the Fifth Third Funds to FTAM and to FTB(Ohio), BISYS, and any other secondary service providers are identical to the fees previously paid by the Kent Funds; (3) FTB(Ohio) has formally committed itself to maintaining total fund operating expenses (as a percentage of total assets), until at least April 2, 2003, at a level less than or equal to the level of such expenses for each corresponding Kent Fund as of April 2, 2001 (the date of the merger, as described above); and (4) the operation of the cash rebates to plan accounts, as described in FAN 99–25E, remains unchanged.

6. Fifth Third requests that FAN 99–25E be replaced by this proposed exemption effective as of April 2, 2001 and requests that the proposed exemption contain one prospective modification to the described transactions.

Fifth Third requests relief for the following transactions:

(a) The payment of investment advisory fees by the Plans to Fifth Third with respect to assets of the Plans invested in the Funds. Each Plan will receive a rebate of its proportionate share of investment advisory fees charged to the Funds by Fifth Third. The Plans will receive such rebate in the form of cash or, if an election has been made by a Plan, in the form of a cash rebate applied to the purchase of additional money market funds shares, in either case within two business days of the receipt of the fees by Fifth Third. If a Plan elects to have its cash rebate applied toward the purchase of additional shares, the fair market value of such shares on the date of purchase equals the amount of the cash rebate.

(b) The receipt and the retention of fees paid by the Funds to Fifth Third for certain Secondary Services provided to the Funds. Fifth Third currently acts as administrator, transfer agent, and fund accountant for the Funds, and may in the future provide additional Secondary Services to the Funds. The fees for such services are based on a percentage of the Funds' average daily net assets. Such fees are accrued daily and paid monthly.

In addition to the changes to the parties, there is one difference in the above transactions from those described in FAN 99–25E. The Applicant requests that, with respect to the transactions occurring on and after the date of publication in the **Federal Register** of the notice granting this exemption, Fifth Third be allowed to credit a Plan, through a cash rebate that will be accrued daily and, if the Plan so elects, will be automatically invested in shares of the money market funds selected by the Plan, of such Plan's proportionate share of all fees charged to the Funds by Fifth Third for investment advisory services, including any investment advisory fee paid to third-party subadvisors, not later than two business days after receipt of such fees by Fifth Third. The crediting of all investment advisory fees to the Plans by Fifth Third will continue to be audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

Fifth Third asserts that the request for up to two business days to effect the rebate is primarily because of the potentially larger number of accounts that may require rebating due to the merger of the OKFC group of companies and the FT Bancorp group of companies. Specifically, the Applicant represents that the number of accounts that currently receive rebates is 662; the number that potentially could participate in the rebating program is 6,355. Although Fifth Third expects to be able to effect the rebate in one business day after receipt of the fees in most cases, the Applicant believes the two business days would give Fifth Third more time to deal with any unexpected glitch in the processing of a large number of rebates without having to be concerned about violating the terms of the exemption and thus possibly engaging in a prohibited transaction.

7. The Applicant represents that the procedures set forth in FAN 99–25E have been followed to date, even though the relevant parties have changed due to the merger of OKFC, the holding company of Old Kent Bank (the prior name of Fifth Third Michigan), with and into FTFC, a newly formed wholly-owned subsidiary of FT Bancorp, effective April 2, 2001. The appropriate officers of Fifth Third Bank acknowledge that the procedures set forth in FAN 99–25E have been

2001, the Kent Funds were advised by FTB(Ohio) pursuant to an Interim Advisory Agreement. This Interim Advisory Agreement was assumed by FTAM as of April 30, 2001.

followed despite the change in the relevant parties.

8. The Applicant represents that, prior to investing a Plan's assets in a Fund, Fifth Third will obtain the advance approval of an independent second fiduciary of the Plan, who will generally be the Plan's named fiduciary, trustee, or sponsoring employer (the Second Fiduciary). Fifth Third will provide the Second Fiduciary with a current prospectus for the Funds, a statement describing the fees to be charged to or paid by the Plan and by the Funds (including fees for investment advisory or similar services and any Secondary Services), a statement of the reasons why Fifth Third considers the investment to be appropriate for the Plan, and a statement describing any applicable limitation with respect to which assets of the Plan may be invested in the Funds.

9. Under section 408(a) of ERISA, the Department may not grant an exemption unless a determination is made that such exemption is (i) administratively feasible; (ii) in the interests of the plan and of its participants and beneficiaries, and (iii) protective of the rights of the plan's participants and beneficiaries.

Fifth Third asserts that the exemption would be administratively feasible because it is substantially similar to FAN 99–25E, except for changes to the parties and limited additional relief provided on a prospective basis to allow the maximum permitted time for rebating Funds-level fees to Plans to increase to two business days. The Applicant does not believe that these changes will significantly affect the protective nature of the exemption. The exemption establishes objective criteria for its application, and compliance with such criteria can be readily determined and audited. Fifth Third states that the proposed exemption is in the interests of investing plans and their participants and beneficiaries since investing assets of a Plan in mutual funds such as the Funds provides the Plans, and their participants and beneficiaries, with certain advantages which are not available through investment in commingled investment trusts (CITs), the alternative collective investment vehicle in which Fifth Third invests assets of employee benefit plans. Fifth Third notes that, because mutual funds share prices are published in daily newspapers, individuals are able to track the performance of their accounts on a daily basis. The daily deposit and redemption features of mutual funds allow for investment of new monies without delay and allow assets of the Plan to realize investment returns up to the date of redemption. Additionally, the various Portfolios offered by the Funds allow the investment managers or participants to transfer their investments between Portfolios with different investment objectives more promptly than could be done using CITs. Distributions can also be made in Funds shares, which eliminates any cost that might be associated with reinvesting cash distributions into new forms of investments. In sum, the Funds are an efficient alternative for the collective investment of assets, and the Plans will benefit from these efficiencies.

If the exemption is not granted, Plans for which Fifth Third serves as a fiduciary with investment discretion will be precluded from investing their assets in the Funds using the rebate mechanism. Fifth Third believes that the Funds represent appropriate investment vehicles that should be made available to the Plans.

10. On February 25, 2003, Fifth Third informed the Department that the Applicant recently discovered that an inadvertent error was made in processing rebates of investment advisory fees to certain retirement accounts. The system Fifth Third has installed for processing rebates involves assigning a code to each asset (*i.e.*, each Fifth Third Fund) held in an account. The assigned code establishes the factor based on which the rebate is accrued and paid. The account itself is then coded to identify if that account is or is not to receive rebates. Fifth Third discovered that although each account was correctly coded, the system identified certain asset codes as ineligible to pay rebates to the accounts. As a result, accounts holding assets with those asset codes did not receive the full rebate to which they were entitled.

Fifth Third states that this error appears to have initially occurred at the time of the merger of the Kent Funds into the Fifth Third Funds effective October 26, 2001. Thus, the rebate of the fees paid for October 2001 was the first rebate affected by the error. Both the number of plans and IRAs affected and the dollar amounts involved are relatively small. Fifth Third has determined that 44 tax-qualified plans and 32 IRAs are involved. The amounts that should have been rebated and were not are $39,736.08 for tax-qualified plans and $8,120.09 for IRAs.

Fifth Third provides that it is correcting this error by returning the principal amount of the rebates to the applicable plans and IRAs plus earnings to the date of correction. The earnings will be calculated using the method set forth in the Department of Labor's Voluntary Fiduciary Correction (''VFC'') Program. Thus, the earnings added to each rebated amount will be the greater of ''Lost Earnings'' or the ''Restoration of Profits,'' both as defined in the VFC Program. *See* Sections 5(b)(5) and 5(b)(6) of the VFC Program. Fifth Third represents that the rebates are now functioning properly for all of the Fifth Third Funds. Thus, the fee rebates shown on the account statements for the tax-qualified plans and the IRAs will be correct going forward, beginning with the posting in early March for the fees paid in February 2003.

Fifth Third represents that within sixty (60) days of the date of publication in the **Federal Register** of the notice granting this exemption, Fifth Third will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code in connection with the error in processing rebates of investment advisory fees during the period beginning October 26, 2001 and ending on March 1, 2003.

11. In summary, First Third represents that the transactions described herein will satisfy the statutory criteria of section 408(a) of ERISA and section 4975(c)(2) of the Code for the following reasons: (a) The transactions will allow the Plans to continue to enjoy the advantages of investment in mutual Funds, including more ready access to information regarding performance, thus enabling Plan fiduciaries and participants to make more informed decisions regarding their investments; (b) prior to the initial investment of Plan assets in the Funds, a second, independent fiduciary of each Plan will receive full disclosure regarding the proposed investment and the fees to be received by Fifth Third, and has the opportunity to approve or disapprove the investment; (c) no sales commissions or redemption fees will be paid by the Plans in connection with the acquisition or sale of shares of the Funds; and (d) all dealings among the Plans, the Funds, and Fifth Third will be on a basis no less favorable to the Plans than such dealings with the other shareholders of the Funds.

Notice to Interested Persons: Fifth Third will furnish a copy of the notice of the proposed exemption along with the supplemental statement described at 29 CFR 2570.43(b)(2) to the named fiduciary of any affected Plan that Fifth Third serves as a fiduciary with investment discretion over such Plan's assets. The notice will be delivered by first class mail within 15 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy McColough of the Department, telephone (202) 693–8561. This is not a toll-free number.

Raleigh Pathology Laboratory Associates, P.A. Profit Sharing Plan (the Profit Sharing Plan), Located in Raleigh, NC

[Application No. D–11171]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[14] shall not apply to the proposed exchange of an unimproved waterfront lot (the Pine Knoll Shores Lot) owned by the Plan and allocated to the individually-directed account (the Account) in the Plan of James R. Edwards, M.D., for one unimproved tract of land (Parcel One) owned personally by Dr. Edwards and his spouse, Mrs. Delores Edwards.

This proposed exemption is subject to the following conditions:

(a) The exchange of the Pine Knoll Shores Lot between the Account and Dr. and Mrs. Edwards for Parcel One is a one-time transaction.

(b) The fair market value of the Pine Knoll Shores Lot and Parcel One is determined by qualified, independent appraisers, who will update their appraisal reports at the time the exchange is consummated.

(c) For purposes of the exchange, Parcel One has a fair market value that is no less than the fair market value of the Pine Knoll Shores Lot at the time the transaction is consummated.

(d) The terms and conditions of the exchange are at least as favorable to the Account as those obtainable in an arm's length transactions with an unrelated party.

(e) The exchange does not involve more than 25 percent of the Account's assets.

(f) The exchange allows the Account to divest itself of property that is susceptible to hurricane damage and high maintenance costs, and it permits the Account to acquire virtually maintenance-proof property having increased liquidity.

(g) Dr. Edwards is the only participant in the Plan whose Account is affected by the transaction and he desires that such transaction be consummated.

Summary of Facts and Representations

1. Raleigh Pathology Laboratory Associates, P.A. (the Employer) of Raleigh, North Carolina, is a professional corporation. Through duly licensed physicians and other employees, the Employer provides professional pathology services to patients of Wake Medical Center, patients of health maintenance organizations and others.

2. The Plan is a defined contribution plan which was established by the Employer, effective January 1, 2002, as a result of the merger of the Raleigh Pathology Laboratory Associates, P.A. Money Purchase Pension Plan (the Pension Plan), also sponsored by the Employer, into the Plan. As of December 31, 2001, which is the most recent date that financial information is available, the Plan had 20 participants and assets with an approximate aggregate fair market value of $13,885,737.83.

3. The Plan is administered by 8 trustees (the Trustees). The Plan's current Trustees are James R. Edwards, M.D., Gordon B. LeGrand, M.D., Dana D. Copeland, M.D., D. Emerson Scarborough, M.D., Dennis E. Ose, M.D., Cheryl A. Szpak, M.D., George H. Clarke, M.D., and Shrinivas Rajagopalan.

Pursuant to provisions of the Plan, each participant has the right to direct investments under such Plan for his or her own account. In such instances, the investments are earmarked for the account of the participants directing such investments.

4. Dr. Edwards, a stockholder, director and an employee of the Employer, as well as a Trustee, has an individually-directed account in the Plan. As of May 5, 2002, the assets in Dr. Edwards's Account were valued at $2,143,643.53.

5. Among the assets in Dr. Edward's Account is the Pine Knoll Shores Lot. This unimproved parcel of waterfront property is located at 122 Arborvitae Court, Pine Knoll Shores, Carteret County, North Carolina. The Pine Knoll Shores Lot is also legally described as ''Lot 11, Block TT, Section 5, Pine Knoll Shores Extension'' and it consists of approximately 9/10 of an acre of land. The property is not located in close proximity to any other property that is owned by Dr. Edwards.

The Account acquired the Pine Knoll Shores Lot as a real estate investment for $65,000 from Romaine and Kathryn Howard, who were unrelated parties, on September 30, 1981. Because the Account paid the Howards cash consideration for the Pine Knoll Shores Lot, the property was not encumbered by a mortgage. Currently, there is no mortgage or other encumbrances existing on the property and it represents approximately 19 percent of the assets of Dr. Edward's Account.

The Pine Knoll Shores Lot is located at the point where the Hoffman Inlet meets Bogue Sound. The lot has open water frontage on two full sides (approximately 202 feet on one side and 135 feet on the other). Although sea walls have been constructed on both sides of the property, they have required frequent maintenance since the North Carolina coastline is prone to hurricane damage.

Since the Pine Knoll Shores Lot has been allocated to the Account, it has not been used by or leased to anyone, including parties in interest. However, the Account has incurred $36,307 in maintaining the sea wall, $14,853 in real estate taxes,[15] and $7,571 for general maintenance for total expenses of approximately $58,731. Thus, together with the $65,000 acquisition price, the Account has expended $123,731 in connection with its interest in the Pine Knoll Shores Lot.

6. The Pine Knoll Shores Lot has been most recently appraised by Edward Michael Lupton, a North Carolina Certified Real Estate Appraiser, who is affiliated with the appraisal firm of Putnam Real Estate of Morehead, North Carolina. In an appraisal report dated December 17, 2002, Mr. Lupton, a qualified, independent real estate appraiser, placed the fair market value of a fee simple interest in the Pine Knoll Shores Lot at $408,000 as of the same date as his report. In valuing the Pine Knoll Shores Lot, Mr. Lupton utilized the sales comparison approach because he believed this method would provide the most reliable indication of market value since other valuation methods were not applicable to vacant lots in the subject neighborhood.

7. Because of ongoing expenses and the risk of further significant hurricane damage has left the Pine Knoll Shores Lot exposed to possible significant future losses, it is proposed that the Account divest itself of this property. Therefore, an administrative exemption is requested from the Department to

[14] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[15] Although the Plan acquired the Pine Knoll Shores Lot in 1981 and Dr. Edwards's Account began paying real estate taxes from that date, the applicant represents that Dr. Edwards has only been able to locate records relating to amounts paid for real estate taxes since 1992.

allow the Account to exchange the Pine Knoll Shores Lot for Parcel One. Although Parcel One does not officially exist at this time, it will be excised from a 20.9718 acre tract of land which is owned by Dr. and Mrs. Edwards and constitutes their homeplace. The subject property will occupy the southwest corner formed by the intersection of Brassfield Road and Cahill Road in Barton's Creek Township, Wake County, North Carolina and consist of approximately 4.017 acres of land. Further, Mrs. Edwards will, by quitclaim deed to Dr. Edwards, release her undivided interest in Parcel One. Following the exchange, Parcel One will constitute approximately 19 percent of the assets of the Account.

8. Currently, boundary lines have been established to form Parcel One by Mr. Ronald Thomas, an independent appraiser who is affiliated with the real estate appraisal firm of Worthy & Wachtel Inc. of Raleigh, North Carolina. In an appraisal report dated December 29, 2002, Mr. Thomas, using the sales comparison approach to valuation, placed the fair market value of Parcel One at $408,000 as of December 17, 2002. Mr. Thomas also determined that the ''highest and best use'' of Parcel One is for single family residential development as four building lots, each consisting of one acre.

9. Once formed and duly recorded with the Wake County Register of Deeds, Parcel One will be transferred by Dr. Edwards to his Account. Simultaneously with the exchange, the Plan trustees will transfer the Pine Knoll Shores Lot to Dr. Edwards. The Account will not pay any real estate fees or commissions in connection with the transaction. In addition, the Account will receive real property having an independently appraised fair market value that is equal to the fair market value of the Pine Knoll Shores Lot on the day of the exchange. For this purpose, the appraisers will update their appraisals just prior to or on the date of the transaction.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The exchange of the Pine Knoll Shores Lot by the Account to Dr. and Mrs. Edwards for Parcel One will be a one-time transaction.

(b) The fair market values of the Pine Knoll Shores Lot and Parcel One will be determined by qualified, independent appraisers.

(c) For purposes of the exchange, Parcel One will have a fair market value that will be no less than the fair market value of the Pine Knoll Shores Lot at the time the transaction is consummated.

(d) The terms and conditions of the exchange will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(e) The exchange will not involve more than 25 percent of the Account's assets.

(f) The exchange will allow the Account to divest itself of property that is susceptible to hurricane damage and high maintenance costs, and it will permit the Account to acquire virtually maintenance-proof property having increased liquidity.

(g) Dr. Edwards is the only participant in the Plan whose Account will be affected by the transaction and he desires that such transaction be consummated.

Notice to Interested Persons

Because Dr. Edwards is the only participant in the Plan whose Account will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a hearing are due 30 days after publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji, telephone (202) 693–8567. (This is not a toll-free number.)

Valley OB-GYN Clinic P.C. Employees Pension Plan (the Plan), Located in Saginaw, Michigan

[Application No. D–11172]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of $550,000 by the Plan to Valley OB-GYN Realty Company (the Company), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

a. The Loan does not exceed 25% of the total assets of the Plan at any time;

b. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

c. The Loan is secured by a building which has a fair market value, as determined by an independent, qualified appraiser, of at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest) throughout its duration (unless other property is pledged as collateral, as noted below in condition f.);

d. An independent, qualified fiduciary (the Independent Fiduciary) reviews the proposed terms and conditions of the Loan, and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

e. The Independent Fiduciary monitors the Loan throughout its duration and takes whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

f. The Plan has the right, under the terms of the Loan and mortgage note related thereto, to require the Company to pledge additional property as collateral for the Loan, in the event such property is needed to maintain full collateralization at the amount specified herein.

Summary of Facts and Representations

1. The Plan is a qualified retirement plan sponsored by Valley OB-GYN Clinic, P.C (the Employer). The trustees of the Plan are Ronald C. Hazen, M.D., James R. Hines, M.D., and Duane B. Heilbronn, Jr., M.D. (the Trustees). Duane B. Heilbronn acts as the Plan's administrator. As of December 31, 2001, the Plan had approximately 42 participants and $7,702,976 in total assets.

2. The sponsor of the Plan is the Employer, a Michigan professional services corporation owned in equal shares by Ronald C. Hazen, M.D., James R. Hines, M.D., Duane B. Heilbronn, Jr., M.D., John Llewelyn, M.D. and Kenneth Su, M.D. The Employer is a medical practice.

3. The Loan will have a principal amount of $550,000, and a ten (10) year duration. The Loan will bear an interest rate of 9% per annum. The promissory note evidencing the Loan (the Note) requires monthly payments of principal and interest in the amount of $6,967 (or more) to be made on or before the 1st of each month. The Note requires monthly payments of principal and interest amortized over the entire ten (10) year duration of the Loan. The Note further provides that if any default should be made in the payment of any installment of principal and interest due thereunder, and should the Company fail to cure such default within thirty (30) days after delivery of written notice

thereof, then the full unpaid balance of the Note and all interest accrued thereon shall become immediately due and payable. The Plan, as the payee under the Note, shall have and may exercise any one or more of the rights and remedies provided by law, pursuant to the mortgage and other documents relating thereto. Among other things, the Note reserves the Plan the right to require the Company to pledge additional property as collateral for the Loan in the event such property is needed to maintain full collateralization at amounts which exceed at least 150% of the outstanding principal balance of the Loan.

The applicant represents that the Loan will represent no more than 25% of the Plan's total assets at any time.

4. The Loan will be secured at all times by a mortgage (the Mortgage) on a medical office building (the Building) owned by the Company that is currently leased to the Employer. The Building is located at 926 North Michigan Avenue, Saginaw, Michigan. The Mortgage will be duly recorded under the laws of the State of Michigan.

The Building was appraised (the Appraisal) on October 11, 2002 by Roland M. Adams, SRA, a certified independent real estate appraiser (Mr. Adams) with Adams Appraisal Services, located in Freeland, Michigan. In the Appraisal, Mr. Adams relied primarily on the cost and income approaches to value the Building.

Mr. Adams states that the cost approach is based on the idea that an informed purchaser would pay no more than the cost of producing a substitute property with the same utility as the subject property. Under the cost approach, the fair market value of the Building was determined to be approximately $926,000.

Mr. Adams also considered the income approach, where such analysis converts anticipated benefits (dollar income or amenities) to be derived from the ownership of property into a value estimate. The income approach is widely applied in appraising income-producing properties. Anticipated future income and/or reversions are discounted to a present-worth figure through the capitalization process. Mr. Adams stated that under the income approach, the fair market value of the Building was approximately $922,000.

Mr. Adams states that due to the Building's overall good condition, he gave equal consideration to the cost and income approaches. In conclusion, Mr. Adams determined that the fair market value of the Building was $925,000, as of October 11, 2002.

5. Citizens Bank in Saginaw, Michigan (the Bank) has examined the terms of the Loan. By letter dated April 21, 2003, Kimberly E. Johnson, a vice president of the Bank, represents that the Bank would provide a similar loan under the same terms for the same amount, payable in equal monthly installments of principal and interest over a ten (10) year period at an interest rate of 9% per annum.

6. The Loan will be monitored by Ronald Krawczyk, CPA (Mr. K), who will serve as the independent fiduciary (the I/F) on behalf of the Plan for purposes of the Loan. Mr. K has submitted a statement dated April 17, 2003, in which he discusses his role as the I/F. Mr. K believes that the Loan would be in the best interest of the Plan's participants and beneficiaries. Mr. K has reviewed the terms and conditions of the Loan in consideration of the Plan's overall investment portfolio, and found the Loan to be consistent with the Plan's overall investment objectives and liquidity needs. In this regard, Mr. K represents that the terms and conditions of the Loan are comparable with, and as favorable to, the Plan as the terms and conditions of a similar loan between unrelated parties. Mr. K believes that the Loan will be a stable investment opportunity that will provide consistent returns for the Plan at a steady rate of interest commensurate with market rates. The Loan will be adequately collateralized by property (*i.e.*, the Building or other property) that will be valued in excess of at least 150% of the outstanding principal amount of the Loan. Mr. K further states that the proposed rate of return for the Loan will exceed similar rates of return that could be obtained through other fixed-income investment vehicles. Mr. K believes that the Loan will insure a favorable rate of return to the Plan on a continuing basis, throughout its duration.

As the I/F, Mr. K will have an affirmative duty to monitor the Loan to ensure that monthly payments are timely made by the Company. Mr. K will consult with counsel for the Plan on a regular basis to determine that no default occurred under the terms of the Loan. In the event of default, Mr. K will act for the Plan and promptly transmit notice of default to the Company and the Trustees. Mr. K will then monitor, on behalf of the Plan, the progress for any cure of such default. Mr. K will have the authority and ability to act unilaterally to protect the interests of the Plan with respect to all options for recovery on the Note, under applicable Michigan law, including foreclosure on the Building with the right to sell the Building, or other property that is securing the Loan to third parties. Such action may be taken by Mr. K without the prior approval of the Trustees, if necessary. Mr. K will also periodically review the condition of the Building.[16] Mr. K represents that he will take such actions as are necessary to ensure, and verify, that the fair market value of the Building is equal to or greater than, an amount that is at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest). If necessary, Mr. K will require the Company to pledge additional property as security for the Loan.

With respect to Mr. K's qualifications to act as the I/F for the Plan for purposes of the Loan, Mr. K represents that he is a licensed CPA and has been in practice for 33 years. Mr. K maintains that he has had extensive auditing experience, having served as a trained auditor and audit manager. Mr. K states that he has performed audits and other financial services for various industries, including banks, hospitals, manufacturing firms and other businesses. Mr. K states that he is a member of the American Institute of CPA's (*i.e.*, the AICPA) and the Michigan Association of CPA's.

Mr. K represents that he is, and will remain, independent of the Employer and the Company, for purposes of his proposed duties and responsibilities as the I/F for the Plan.

7. With respect to the possibility of the need to appoint an individual or entity to succeed Mr. K as the I/F for the Plan, the applicant states that it will notify the Department at least sixty (60) days in advance of such appointment. The person or entity so appointed will have the same responsibilities as Mr. K, and will have experience that is similar or comparable to that of Mr. K. Finally, the individual or entity that may be selected as the new I/F will be independent of the Employer and the Company.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. The Loan will not exceed 25% of the total assets of the Plan at any time;

b. The terms of the Loan are at least as favorable to the Plan as those terms

[16] Among other things, Mr. K notes that the insurance provisions relating to the Building are adequate to protect the Plan's interests. Pursuant to the terms of the Note, the Company is required to maintain both fire and casualty and general liability insurance policies on the Building at all times in commercially reasonable amounts satisfactory to the Plan. The amount of such policies shall be no less than the unpaid principal balance and accrued interest under the Note.

that would exist in an arm's-length transaction with an unrelated party;

c. The Loan will be secured by the Building, which has a fair market value, as determined by an independent, qualified appraiser, of at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest);

d. Mr. K., as the I/F for the Plan, has reviewed the proposed terms and conditions of the Loan, and determined that the Loan would be in the best interest and protective of the Plan and its participants and beneficiaries;

e. Mr. K, as the I/F for the Plan, will monitor the Loan throughout its duration and take whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

f. The Plan has the right to require the Company to pledge additional property as collateral for the Loan in the event such property is needed to maintain full collateralization at an amount which is at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest).

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of June, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–15928 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,560]

Crown Pacific Including Temporary Workers of Express Personnel, Gilchrist, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 2003, applicable to workers of Crown Pacific, Gilchrist, Oregon. The notice was published in the **Federal Register** on May 1, 2003 (68 FR 23323).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Express Personnel were employed at Crown Pacific to produce dimensional lumber at the Gilchrist, Oregon location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Express Personnel employed at Crown Pacific, Gilchrist, Oregon.

The intent of the Department's certification is to include all workers at the Gilchrist location of Crown Pacific who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,560 is hereby issued as follows:

All workers of Crown Pacific, Gilchrist, Oregon, and temporary workers of Express Personnel, producing dimensional lumber at Crown Pacific, Gilchrist, Oregon, who became totally or partially separated from employment on or after October 11, 2002, through April 14, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15866 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,728 and TA–W–50,728A]

Delco Remy America, Inc., Anderson, Indiana; Delco Remy America, Inc. d/b/a Remy Logistic, Anderson, Indiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 24, 2003, applicable to workers of Delco Remy America, Inc., Anderson, North Carolina. The notice was published in the **Federal Register** on April 7, 2003 (68 FR 16834).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of light and heavy duty starters and alternators.

Information shows that worker separations occurred at Remy Logistic, a division of Delco Remy America, Inc., Anderson, Indiana. Workers at Remy Logistic (a warehouse) ship, store and inspect products made by Delco Remy.

Accordingly, the Department is amending the certification to include workers of Delco Remy America, Inc., d/b/a Remy Logistic, Anderson, Indiana.

The intent of the Department's certification is to include all workers of Delco Remy America, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,728 is hereby issued as follows:

All workers of Delco Remy America, Inc., Anderson, Indiana (TA–W–50,728) and Delco Remy America, Inc. d/b/a/ Remy Logistic, Anderson, Indiana (TA–W–50,728A) who became totally or partially separated from employment on or after October 17, 2002, through March 24, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15867 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,841 and TA–W–40,841A]

FCI USA, Incorporated, Emigsville, Pennsylvania; Willow Springs Distribution Center, York, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 25, 2002, applicable to workers of FCI USA, Incorporated, Emigsville, Pennsylvania. The notice was published in the **Federal Register** on March 20, 2002 (67 FR 13011).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electrical connectors.

New information provided by the company shows that worker separations will occur at the Willow Springs Distribution Center, of FCI USA, Incorporated in York, Pennsylvania. The York, Pennsylvania location provides warehousing and distribution services for the Emigsville, Pennsylvania production facility of FCI USA, Incorporated.

Accordingly, the Department is amending the certification to cover the workers of the Willow Springs Distribution Center, York, Pennsylvania.

The intent of the Department's certification is to include all workers of FCI USA, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,841 is hereby issued as follows:

All workers of FCI USA, Incorporated, Emigsville, Pennsylvania (TA–W–40,841) and Willow Springs Distribution Center, York, Pennsylvania (TA–W–40,841A), who became totally or partially separated from employment on or after January 7, 2001, through February 25, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of May 2003.

Linda G. Poole,

Certification Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15865 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 7, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 7, 2003.

The petition filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of June 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 05/28/2003 and 05/30/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,862	Fishing Vessel (F/V) Sharon W (Comp)	Kodiak, AK	05/28/2003	05/27/2003
51,863	Fishing Vessel (F/V) Amber J (Comp)	Juneau, AK	05/28/2003	05/27/2003
51,864	Fishing Vessel (F/V) Seafarer (Comp)	Sitka, AK	05/28/2003	05/08/2003
51,865	F/V Puda Vida (Comp)	Kodiak, AK	05/28/2003	05/11/2003
51,866	General Electric Transportations (Wkrs)	Grain Valley, MO	05/28/2003	05/23/2003
51,867	Federal Mogul Corporation (Comp)	El Paso, TX	05/28/2003	05/23/2003
51,868	Apparel Cutting, Inc. (Wkrs)	Medley, FL	05/28/2003	05/17/2003
51,869	Curtis Papers (Comp)	Milford, NJ	05/28/2003	05/19/2003
51,870	McKenzie Forest Products (OR)	Springfield, OR	05/28/2003	05/21/2003
51,871	Citation Corporation (USWA)	Camden, TN	05/28/2003	05/23/2003
51,872	Johnson and Johnson Wound Management (UFCW)	Sherman, TX	05/28/2003	05/27/2003
51,873	AlphaThought/Provider Business Services (Wkrs)	Pittsburgh, PA	05/28/2003	05/27/2003
51,874	Flow Controls (Comp)	St. Louis, MO	05/28/2003	05/27/2003
51,875	Sony Corp. (OR)	Eugene, OR	05/28/2003	05/20/2003
51,876	Straits Steel and Wire (Comp)	Ludington, MI	05/28/2003	05/22/2003

APPENDIX—Continued

[Petitions instituted between 05/28/2003 and 05/30/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,877	Peak Oilfield Service Company (Comp)	Anchorage, AK	05/28/2003	05/27/2003
51,878	Ark-Les Electronics Products Corp. (Wkr)	Gloucester, MA	05/28/2003	05/12/2003
51,879	Monarch Ware, Inc. (Comp)	Algoma, WI	05/28/2003	05/27/2003
51,880	Infocus Corp. (Wkrs)	Wilsonville, OR	05/28/2003	05/08/2003
51,881	Centis, Inc. (Comp)	Niles, MI	05/28/2003	05/20/2003
51,882	BASF Corp. (Comp)	Hannibal, MO	05/28/2003	05/21/2003
51,883	Rossville/Chromatex (Wkrs)	Chattanooga, TN	05/28/2003	05/22/2003
51,884	Louisiana Pacific Corp. (Comp)	Belgrade, MT	05/28/2003	05/27/2003
51,885	Tyco Healthcare (Comp)	Lafayette, IN	05/28/2003	05/27/2003
51,886	General Elecrtric Co. (IUE)	Tell City, IN	05/28/2003	05/27/2003
51,887	Starline Manufacturing (Wkrs)	Milwaukee, WI	05/28/2003	05/23/2003
51,888	Mid South Footwear (AR)	Manila, AR	05/28/2003	05/27/2003
51,889	Sommer Products (Wkrs)	Bartonville, IL	05/28/2003	05/23/2003
51,890	CTNA (USWA)	Mayfield, KY	05/28/2003	05/27/2003
51,891	O'Sullivan Ind. of VA, Inc. (Comp)	South Boston, VA	05/29/2003	05/29/2003
51,892	Hart Marx—International Women's Apparel (Wkr)	Easton, PA	05/29/2003	05/19/2003
51,893	Ferraz Shawmut, Inc. (IBEW)	Newburyport, MA	05/29/2003	05/28/2003
51,894	Kansa Corporation (Wkrs)	Emporia, KS	05/29/2003	05/21/2003
51,895	TRW Automotive (Comp)	Sparks, NV	05/29/2003	05/29/2003
51,896	ADI/Ademco (Wkrs)	Melville, NY	05/29/2003	05/28/2003
51,897	Yellow Book USA (Comp)	Effingham, IL	05/29/2003	05/27/2003
51,898	MRC Bearings, SKF USA Inc. (UAW)	Jamestown, NY	05/29/2003	05/21/2003
51,899	Style Setter Fashions, Inc. (Comp)	Philadelphia, PA	05/29/2003	05/28/2003
51,900	Manastrip Corporation (Comp)	Rexford, NY	05/29/2003	03/07/2003
51,901	J.J. Mac Inc. dba Rainbeau (Wkrs)	San Francisco, CA	05/29/2003	05/19/2003
51,902	River Ltd. (Comp)	Fall River, MA	05/29/2003	05/27/2003
51,903	Nistem Corporation (Comp)	San Diego, CA	05/29/2003	05/16/2003
51,904	Primanex Corporation (Wkrs)	Fremont, CA	05/29/2003	05/20/2003
51,905	Roane Hosiery (Wkrs)	Harriman, TN	05/29/2003	05/22/2003
51,906	Central Brass Manufacturing Company (Wkrs)	Cleveland, OH	05/29/2003	05/22/2003
51,907	Broyhill Furniture (Wkrs)	Taylorsville, NC	05/30/2003	05/29/2003
51,908	C M Offray, Inc. (MD)	Hagerstown, MD	05/30/2003	05/29/2003
51,909	Inman Mills (Comp)	Inman, SC	05/30/2003	05/28/2003
51,910	Southwest Wind Power (MN)	Duluth, MN	05/30/2003	05/27/2003
51,911	TSI of Florida (Comp)	Riverview, FL	05/30/2003	05/16/2003
51,912	Tecumseh (IAMAW)	Grafton, WI	05/30/2003	05/28/2003
51,913	Metz and Associates (Wkrs)	Dallas, PA	05/30/2003	05/23/2003

[FR Doc. 03–15862 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,395 and TA–W–51,395A]

Lexington Home Brands, Plants 1, 2, 4, 5, & 12, Lexington, North Carolina; Lexington Home Brands, Plant 98 (Main Office), Lexington, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 24, 2003, applicable to workers of Lexington Home Brands, Plants 1, 2, 4, 5 & 12, Lexington, North Carolina. The notice was published in the **Federal Register** on May 9, 2003 (68 FR 25060).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wooden household furniture.

The company reports that worker separations occurred at the Plant 98 (Main Office), Lexington, North Carolina location of the subject firm. Workers at Plant 98 (Main Office) provide administrative, sales, and technical services for the subject firm's production plants located throughout North Carolina.

Based on these findings, the Department is amending the certification to include workers of Lexington Home Brands, Plant 98 (Main Office), Lexington, North Carolina.

The intent of the Department's certification is to include all workers of Lexington Home Brands who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,395 is hereby issued as follows:

All workers of Lexington Home Brands, Plants 1, 2, 4, 5 & 12, Lexington, North Carolina (TA–W–51,395), and Lexington Home Brands, Plant 98 (Main Office), Lexington, North Carolina (TA–W–51,395A) who became totally or partially separated from employment on or after March 31, 2002, through April 24, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15868 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,702]

Marion County Shirt Company, Capital Mercury Apparel, Springfield, Missouri; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 14, 2003, applicable to workers of Marion County Shirt Company located in Springfield, Missouri. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce men's woven dress shirts. The Department inadvertently omitted the parent company's name, Capital Mercury Apparel, in the certification. Accordingly, the Department is amending the certification to properly identify the company name.

The amended notice applicable to TA–W–51,702 is hereby issued as follows:

All workers of Marion County Shirt Company, Capital Mercury Apparel, Springfield, Missouri, who became totally or partially separated from employment on or after May 5, 2002 through May 14, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 27th day of May 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15870 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,561]

Motorola, Broadband Communications Sector, Tewksbury, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 24, 1997, applicable to all workers of Motorola, Broadband Communications Sector, Tewksbury, Massachusetts. The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27207).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly issued certification coverage to all workers of the subject firm. The intent of the Department's certification is to cover only workers manufacturing carrier class edge router for cable television systems at Motorola, Broadband Communications Sector, Tewksbury, Massachusetts who were adversely affected by the shift in production to Mexico.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The amended notice applicable to TA–W–33,966 is hereby issued as follows:

Workers manufacturing carrier class edge router for cable television systems at Motorola, Broadband Communications Sector, Tewksbury, Massachusetts, who became totally or partially separated from employment on after April 18, 2002, through May 7, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15869 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,588]

Motorola, Inc., iDEN Subscriber Division Including Leased Workers of Manpower International, Plantation, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 23, 2001, applicable to workers of Motorola, Inc., iDEN Subscriber Div., Plantation, Florida. The notice was published in the **Federal Register** on August 15, 2001 (66 FR 42880).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Manpower International were employed at Motorola, Inc., iDEN Subscriber Div. to produce radios and printed circuit boards (for iDEN Radio units) at the Plantation, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Manpower International, employed at Motorola, Inc., iDEN Subscriber Div. Corporation, Plantation, Florida.

The intent of the Department's certification is to include all workers of Motorola, Inc., iDEN Subscriber Div. who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,588 is hereby issued as follows:

All workers of Motorola, Inc., iDEN Subscriber Div., Plantation, Florida, including leased workers of Manpower International, who were engaged in production of radios and printed circuit boards (for iDEN Radio units) at Motorola, Inc., iDEN Subscriber Div., Plantation, Florida, who became totally or partially separated from employment on or after June 27, 2000, through July 23, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15864 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,710]

Rayovac Corporation, Fennimore, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 7, 2003 in response to a petition filed by a company official on behalf of workers at Rayovac Corporation, Fennimore, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of June, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–15871 Filed 6–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 7, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 7, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of June 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/02/2003 and 06/06/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,914	Tecumseh Products Company (Comp)	Douglas, GA	06/02/2003	05/23/2003
51,915	Foremost Fisheries, Inc. (Comp)	Seattle, WA	06/02/2003	05/30/2003
51,916	Twin City E.D.M., Inc. (Comp)	Fridley, MN	06/02/2003	05/28/2003
51,917	Liberty Embroidery Wentworth Corp. (Wkrs)	Madison, NC	06/02/2003	05/19/2003
51,918	Alstom USA, Inc. (Wkrs)	Charleroi, PA	06/02/2003	05/30/2003
51,919	Chevron—Texaco (Wkrs)	Concord, CA	06/02/2003	05/09/2003
51,920	O'Sullivan Industries Holdings (Comp)	Lamar, MO	06/02/2003	05/29/2003
51,921	Nortel Networks (Wkrs)	RTP, NC	06/02/2003	05/24/2003
51,922	PDC Pharmaceutical Systems LLC (Comp)	Hartland, WI	06/02/2003	05/30/2003
51,923	Sanmina—SCI (Wkrs)	Lynchburg, VA	06/02/2003	05/19/2003
51,924	Software Spectrum (Comp)	Liberty Lake, WA	06/02/2003	05/27/2003
51,925	F/V Martle (Comp)	Blaine, WA	06/03/2003	05/26/2003
51,926	State of Alaska Commercial Fisheries (Comp)	Manokotak, AK	06/03/2003	05/20/2003
51,927	Sound Fish, Inc. F/V New York (Comp)	Blaine, WA	06/03/2003	06/02/2003
51,928	Joan Fabrics Corporation (Comp)	Newton, NC	06/03/2003	06/02/2003
51,929	LeSporsac (Wkrs)	Stearns, KY	06/03/2003	05/27/2003
51,930	Richards Industries (Wkrs)	Frenchburg, KY	06/03/2003	05/27/2003
51,931	New Stamco, Inc. (Comp)	New Bremen, OH	06/03/2003	05/21/2003
51,932	Northwest Airlines, Inc (Wkrs)	Anchorage, AK	06/03/2003	05/19/2003
51,933	Vigorelli Sportswear (Comp)	McMinnville, TN	06/03/2003	05/22/2003
51,934	Darwood Manufacturing Co. (Comp)	Pelham, GA	06/03/2003	05/30/2003
51,935	Corning Cable Systems (Wkrs)	Keller, TX	06/03/2003	05/23/2003
51,936	Weslaco Materials Warehouse (Comp)	Weslaco, TX	06/03/2003	05/15/2003
51,937	Magne Quench UG, Inc. (USWA)	Valparaiso, IN	06/03/2003	05/30/2003
51,938	Eureka Company (The) (Comp)	El Paso, TX	06/03/2003	06/02/2003
51,939	Standard Mercerizing and Specialty Yarn (UNI)	Chattanooga, TN	06/03/2003	05/30/2003
51,940	Broyhill Furniture Industries, Inc. (Comp)	Rutherfordton, NC	06/04/2003	005/27/2003
51,941	Midland Steel Products Company (UAW)	Solon, OH	06/04/2003	005/19/2003
51,942	V.C. Textile, Inc. (Wkrs)	Miami, FL	06/04/2003	005/29/2003
51,943	F/V Carolina (Comp)	Wasilla, AK	06/04/2003	06/02/2003
51,944	F/V Dawn (Comp)	Craig, AK	06/04/2003	05/08/2003
51,945	Tom Kouremetis (Comp)	Kodiak, AK	06/04/2003	05/30/2003
51,946	Towle Manufacturing Company (Comp)	N. Dighton, MA	06/04/2003	06/02/2003
51,947	Alltrista Consumer Products Co. (Comp)	Strong, ME	06/04/2003	05/21/2003
51,948	American Tool Companies (Comp)	Beatrice, NE	06/04/2003	06/03/2003
51,949	Peerless Corporation (Comp)	Ironton, OH	06/04/2003	06/02/2003
51,950	Shipley Company (Comp)	Moss Point, MS	06/04/2003	05/21/2003
51,951	Fishing Vessel (F/V) ULU (Comp)	Dillingham, AK	06/05/2003	06/04/2003
51,952	F/V Ms. Ingrid (Comp)	Sand Point, AK	06/05/2003	06/03/2003
51,953	Wm Jette and Sons, Inc. (Comp)	Providence, RI	06/05/2003	05/28/2003
51,954	Facility Pro (Wkrs)	Allentown, PA	06/05/2003	05/15/2003
51,955	Gilmour Manufacturing (Comp)	Somerset, PA	06/05/2003	06/04/2003
51,956	Plexus (Wkrs)	Neenah, WI	06/06/2003	06/04/2003
51,957	Temme Mold and Engineering (Comp)	Evansville, IN	06/06/2003	06/03/2003

APPENDIX—Continued

[Petitions instituted between 06/02/2003 and 06/06/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,958	UTI Star Guide (CO)	Arvada, CO	06/06/2003	06/04/2003
51,959	Fiskars Brands (Comp)	Opelika, AL	06/06/2003	05/29/2003
51,960	Agilent Technologies, Inc. (Wkrs)	Palo Alto, CA	06/06/2003	06/03/2003
51,961	3M (Comp)	Eagar, MN	06/06/2003	05/30/2003
51,962	Vibratech, Inc. (UAW)	Alden, NY	06/06/2003	06/03/2003
51,963	Nortel Networks (Wkrs)	RTP, NC	06/06/2003	05/19/2003
51,964	L.E. Smith Glass (AFGWU)	Mt. Pleasant, PA	06/06/2003	05/28/2003
51,965	Copperweld Corporation (Comp)	Birmingham, AL	06/06/2003	05/28/2003
51,966	Springs Window Fashions (Comp)	Wausau, WI	06/06/2003	06/04/2003
51,967	Reading Anthracite Co. (Wkrs)	Pottsville, PA	06/06/2003	05/29/2003
51,968	International Uranium Corp. (Wkrs)	Blanding, UT	06/06/2003	05/23/2003
51,969	Knaack Manufacturing Co. (Wkrs)	Payson, UT	06/06/2003	06/03/2003
51,970	Northwest Airlines (MN)	St. Paul, MN	06/06/2003	05/06/2003
51,971	Fulton Bellows and Components (USWA)	Knoxville, TN	06/06/2003	06/05/2003
51,972	Ken-Marc Sales Corp. (Comp)	Maspeth, NY	06/06/2003	06/05/2003
51,973	Briggs and Stratton (PACE)	Wauwatosa, WI	06/06/2003	06/02/2003
51,974	ICT Group (Wkrs)	Christiansburg, VA	06/06/2003	05/30/2003
51,975	Walstenburg Apparel Corp. (Comp)	Walstenburg, NC	06/06/2003	05/30/2003

[FR Doc. 03–15863 Filed 6–23–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Business-Led H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $50 million in grant funds for technical skills training programs.

Technical skills training grants were authorized under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended. Fees paid by employers who bring foreign workers into the United States to work in high skill or specialty occupations on a temporary basis under H–1B nonimmigrant visas finance these grants. Twenty-five percent of the grants are to be awarded to business partnerships and seventy-five percent are to be awarded to local workforce investment boards established under the Workforce Investment Act (WIA).

This notice applies to the 25 percent of the total funds available for technical skills training grants that are required by ACWIA to be awarded to business partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. The partnership may also include any educational, labor, faith-based or community organization, or workforce investment board.

H–1B Technical Skills Training Grants are focused on addressing the high skill technology shortages of American businesses and are a long-term solution to domestic skill shortages in high skill and high technology occupations. H–1B Technical Skills Training Grants are aimed at raising the technical skills levels of American workers so they can take advantage of the new technology-related employment opportunities. Raising the skill level of American workers will, in turn, help businesses reduce their dependence on skilled foreign professionals permitted to work in the United States using H–1B visas. H–1B Technical Skills Training Grants are not intended to address labor shortages due to reasons other than technical skills shortages.

At least eighty percent of the grants are to be awarded to projects that train workers in high technology, information technology, and biotechnology skills, including skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services.

Grant funds awarded under the 25 percent provision may be used only to carry out a strategy that would otherwise not be eligible for funds provided through workforce investment boards under the 75 percent provision. Applicants must explain the barriers that prevent them from meeting the 75 percent eligibility criteria. An announcement of the solicitation for grant applications (SGA/DFA 03–100) for the 75 percent of grants to be awarded to local boards was published in the **Federal Register** on January 6, 2003.

In awarding H–1B Technical Skills Training Grants, every effort will be made to fairly distribute grants across rural and urban areas and across the different geographic regions of the United States. It is anticipated that individual awards will not exceed $3 million.

This solicitation provides background information and describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected.

DATES: The closing date for receipt of applications under this announcement is September 22, 2003. Applications must be received at the address below no later than 4 pm EST (Eastern Standard Time). Grant applications received after this date will not be considered.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie D. Williams, SGA/DFA 03–114, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail

decontamination procedures. Hand delivered proposals will be received at the above address.

FOR FURTHER INFORMATION CONTACT: Mamie D. Williams, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301. (This is not a toll free number.) You must specifically ask for Mamie D. Williams. This announcement is also being made available on the ETA Web site at *http://www.doleta.gov/h-1b.*

SUPPLEMENTARY INFORMATION: The announcement consists of four parts:

- Part I provides background information on the H–1B grant program, the principles of H–1B Technical Skills Training Grants, and DOL's policies and emphases.
- Part II describes specific program, administrative and reporting requirements that will apply to all grant awards.
- Part III describes the application process.
- Part IV describes the review process and rating criteria that will be used to evaluate applications for funding.

Part I—Background, DOL Policies and Emphases

A. Background

This section provides a summary overview of the intent and nature of the solicitation for grant award. Elements mentioned in this background summary may be covered in greater detail later in the document.

Authorizing Legislation: In response to demands from industries that were experiencing skill shortages in areas such as information technology, Congress amended the Immigration and Nationality Act and created the H–1B visa category. The H–1B visa enables employers to hire non-immigrants in high skill or specialty occupations for work in the United States. An annual limit of 65,000 was established on the number of H–1B visas granted. In a subsequent effort to help employers access skilled foreign workers and compete internationally, Congress enacted the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998) Public Law 105–277 in October 1998. The provisions of ACWIA 1998 created technical skills training grants under the Department of Labor's Employment and Training Administration.

ACWIA 1998 increased the annual limit on H–1B visas temporarily to 115,000 in fiscal years 1999 and 2000, and to 107,500 in 2001. In addition, a $500 user fee was imposed on employers for each H–1B application. ACWIA 1998 authorized the use of 56.3% of the fee to finance the H–1B Technical Skills Training Grant Program. Grants funded under ACWIA 1998 had the long-term goal of raising the technical skill levels of American workers in order to fill specialty occupations presently being filled by temporary workers admitted to the United States under the provisions of the H–1B visa. Eligible grant applicants were local Private Industry Councils (PICs) and Workforce Investment Boards (local boards) established under Section 117 of the Workforce Investment Act (WIA) or a consortium of local boards.

ACWIA 1998 was amended by the American Competitiveness in the Twenty-first Century Act of 2000 (ACWIA 2000) Public Law 106–313, enacted on October 17, 2000. This law increased the temporary cap of H–1B visas to 195,000 annually until the end of fiscal year 2003. Separate legislation raised the employer H–1B application fee from $500 to $1,000. ACWIA 2000 authorized the use of 55% of the funds generated by H–1B visa fees to continue the Department of Labor's H–1B Technical Skills Training Grant Program through September 30, 2003. ACWIA 2000 H–1B Technical Skills Training Grant Program statutory provisions are codified at 29 U.S.C. 2916 a.

Nature of Funding: ACWIA 2000 also created a two-part eligibility and funding criteria for the H–1B program. Local boards are eligible to receive 75% of total funds awarded. These grants provide funds to partnerships consisting of one or more local boards, at least one business or business related non-profit (such as a trade association) and one community-based organization (which may be faith-based), higher education institution or labor union. The remaining 25% of funds, the subject of this solicitation, are made available through grants to eligible partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. Partnerships may include any educational, labor, community and faith-based organization, or local board, but funds may be used only to carry out a strategy that would otherwise not be eligible for funds under the 75% clause due to barriers in meeting partnership eligibility criteria. The scope of the business partnerships, for example, may be national or multi-state, making the partnership ineligible for the 75% funding stream.

Applications submitted by Business-Led partnerships require a 100 percent match in cash or in kind. Partners cooperating in the proposed project may divide the responsibility for the match among themselves in any way they choose to do so, provided that at least 50 percent of the match comes from the business partners (see Part II, section E, Matching Funds). ACWIA 2000 also specified that consideration be given to applicants that provide a specific commitment from other public or private sources, or both, to demonstrate the long-term sustainability of the training program or project after the grant expires.

Targeted Occupations: At least eighty percent of the grants are to be awarded to projects that train workers in high technology, information technology, and biotechnology skills. For example, this includes skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services. No more than 20 percent may be awarded to projects that train for skills related to any single specialty occupation. Specialty occupations require a theoretical and practical application of a body of highly specialized knowledge and sometimes may even require full state licensure to practice in the occupation. These occupations require at least a bachelor's degree or higher and/or experience in the specific specialty. They also may require recognition of expertise in the specialty through progressively responsible positions relative to the specialty occupation.

The technical skills training portion of ACWIA 2000 (Section 111) is designed to help both employed and unemployed American workers acquire the requisite technical capabilities in high skill occupations that have shortages. Training generally is aimed at occupations at the H–1B skill levels, which are defined as a bachelor's degree or comparable experience. Under ACWIA 2000, training is not limited to skill levels commensurate with 4-year undergraduate degrees, but can include the preparation of workers for a broad range of positions along a career ladder leading to an H–1B skill level job.

Occupational Skill Levels: To meet the legislative intent of training American workers to replace foreign workers under the H–1B visa program, technical skills training grants under this SGA must focus on a high level of training and on selected occupations. As shown on Table 1, foreign workers coming to the United States under the H–1B visa program are exceptionally well-educated; 50 percent possess a Bachelor's degree, 30 percent have a Master's degree, and 17 percent have a

Doctorate or Professional degree. Fewer than 2 percent of H–1B visas go to foreign workers with less than a Bachelor's degree. With respect to occupations in 2002, 38 percent are computer/information technology related occupations, such as programmers, database administrators and systems analysts. The second largest occupational area is architecture, engineering and surveying related occupations. It should be noted that of the medicine and health related occupations, the largest grouping is physicians and surgeons rather than nurses or other healthcare workers.

Outcomes Expected from H–1B Grantees: ACWIA 2000 specified that the Secretary of Labor is to give consideration to applicants who commit to achieving certain outcome goals for individuals who complete training. These outcome goals are: (1) Hiring or causing the hiring of unemployed trainees; (2) increasing the wages or salary of incumbent workers, or (3) providing skill certifications to trainees or linking the training to industry accepted occupational skill standards, certificates, or licensing requirements. Applicants may propose additional goals or combine goals.

ACWIA 2000 also specified that consideration in awarding H–1B grants be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training more workers or offering more courses or projects resulting from collaborations, especially with more than one small business or with a labor management training program or project, or for a partnership that involves and directly benefits more than one small business.

TABLE 1. KEY FACTS ABOUT H–1B VISA APPROVED PETITIONS, FISCAL YEAR 2002

	Percent of total
Country of Birth	
India	33.0
China	9.6
Canada	6.0
Philippines	4.7
United Kingdom	3.6
Korea	3.0
Other	40.1
Level of Education	
Less than Bachelor's degree	1.9
Bachelor's degree	50.4
Master's degree	30.4
Professional degree	5.3
Doctorate degree	11.8
Occupational Area	
Computer/information technology	38.3
Architecture, engineering and surveying	12.8
Administrative specialties	10.8
Education	10.5
Medicine and health	6.6
Managers and officials	5.4
Life sciences	3.5
Social sciences	2.8
Mathematics/physical sciences	2.8
Other	6.5

Source: *Yearbook of Immigration Statistics, Fiscal Year 2002,* U.S. Bureau of Citizenship and Immigration Services, June 2003.

Status of the H–1B Program: Forty-three H–1B Technical Skills Training Grants totaling $95.6 million were awarded under the provisions of ACWIA 1998. Under ACWIA 2000, the Department of Labor has awarded 56 grants totaling $148 million; of these, 42 grants totaling $113.3 million were under the 75 percent funding stream and 14 grants totaling $34.5 million were under the 25 percent funding stream. Combining all awards made under ACWIA 1998 and ACWIA 2000, the Department of Labor has awarded a total of 99 H–1B Technical Skills Training Grants totaling $243.3 million.

H–1B grants under earlier SGAs were funded for up to a 24-month period, with the possibility of a no-cost extension for one additional year. Grants awarded under this solicitation will have a 36-month performance period, with the possibility of a no-cost extension for one additional year.

Additional details on the background of the H–1B Technical Skills Training Grants program can be found at the H–1B Web site *http://www.doleta.gov/h-1b.* This Web site contains descriptions of current projects, legislative documents and research papers.

B. Principles of Business-Led H–1B Technical Skills Training Grants

Development, implementation and operation of H–1B Technical Skills Training Grants as envisioned under the authorizing legislation (see Background above) are based on the following principles:

Business Leadership: Businesses generate the demand for jobs, in particular those high skill occupations currently being filled by temporary H–1B workers. Businesses know, as only a consumer can, the exact skill needs of their workforce. To ensure these needs are met, business plays the critical leadership role in formulating, developing, and operating Business-Led Technical Skills Training Grants programs.

Successful H–1B training programs are those in which business is seriously invested in the program and has translated this investment into material support at all levels, including: defining program strategy and goals; designing the training program and curricula; implementing the program, and contributing financial support to the program.

For the purpose of these grants, it is desirable that businesses represented in the group applying for this grant include those with current high technology skills shortages. Some of these businesses may have in the past utilized foreign workers under the H–1B visa program. Now, they intend to hire, retain, or promote graduates of the H–1B Technical Skills Training Program.

Partnership Sustainability: ETA intends that local and regional partnerships and training activities sustain themselves over the long term, well after the Federal resources from this initiative have been exhausted. For this to happen, applicants are encouraged to develop and nurture partnerships that reflect commitments, both financial and non-financial, to the proposed training program as well as to the future success of the program. These partners may include businesses, non-profit industry associations, local workforce investment boards, training providers, community and faith-based organizations, state and local government agencies and should provide the foundation for developing long-term systematic solutions to the high technology skills shortage challenge for employers and workers in a regional or local area.

The matching requirement is an important, but not the only, indicator of the strength of the applicant's partnerships. The requirement that at least one-half of the matching funds must come from the business sector partners is designed to encourage the direct and active participation of employers whose high technology skills needs can be filled by this program. It may also demonstrate that business contributions could be made available in the future to operate technical skills training programs after Federal funds are exhausted.

High Skill Level Focus and Innovative Service Delivery: Training selected employed and unemployed workers to fill current high skill level shortages is the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as high technology skills

shortage areas. H–1B Technical Skills Training Grants are not intended to address lower level skill labor shortages nor are they intended to fund training programs aimed at imparting basic educational skills. In addition, H–1B grants are not intended to address occupational shortages due to reasons other than high technology skills shortages.

H–1B training projects may consider utilizing either innovative or proven tools or approaches to close particular skill gaps and provide strategies for training that promote regional development. These may include, but are not limited to, on-the-job training, distance learning, or combinations of training and educational techniques. H–1B grantees should tailor training to the specific needs of the selected incumbent and unemployed workers, both in content and delivery.

Qualified Target Population: Technical skills training should be geared towards employed and unemployed workers who can be trained and placed directly in high skill H–1B occupations, or in the highest echelons of an H–1B career ladder. Candidates for training funded by H–1B Technical Skills Training Grants should possess (and be identified through appropriate assessment tools) a high level of general educational background, the prerequisites for the occupational training being proposed, and certain characteristics such as drive and initiative that will help guarantee successful completion of the high skill level training.

Employees at the H–1B skill level are generally characterized as having a Bachelor's degree or comparable work experience. H–1B technical skills training is not limited to skill levels commensurate with a four-year degree and may be used to prepare workers for a broad range of positions along a specified career ladder. ''Career ladder'' may generally be defined as a system of career and skill level ''steps'' directly leading to a high skill level job within a reasonable period of time. Thus, potential trainees are not required to enter training with a four-year degree and trainees do not necessarily have to acquire a four-year degree to be successful. Many will have a four-year degree and others will possess two-year degrees. Career ladders create opportunities for individuals who may vary in experience and education levels (such as specialty training and Associate's degrees) to advance along a defined career ladder and qualify through additional training and education for H–1B level related occupations.

Use of Skill Standards: Skill standards represent a benchmark by which an individual's achieved competence can be measured. Training programs that provide individuals with professionally recognized, portable skills certifications help ensure that these individuals have received useful knowledge and skills relevant to their employers needs and to their own careers. The documentation of skills standards and skills attainment is also indicative of the program's ability to meet industry needs and to reduce the dependence of American businesses on skilled foreign workers.

Well-defined skills standards can be useful tools in matching training goals to targeted occupational areas. Work in the area of skills standards has been performed by private industry and trade associations, registered apprenticeship training systems, and public and private partnerships. Applicants are encouraged to survey the progress to date in developing occupational skills standards and incorporate appropriate ones into their H–1B Technical Skills Training Project.

As alluded to earlier (In Part IA—Background), the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214(i), 8 U.S.C. 1184(i) of the Immigration and Nationality Act (INA), speaks to a very high skill level for these ''specialty occupations.'' These are occupations that require ''theoretical and practical application of a body of highly specialized knowledge,'' and full state licensure, if required for the occupation, to practice in the occupation. The standard for these occupations is either completion of at least a Bachelor's degree or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. In addition to academic degrees, specialized and professionally recognized certificates may also be characteristic of a high level of technical skill.

Comprehensive Local and Regional Planning: Developing and implementing a training strategy that addresses businesses' high technology skill needs requires applicants seeking H–1B grants to engage in a process of comprehensive local and regional planning with their partners. This planning effort entails a thorough analysis and understanding of applicable local and regional labor markets, identification of high technology skills shortages in the areas, information on the employment opportunities, trends and training needs within the targeted occupations and industries, as well as knowledge of the impact of skills training in response to the identified skill shortages in the targeted regions.

Applicants are strongly encouraged to utilize all available data sources to demonstrate the high technology skills shortages and training needs in their local or regional areas. Sources of data may include: area businesses and business associations, state labor and local market information systems, the Bureau of Labor Statistics (BLS), local employer surveys, academic sources, and the U.S. Census Bureau.

In addition, current data on approved H–1B visa petitions should be utilized to the extent feasible to describe skill shortages in specific occupations. Appendix B to this solicitation is a listing of occupations for which H–1B visa petitions have been recently approved. Requests for H–1B visas for the applicant's region may reflect a skills shortage for those occupations. Applicants should use data from the business partners involved in submitting the H–1B grant proposal, and may consider surveying other local and regional employers to ascertain the extent of employer use of H–1B visas to obtain foreign workers and to obtain information on the specific occupations and skills imported in the regions.

C. DOL Policies and Emphases

To implement the preceding principles and to meet the legislative intent of ACWIA 2000, DOL has established certain policies and emphases for awarding H–1B Technical Skills Training Grants under this solicitation. Applicants are encouraged to develop proposals based on the principles described above and the policies and emphases identified below.

Connection to the Workforce Investment System: Utilizing Federal resources along with H–1B grant funds to strengthen the overall program is a strongly recommended course of action. In order to obtain these resources, applicants are encouraged to form partnerships with local workforce investment boards. Each local workforce investment board prepares a strategic workforce investment plan for its local area and also designates One-Stop center operators and certifies or approves eligible training providers. Local boards thus have a good base of knowledge about the local area, WIA, regional training efforts, ETA grant administration, One-Stop capabilities and training providers. This knowledge and experience should materially aid business partnerships in planning,

developing and implementing H–1B Technical Skills Training Projects.

By building linkages to the One-Stop Career Center network, applicants can reach out, inform, and recruit individuals to participate in H–1B technical skills training and access a range of services for H–1B participants. ETA believes that co-enrollment in WIA and H–1B technical skills training allows for a much broader and comprehensive service provision for H–1B Program participants. For example, some H–1B participants may need supportive services, such as childcare and transportation, to enable them to be successful in both the learning environment and labor market. Supportive services are not allowable activities under the H–1B grant and by co-enrolling these H–1B participants in WIA, some H–1B participants may have access to a full range of supportive services available through their local One-Stop Career System, if determined necessary. Applicants may also consider working with community and faith-based organizations to access supportive services for H–1B participants.

Coordination and consultation activities with the applicable state workforce agency and/or Governor's office or State Workforce Investment Board are also highly encouraged in order to connect to other relevant skills shortages projects that may be operating in the state as well as for sustainability purposes. Although Federal resources may not be counted towards the match requirement, leveraging WIA resources will help make the technical skills training more effective.

Higher Level of Training: Under this SGA, DOL's goal is to fund grants that will provide training at the H–1B level, a level that clearly prepares individuals to meet the ''specialty occupation'' definition of ''a theoretical and practical application of a body of specialized knowledge and sometimes may even require full state licensure to practice in the occupation.'' These occupations require at least a bachelor's degree or higher and/or experience in the specific specialty. This will require a higher level of training than has occurred to date under some H–1B funded grants.

To train at high levels, applicants should ensure that eligible participants have a fairly advanced education and skill sets and be capable of pursing training at the college level. In addition, the applicant should determine how these individuals will possess the capacity after completion of the training to perform in jobs that were previously filled via the H–1B visa process, or could be filled at the H–1B level.

If career ladder training is proposed, applicants most demonstrate that the majority of participants will complete the highest rungs of the H–1B level training under the grant within a reasonable period of time. Proposals to fund training in non-H–1B level occupations and preparatory or introductory level information technology areas will receive low selection priority under this SGA.

H–1B Occupational Focus: Since a major objective of H–1B Technical Skills Training Grants is to reduce dependency upon foreign workers in specialty occupations, DOL believes that increased priority is needed in occupations that are largely reflected in approved H–1B visa petitions and that are part of ACWIA legislation. These priority occupations include higher levels of computer science and information technology and architecture, engineering and surveying occupations. In accordance with ACWIA 2000, priority will also be given to proposals related to occupations in biotechnology, biomedical research and manufacturing, and advanced manufacturing technology. Proposals to provide training in other occupational areas such as nursing will receive low selection priority.

Demonstrable Results: DOL will give consideration to applicants that commit to achieving the following outcome goals upon successful completion of training: (1) Hiring or causing the hiring of unemployed trainees; (2) increasing the wages or salary of incumbent workers; or (3) providing skill certifications to trainees or linking the training to industry accepted occupational skill standards, certificates, or licensing requirements. Applicants should provide a description of what demonstrable results are expected and how these results will be achieved and measured.

Small Businesses: As required by ACWIA 2000, DOL will give consideration in awarding grants to any proposal which includes and directly benefits two or more small businesses (100 employees or less).

Part II—Requirements

A. Participants Eligible to Receive H–1B Training

Employed and Unemployed Individuals: Training funded by a grantee may be for both individuals who are currently employed and who wish to obtain and upgrade skills and individuals who are unemployed. The aim of the skills training is to place employed and unemployed workers in highly skilled H–1B related occupations. Applicants are encouraged to consider using community and faith-based organizations in the recruitment of qualified unemployed workers into H–1B programs. As noted above, eligible participants for the H–1B Technical Skills Training Grant Program, prior to the beginning of H–1B training, should possess (and be identified as having through appropriate assessment tools) a fairly advanced educational background and skills set. In addition, eligible participants should have the prerequisites for the occupational training being proposed.

Citizenship Status: Training may be provided to American citizens and nationals and immigrants authorized by the Attorney General to work in the United States, which includes lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General. Note that workers admitted under non-immigrant visas, such as the H–1B program and related programs, are not eligible for training with grant funds.

Veterans Priority: In addition, this program is subject to the provisions of the ''Jobs for Veterans Act,'' Pub. L. 107–288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. Comprehensive policy guidance is being developed and will be issued in the near future.

B. Administrative Requirements

1. General

Grantee organizations will be subject to: ACWIA 2000; these guidelines; the terms and conditions of the grant and any subsequent modifications; applicable Federal laws (including provisions in appropriations law), and any applicable requirements listed below:

a. Workforce Investment Boards—20 Code of Federal Regulations (CFR) Part 667.220, published in the **Federal Register** on Friday, August 11, 2000 (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles)

and 29 CFR Part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements). In addition, the audit requirements at 20 CFR 627.480 applies to commercial recipients.

f. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

2. Administrative Costs

ACWIA 2000 Section 111(c)(6) provides that an entity that receives a grant to carry out a program or project under section 414(c)(1)(A) of ACWIA may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs are defined at 20 CFR 667.220. In general, however, this grant does not contemplate or permit the purchase of capital equipment.

3. Start-Up Costs

ACWIA 2000 Section 111(c)(3) limits the amount of start-up costs of partnerships or new training projects, which may be charged to these grants. Except for partnerships of small businesses, the limit is the lesser of five (5) percent of any single grant or costs not to exceed $75,000. For partnerships consisting primarily of small businesses, the limit is the lesser of ten (10) percent of the cost allocable for a single grant or a maximum of $150,000.

C. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF269) is required until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days following each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter including:

1. # Completing training this quarter
2. # Completing training overall
3. # Enrolled in training
4. # Expected to complete training by end of project
5. # New job placements as a result of training
6. # Promotions resulting from the training
7. # Wage increases resulting from training and amount of wage increases resulting from training
8. # Certifications and/or /degrees, by type, awarded as result of training

Note: DOL may require additional data elements, *e.g.*, veteran status, to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements.

A narrative section is also required for each quarterly report, including:

1. General overview of project progress, new developments and resolution of previous issues and problems.
2. Explanation of any problems and issues encountered and planned response.
3. Lessons learned in the areas of project administration and management, training delivery, partnership relationships and other related areas.
4. Discussion of the occupational areas for which skills training is being provided, including a listing of the occupations being trained, training delivery, number of students per occupation and other relevant information that provides a reasonable picture of the occupational training being conducted.

Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the training project must be submitted no later than 60 days prior to the expiration date of the grant. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

D. Evaluation

As required by ACWIA 2000, applications must include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness. To measure the impact of these skill training grants, ETA will arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

E. Matching Funds

Applicants must demonstrate the ability to provide resources equivalent to at least 100 percent of the grant award amount as a match. This statutory match may be provided in cash or in-kind, and Federal resources may not be counted against the matching requirement. At least one-half of the non-Federal matching funds must be from the business or businesses or business-related nonprofit organizations involved. The match requirement applies to the entire Federal grant funding level. The application must clearly describe the size, nature, and quality of the non-Federal match and how the match will be used to further the goals of the project.

Applicants should describe the nature of the match to ensure that activities counted as match are permitted under the H–1B program. To be allowable as part of the match, a cost must be an allowable training cost that could conceivably be charged to Federal grant funds. If the cost cannot be charged to the grant funds, then it cannot be charged to match either.

For the purposes of the H–1B Grant Program, there is one exception to the allowable cost rule for matching funds. Grantees may include as training costs the salaries and wages employers pay for their employees while the employees are participating in skills training. These costs are allowable as match provided that: (a) The trainees are bona-fide employees; (b) the employer pays only regular salary and wages, but not overtime, benefits, or other costs, for each trainee for time spent attending classes during working hours; and (c) the trainee remains employed with the employer for sixty days after the completion of training.

Part III—Application Process

A. Eligible Applicants

ACWIA 2000, Section 111(c)(2)(A)(ii) [29 U.S.C. 2916 a (c)(2)(A)(ii)] specifies that the Secretary shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award 25 percent of the grants to partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business, and that may include any educational, labor, community and faith-based organization, or workforce investment board.

Grant funds awarded under the 25 percent provision may be used only to carry out a strategy that would otherwise not be eligible for funds

provided through the workforce investment boards under the 75 percent provision due to barriers in meeting those partnership eligibility criteria. For example, if the scope of the business partnerships is national or multi-state, this may make the partnership ineligible for the 75% funding stream. Applicants must explain the barriers that prevent them from working through their local workforce investment board and letting the workforce investment board be the applicant.

The application must clearly identify the applicant as well as the fiscal agent, the grant recipient (and/or fiscal agent), and describe its capacity to administer this project. Applicants are encouraged to collaborate with entities that possess a sound grasp of the job market in the region and are in a position to address the issue of skill shortage occupations. These entities include organizations such as private, for-profit businesses—including small and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions.

According to Section 18 of the Lobbying Disclosure Act of 1995, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, or loan.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require and an entity's procurement procedures must require that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, it does not authorize the applicant to avoid competition when procuring these services.

B. Submission of Proposals

Applicants must submit an original signed application and two copies. The proposal must consist of two (2) separate and distinct parts, Parts I and II. Failure to adhere to the instructions in this section will be considered as non-responsive.

Part I of the proposal must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix C), the Budget Information Form (Appendix D) and the Project Profile Information form (Appendix E). Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity.

In preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA 2000 is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. An illustrative, but not exclusive, list of allowable and allocable types of administrative costs is provided in the WIA regulations at 20 CFR 667.220. The budget narrative should discuss precisely how the administrative costs support the project goals.

Part II of the application must contain a technical proposal that demonstrates the applicant's capabilities to plan and implement an H–1B Technical Skills Training Grant Program in accordance with the provisions of this solicitation. Part II of the grant application is limited to twenty-five (25) double-spaced, single-sided, 8.5 inch x 11 inch pages with one-inch margins. In addition, the applicant may provide resumes, a staffing pattern, statistical information and related material in attachments, which may not exceed fifteen (15) pages. Although not required, letters of commitment from partners or from those providing matching resources may be submitted as attachments. Such letters will not count against the allowable maximum page total. The applicant must briefly itemize those participating entities in the text of the proposal. Text type shall be 12 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities *and* an Executive Summary that is not to exceed two pages. The Time Line and the Executive Summary do not count against the 25-page limit. No cost data or reference to prices should be included in the technical proposal.

C. Award Amount and Period of Performance

It is anticipated that individual awards will not exceed $3 million. The initial period of performance will be up to 36 months from the date of execution of the grant documents. ETA may elect to exercise its option to award no-cost extensions to these grants for an additional period not to exceed 12 months, based on the success of the program and other relevant factors.

Part IV—Review Process and Rating Criteria

A. The Review Process

Applications for the H–1B Technical Skills Training Grants will be accepted after the publication of this announcement until the closing date. A technical review panel will make careful evaluation of applications against the criteria below which include the policy goals, principles, priorities and emphases set forth in this SGA. Final funding decisions will be based on the rating of applications as a result of the review process, and other factors such as regulatory and statutory requirements and considerations. These factors may include urban/rural and geographic balance, the requirement that at least 80 percent of funds be awarded for high technology, information technology, and biotechnology occupational training, the availability of funds, and what is most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant(s) with or without discussions with the applicants. In situations without discussions, an award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

B. Rating Criteria

This section identifies and describes the criteria that will be used to evaluate H–1B Technical Skills Grant proposals. These criteria and point values are:

Criterion	Points
A. Statement of Need	10
B. Level of Training and Service Delivery Strategy	25
C. Target Population	10
D. Sustainability	15
E. Linkages with Key Partners	15
F. Outcomes, Management and Cost Effectiveness	25
Total Possible Points	100

1. Statement of Need (10 points)

Analysis of Labor Market: ACWIA 2000 is a response to high technology skill shortages around the country in specific occupations. Applicants must describe the local area or region for which training services are to be provided and the high technology skill shortages prevalent in the geographic area or region. The process through which training needs were identified to ensure that the proposed training is relevant to local and regional labor market shortages should be clearly explained. Evidence of a comprehensive

analysis of the region's labor market and skills shortages and identity of the source of the data used in the analysis should be provided. Include an explanation of how the skills training will impact the identified skills shortages of the region.

A general description of the local area or region should provide information such as urban or rural and socioeconomic data, with a particular focus on general education and skills levels prevalent in the area. In addition, a description of the characteristics of the political, economic and administrative jurisdictions (local workforce boards, labor market areas, special district authorities) that led them to partner for the purpose of this application should be incorporated. Information on transportation patterns, demographics and other factors, as they affect the high skill shortage situation, may be useful in explaining the training needs.

Business Environment: Answers should be provided to questions germane to the business environment such as:

- What is the general business environment?
- What industries and occupations are growing and declining?
- What types of skills are being sought in the geographic area or region by the major employers in general, and this grant application's member companies, in particular?
- How many H–1B visa petitions were filed by area employers and in this grant application's member companies, in particular? For which occupations? Which specific skills did H–1B visa workers have that were not available in the area?
- What high skills needs are expected to be met through the H–1B grant project?

2. Level of Training and Service Delivery Strategy (25 points)

Comprehensive Strategy: Applicants must lay out the comprehensive strategy proposed for providing the technical skills training that is mandated as the core activity of these grant awards. Applicants shall describe a service delivery strategy that provides training at or directly leading to an H–1B level skill. Part 1C of this SGA spells out very clearly DOL's strong interest in achieving a higher level of training than has occurred in some H–1B grants in the past and thus, training at a sufficiently high skill level will be an important factor in this criterion. Specific issues that must be addressed as part of this section include:

- The range and identity of potential training providers, including identifying whether they are on the eligible training provider list as described in WIA, section 122, the types of skills training that will be offered, how the training will meet the local area or regional skills needs, and how the training will be provided.
- The targeted occupations and skill level and how the skill upgrading will be measured. If degrees and/or certificates are contemplated, the type and recognition authority should be described as well as an estimate of the number and type to be attained.
- What steps will be taken to reach out to the community(ies) to provide information about the project and planned training activities.
- How will the types of training planned for project participants be determined.

Career Ladders: If career ladder training is proposed, the applicant must provide adequate detail demonstrating that all rungs of the ladder lead to H–1B training at the top rung and that it is reasonably likely that the majority of individuals on the ladder will complete the highest rungs of H–1B level training under the H–1B Technical Skills Training Grant.

Innovation: Applicants should fully describe any innovative and creative approaches to be undertaken in the context of service delivery. Innovation can be represented by a wide variety of creative approaches and techniques in which training services are provided, *e.g.*, distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate).

Business Involvement and Trainee Needs: The service delivery strategy must meet the needs of business partners, providing the skills identified in the statement of need. Evidence should be provided that business partners have been involved in developing the training service delivery plan, which may include designing the training program and curricula as well as operating the program. The service delivery strategy should also effectively reach out to and meet the needs of the target population, *i.e.*, desired candidates are recruited and training conducted in such a manner that participants can attend without undue hardship (training during the workday, on weekends and/or through distance learning methods).

Timing: DOL anticipates that the focus on a higher level of training and on H–1B occupations may necessitate formal education and/or a longer period of training than many other employment and training programs. As a result, applicants should carefully plan and coordinate preparatory activities, such as recruitment and assessment, with training providers to ensure that there is sufficient time for participants to complete training during the grant period. Applicants should identify assessment/enrollment and training phase activities in project operation timeline charts.

3. Target Population (10 points)

Employed and/or Unemployed Workers and Why: The eligibility criteria for skills training enumerated in ACWIA 2000 are extremely broad: employed and unemployed workers.

Applicants must clearly describe how and why members of the target population will be selected as well as their technical skills training needs in such a way as to verify that H–1B level training is actually required, especially in the case of incumbent workers. Applicants should also describe the partners' involvement, particularly business, in the selection process as well as that of any involved community and faith-based organizations.

Assessment: Applicants shall describe the assessment tools used to ensure that proposed trainees are qualified for the training and have a high likelihood of successful completion of the H–1B level training, in terms of ability and educational preparation. In addition, the applicant should discuss how those individuals will be determined to possess the capacity after the completion of training to accept jobs that previously were filled via the H–1B visa process, or could be filled at the H–1B level.

Specificity: The applicant should address some specific issues relating to the targeted worker population such as:

- How many employed workers and unemployed workers will be targeted for services and why?
- What are the technical skills training needs of those workers to fulfill skill shortage occupations at the H–1B level? Note that employers' needs should be addressed in the Statement of Need section.
- What criteria will be utilized to select employed and unemployed workers?
- What assessment tools will be used to ensure trainees will be able to complete this high level of training?
- What is the business partners' involvement in the selection of candidates?

- What is the targeted education and skill level of trainees as they enter the program?
- How will individuals eligible for priority of service under the Job for Veterans Act be identified and provided services?

4. Sustainability (15 points)

Outlasting the Federal Investment: Sustainability refers to the continuation of the partnership and/or training activities based on the strength of that partnership and the ability of the training program to deliver value to employers. Applicants may address sustainability by providing concrete evidence that training activities of the partnership and/or the partnerships that were formed to create them will be continued through the use of other public or private resources after the expiration of the grant.

Match: Matching resources and partnerships are considered an integral element of the project, as they support and strengthen the quality of the technical skills training provided and may contribute materially toward sustainability. Applicants must demonstrate that they will meet the statutory requirement to provide a 100 percent match to the resources for proposed projects. Applicants must describe to what extent the partners provide matching funds or services and how this contribution assists in building the foundation for a long-term partnership, *i.e.*, sustainability. This section MUST contain a detailed discussion of the size, nature, and quality of the non-Federal match and how the match will be used to further the goals of the project. Proposals not meeting the statutory 100 percent match requirement will be considered non-responsive and will not be considered.

Other Resources: Since H–1B Technical Skills Training Grant resources are limited to raising the skills levels of individuals to fill high skills H–1B occupations, applicants should identify other resources, both Federal and non-Federal, that can contribute materially toward quality outcomes and sustainability. (Note that although Federal resources may not be counted as match, they may help to demonstrate project sustainability). Applicants should enumerate these resources and describe any specific existing contractual commitments that support their sustainability strategies.

5. Linkages with Key Partners (15 points)

Nature of Partnerships: The application must show the partnership required by Section 111(c)(2)(A)(ii) of ACWIA 2000 (at least 2 businesses or a business-related nonprofit organization that represents more than one business, and that may include any educational, labor, community organization, or workforce investment board). ETA encourages, and will be looking for, applications that go beyond the minimum requirements of the statute and show broader, longer-term partnerships. The applicant should identify the partners and how they will interact together (*e.g.*, what roles each will play and what resources each partner will offer). In particular, this section should identify partnerships with the private and public sectors, including ties with small- and medium-sized businesses and small business federations.

Coordination and Consultation: In addition, the proposal should include a description of any coordination and consultation activities with the applicable local workforce board(s), state workforce agency and/or Governor's office. Evidence of such coordination and/or consultation such as written documentation should be included in the application. The Service Delivery Strategy section describes the role of each of the partners in delivering the proposed training services, while this section is intended to look at the linkages from a more structural perspective with particular emphasis on the employers in the consortium that are experiencing skills shortages and have hiring or upgrading needs.

Small Businesses: As noted previously, ETA also is interested in the extent of the involvement of small businesses in the partnership. Consideration will be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

6. Outcomes, Management and Cost Effectiveness (25 points)

This criterion includes three areas: (a) Program and training outcomes, (b) project and grant management, and (c) cost effectiveness. Applicants must describe fully the predicted outcomes resulting from the technical skills training. As stated previously, applicants should indicate how they plan to achieve the following outcome goals, if appropriate, upon successful completion of a training program:

(1) The hiring of unemployed trainees (if applicable);
(2) Increases in the wages or salaries of already employed trainees (if applicable); and
(3) Awards of educational degrees, credit toward degrees, skill certifications to trainees or links the trainees to industry-accepted occupational skill standards, certificates or licensing requirements.

In addition, applicants should indicate if any additional goals or outcomes are anticipated and how these are expected to be achieved.

Benefits as a Result of Training: Participants in the H–1B Training Program may be of differing skill levels and backgrounds and therefore, the outcomes section should discuss gains attained for individual participants in the context of their backgrounds and skills levels when they entered the program. Outcomes for employed workers may be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset. The focus of the discussion in this section should emphasize very specifically the benefits that occurred because of the training. For example, an applicant might state that a certain skill level is projected for a given group and indicate what change in skills that represents and how that might translate into an increase in earnings.

Qualifications for and Nature of Program Management: Project and Grant Management includes the organizational structure and capacity of the applicant and its partners and the utilization of automated data systems. In the management area, identification of a management entity, the proposed staffing pattern, the qualifications and experience of key staff members and detailed descriptions of the roles of the participating partners should be discussed. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to the project, which may be defined as at least 60 percent. The applicant should also include a description of the organizational capacity and track record in high skills training and related activities of the primary actors in the partnership.

Automated Tracking and Reporting: Applicants should include a description of the automated data system to be used for managing the project, collecting project data, monitoring and tracking progress, responding to issues and problems, and producing relevant reports for both the grantee and DOL. The grantee's automated system must be capable of collecting, storing and retrieving participant and training results information and producing reports needed for administrative, management, and analytical purposes. The grantee must identify the data

elements to be routinely collected and measures to ensure the accuracy and validity of information reported.

Cost Benefit: Applicants should provide a detailed discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes, such as placement, increased salary, promotion or retention and the level of skill to be achieved (such as attaining state licensing in an occupation), relative to the level and duration of training that the individual needed to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained, including degrees and certificates attained, and quantitatively in terms of wage gains. Costs must be justified in relation to cost per participant and, when possible, contrasted with similar costs for training conducted elsewhere. The applicant's expectations regarding these measures should also be included.

Signed in Washington, DC, this 19th day of June 2003.

James W. Stockton,

Grant Officer.

Appendix A: Legislative Mandate
Appendix B:—H–1B Petitions Approved in Fiscal Years 2001 and 2002 for Top 10 Major
Occupational Groups: U.S. Bureau of Citizenship and Immigration Services, May 2003
Appendix C: (SF) 424—Application Form
Appenidx D: Budget Information Form
Appendix E: Project Profile Information (complete by applicant)

Appendix A

Legislation

Applicable Sections of ACWIA 1988 and ACWIA 2000

29 U.S.C. 2916a.

Section II 2916a. Demonstration programs and projects to provide technical skills training for workers

(1) In general—

(A) Funding.

The Secretary of Labor shall use funds available under section 1356(s)(2) of Title 8 to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(B) Training provided.

Training funded by a program or project described in subparagraph (A) shall be for persons who are currently employed and who wish to obtain and upgrade skills as well as for persons who are unemployed. Such training is not limited to skill levels commensurate with a four-year undergraduate degree, but should include the preparation of workers for a broad range of positions along a career ladder. Consideration shall be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training more workers or offering more courses, and training programs or projects resulting from collaborations, especially with more than one small business or with a labor-management training program or project. The need for the training shall be justified through reliable regional, State, or local data.

(2) Grants.

(A) Eligibility.

To carry out the programs and projects described in paragraph (1)(A), the Secretary of Labor shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award—

(i) 75 percent of the grants to a local workforce investment board established under section 2831(b) or section 2832 of this title or consortia of such boards in a region. Each workforce investment board or consortia of boards receiving grant funds shall represent a local or regional public-private partnership consisting of at least—

(I) one workforce investment board;

(II) one community-based organization or higher education institution or labor union; and

(III) one business or business-related nonprofit organization such as a trade associated: *Provided,* That the activities of such local or regional public-private partnership described in this subsection shall be conducted in coordination with the activities of the relevant local workforce investment board or boards established under the Workforce Investment Act of 1998 (29 U.S.C. 2832); and

(ii) 25 percent of the grants under the Secretary of Labor's authority to award grants for demonstration projects or program sunder section 171 of the Workforce Investment Act [FN1] [29 U.S.C.A. § 2916] to partnership that shall consist of at least 2 businesses or a business-related nonprofit organization that represents more than one business, and that may include any educational, labor, community organization, or workforce investment board, except that such grant funds may be used only to carry out a strategy that would otherwise not be eligible for funds provided under clause (i), due to barriers in meeting those partnership eligibility criteria, on a national, multistate, regional, or rural area (such as rural telework programs) basis.

(B) Designation of responsible fiscal grants.

Each partnership formed under subparagraph (A) shall designate a responsible fiscal agent to receive and disburse grant funds under this subsection.

(C) Partnership considerations.

Consideration in the awarding of grants shall be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

(D) Allocation of grants.

In making grants under this paragraph, the Secretary shall make every effort to fairly distribute grants across rural and urban areas, and across the different geographic regions of the United States. The total amount of grants awarded to carry out program and projects described in paragraph (1)(A) shall be allocated as follows:

(i) At least 80 percent of the grants shall be awarded to programs and projects that train employed and unemployed workers in skills in high technology, information technology, and biotechnology, including skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services.

(ii) No more than 20 percent of the grants shall be available to programs and projects that train employed and unemployed workers for skills related to any single specialty occupation, as define din section 1184(i) of Title 8.

(3) Start-up funds.

(A) In general.

Except as provided in subparagraph (B), not more than 5 percent of any single grant, or not to exceed $75,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(B) Exception.

In the case of partnerships consisting primarily of small businesses, not more than 10 percent of any single grant, or $150,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(C) Duration of start-up period.

For purposes of this subsection, a start-up period consists of a period of not more than 2 months after the grant period begins, at which time training shall immediately begin and no further Federal funds maybe used for start-up purposes.

(4) Training outcomes.

(A) Consideration for certain programs and projects.

Consideration in the awarding of grants shall be given to applicants that provide a specific, measurable commitment upon successful completion of a training course, to—

(i) hire or effectuate the hiring of unemployed trainees (where applicable);

(ii) increase the wages or salary of incumbent workers (where applicable); and

(iii) provide skill certifications to trainees or link the training to industry-accepted occupational skill standards, certificates, or licensing requirements.

(B) Requirements for grant applications,

Applications for grants shall—

(i) articulate the level of skills that workers will be trained for and the manner by which attainment of those skills will be measured;

(ii) include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness; and

(iii) in the case of an application for a grant under paragraph (2)(A)(ii), explain what barriers prevent the strategy from being implemented through a grant made under paragraph (2)(A)(i).

(5) Matching funds.

Each application for a grant to carry out a program or project described in paragraph (1)(1) shall state the manner by which the partnership will provide non-Federal matching resources (cash, or in-kind contributions, or both) equal to at least 50 percent of the total grant a mount awarded under paragraph (2)(A)(i), and at least 100 percent of the total grant amount awarded under paragraph (2)(A)(ii). At least one-half of the non-Federal matching funds shall be from the business or businesses or business-related nonprofit organizations involved. Consideration in the award of grants shall be given to applicants that provide a specific commitment or commitments of resources from other public or private source, or both, so as to demonstrate the long-term sustainability of the training program or project after the grant expires.

(6) Administrative costs.

An entity that receives a grant to carry out a program or project described in paragraph (1)(A) may not use more than 10 percent of the amount of the grant to pay for administrative costs associated with the program or project.

Applicable Sections of the Immigration and Nationality Act

The Immigration and Nationality Act (INA) (section 101(a)(15)(h)(i)(b)) (8 U.S.C. 1101(a)(15)(H)(i)(B)) defines the H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation * * * or as a fashion model. * * *''

The INA (Section 214(i)) sets criteria to define the term ''speciality occupation:''

(1) For purposes of section 1101(a)(15)(H)(i)(b) and paragraph 1, a ''specialty occupation'' means an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's higher degree in the specific speciality (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

APPENDIX B—H–1B PETITIONS APPROVED IN FISCAL YEARS 2001 AND 2002 FOR TOP 10 MAJOR OCCUPATIONAL GROUPS: U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, JUNE 2003

Occupations	Group rank	LCA* code	FY 2001 percent	FY 2002 percent
Computer-related	1	03	58.0	38.3
Systems analysis and programming	.....	030		
Data communications and networks	.....	031		
Computer systems technical support	.....	033		
Architecture, engineering and surveying	2	00/01	12.2	12.8
Electrical/Electronics engineering	.....	003		
Mechanical engineering	.....	007		
Architectural	.....	001		
Civil engineering	.....	005		
Industrial engineering	.....	012		
Administrative specializations	3	16	7.2	10.7
Accountants, auditors and related occupations	.....	160		
Budget and management systems	.....	161		
Sales and distribution management	.....	163		
Education	4	09	5.3	10.5
College and university education	.....	090		
Preschool, primary school and kindergarten education	.....	092		
Medicine and health	[1]6 [2]5	07	3.4	6.6
Physicians and surgeons	.....	070		
Managers and officials	[1]6 [2]6	18	3.8	5.4
Life Sciences	7	04	2.0	3.5
Biological Sciences	.....	041		
Social Sciences	8	05	1.9	2.8
Economics	.....	050		
Mathematics and physical sciences	9	02	1.7	2.8
Chemistry	.....	022		
Miscellaneous professional, technical and managerial	10	19	1.7	2.5

[1] FY 2001.
[2] FY 2002.
* Labor Condition Application code.

BILLING CODE 4510–30–P

Appendix C

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Appendix D

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix E: Project Profile Information

Applicant Name: _____

Project Title: _____

Occupations and Number of individuals to be Trained [list]:

Level of Training:

a. Pre-career ladder _____
b. Lower career ladder _____
c. Mid-career ladder _____
d. H-1B visa level (bachelor's degree or equivalent, professionally recognized certificate training) _____

Note: Pre-Career Ladder training refers to training that is meant to prepare someone for development along a career path. This may include basic literacy classes, GED classes, basic computer skills training, ESL education, or other low level training that in and of itself will not prepare the student to hold a job on an H-1B level career ladder. Lower career ladder and mid-career level training is more advanced than pre-career ladder but still constitutes foundation preparation rather than training specifically addressing a specialty occupation at the H-1B visa level. The H-1B visa level requires "a theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specialty."

Targeted Population:

a. Incumbent workers (# to be trained) _____
b. Unemployed workers (# to be trained) _____

Note: incumbent workers are those currently employed by a specific company or business. Unemployed workers are those workers not currently employed, but still part of the labor force.

Geographic area served:

a. Rural _____
b. Urban _____

Note: A general delineation of urban/rural is whether the geographic area served in within a Metropolitan Statistical Area (MSA). If within a MSA, the area is considered urban, otherwise, rural.

Degrees/certificates expected [list by type. name and number]:

[FR Doc. 03–15922 Filed 6–23–03; 8:45 am]
BILLING CODE 4510–30–C

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet June 27, 2003 from 9 a.m. until 10:30 a.m. and continue on June 28, 2003 at 10 a.m. until conclusion of the Board's agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW., Washington, DC.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's

implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters to be Considered:

Open Session

1. Approval of agenda.
2. Chair's report on suggested procedures to guide the search for a new President and a new Inspector General.
3. Consider and act on the establishment of a Search Committee for LSC President and Inspector General.
4. Consider and act on whether to authorize a June 28, 2003 executive session of the Search Committee for LSC President and Inspector General to consider and act on search firm options.
5. Consider and act on the establishment of an Annual Performance Reviews Committee.
6. Consider and act on assignment of Directors to the Board's Search Committee for LSC President and Inspector General, Annual Performance Reviews Committee, Finance Committee, Operations & Regulations Committee, and the Provision for the Delivery of Legal Services Committee.
7. Approval of the minutes of the Board's meeting of April 25 & 26, 2003.
8. Approval of the minutes of the Executive Session of the Board's meeting of April 26, 2003.
9. Approval of the minutes of the Board's telephonic meeting of May 19, 2003.
10. Chairman's Report.
11. Members' Reports.
12. Acting Inspector General's Report.
13. President's Report.
14. Consider and act on the report of the Board's Annual Performance Reviews Committee.
15. Consider and act on the report of the Board's Finance Committee.
16. Consider and act on the report of the Board's Operations & Regulations Committee.
17. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
18. Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.
19. Consider and act on resolutions thanking former members of the LSC Board of Directors for their service.
20. Consider and act on other business.
21. Public comment.
22. Consider and act on whether to authorize an executive session of the Board to receive a briefing by the Acting Inspector General on the activities of the Office of the Inspector General and to consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Closed Session

23. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
24. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

25. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–16063 Filed 6–20–03; 2:17 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Annual Performance Reviews Committee of the Legal Services Corporation's Board of Directors will meet on June 27, 2003. The meeting will begin at 1:30 p.m. and continue until conclusion of the Committee's agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on future activities for the Committee.
3. Consider and act on other business.
4. Public comment.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 295–1500.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See* also 45 CFR 1622.2 & 1622.3.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 03–16064 Filed 6–20–03; 2:17 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on June 27, 2003. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Staff report on LSC's Consolidated Operating Budget, Expenses and Other Funds Available through April 30, 2003.
3. Staff report on LSC's budget projections for April 1—September 30, 2003.
4. Consider and act on LSC's 2005 budget request.
5. Consider and act on future activities for the *Committee.*
6. Consider and act on other business.
7. Public comment.
8. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–16065 Filed 6–20–03; 2:16 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations & Regulations Committee of the Legal Services Corporation Board of Directors will meet on June 27, 2003. The meeting will begin at 3:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW., Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Staff report on LSC's Rulemaking Process.
3. Consider and act on Grant Assurances for 2004.
4. Consider and act on future activities for the *Committee.*
5. Consider and act on other business.
6. Public comment.
7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–16066 Filed 6–20–03; 2:16 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on June 27, 2003. The meeting will begin at 4:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW, Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on future activities for the Committee.
3. Report by staff of LSC's Office of Program Performance on the three-year history of LSC's Technology Initiative Grant (TIG) awards program.
4. Consider and act on other business.
5. Public comment.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–16067 Filed 6–20–03; 2:16 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Search Committee for LSC President and Inspector General of the Legal Services Corporation's Board of Directors will meet on June 28, 2003. The meeting will begin at 9:00 a.m. and continue until conclusion of the Committee's agenda.

LOCATION: The Latham Hotel, 3000 M Street, NW, Washington, DC

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2), (4) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a), (c) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Presentations by representatives of the National Legal Aid & Defender Association (NLADA) and the ABA's Standing Committee for Legal Aid and Indigent Defendants (SCLAID).
3. Other public comment.
4. Consider and act on future activities for the Committee.
5. Consider and act on other business.

Closed Session

6. Consider and act on search firm options.

Open Session

7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 295–1500.

Dated: June 20, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 03–16068 Filed 6–20–03; 2:16 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 13, 2003.

TIME AND DATE: 10 a.m., Tuesday, June 24, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Lodestar Energy, Inc.,* Docket Nos. KENT 2002–184 and KENT 2003–238. (Issues include whether the judge erred by failing to modify an order issued under section 104(d)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 814(d)(1), to a citation under section 104(a) of the Act.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–16037 Filed 6–20–03; 12:30 am]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 149th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 10, 2003 from 2 p.m. to 5:30 p.m. in Room 527 and on July 11, 2003 from 9 a.m. to 12:15 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet in closed session on July 10th, from 2 to 5:30 p.m. for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of April 30, 2003, this session will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code. The remainder of the meeting, from 9 a.m. to 12:15 p.m. on July 11th, will be open to the public on a space available basis. Following opening remarks and announcements, there will be a presentation on Shakespeare in American Communities. This will be followed by Congressional, White House, and budget updates. A presentation on the American Jazz Masters program will feature NEA staff members A. B. Spellman and Wayne Brown (on the history of the program), International Association of Jazz Educators (IAJE) Executive Director Bill McFarlin (excerpts from the IAJE website), musician Jimmy Heath (Jazz Masters Fellowship recipient) and Jeb Patton of the Heath Brothers (jazz piano performance) and will include a discussion of the Chairman's new initiative and FY 05 guidelines. After a break, there will be a presentation on The Arts in Healthcare Symposium by Naj Wikoff (Director, Healing & the Arts Project, Dartmouth College) and Paula Terry (Director, NEA Office of AccessAbility). Other topics will include application review for American Jazz Masters Fellowships, Literature Fellowships/Translation, Resources for Change: Technology, and Leadership Initiatives and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY–TDD (202) 682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at (202) 682–5570.

Dated: June 18, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–15924 Filed 6–23–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Museums: July 22–25, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 11 a.m. to 12 p.m. on July 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on July 22nd–24th, and from 9 a.m. to 11 a.m. and 12 p.m. to 4 p.m. on July 25th, will be closed.

Presenting: July 28–29, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists category). A portion of this meeting, from 11 a.m. to 12 p.m. on July 29th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on July 28th, and from 9 a.m. to 11 a.m. and 12 p.m. to 1 p.m. on July 29th, will be closed.

Multidisciplinary: July 29-August 1, 2003, Room 714 (Creativity category). A portion of this meeting, from 11 a.m. to 12 p.m. on August 1st, will be open to the public for policy discussion. The remaining portions of this meeting, from 3 p.m. to 6 p.m. on July 29th, from 9 a.m. to 6 p.m. on July 30th and 31st, and from 9 a.m. to 11 a.m. and 12 p.m. to 1:15 p.m. on August 1st, will be closed.

Multidisciplinary: August 4, 2003, Room 714 (Services to Arts Organizations and Artists category). A portion of this meeting, from 3:45 p.m. to 4:45 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 3:45 p.m. and 4:45 p.m. to 5:45 p.m., will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 18, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–15923 Filed 6–23–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* July 8, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Art and Anthropology, submitted to the Office of Challenge Grants at the May 1, 2003, deadline.

2. *Date:* July 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

3. *Date:* July 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

4. *Date:* July 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for History and Public Programming, submitted to the Office of Challenge Grants at the May 1, 2003, deadline.

5. *Date:* July 17, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

6. *Date:* July 17, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

7. *Date:* July 17, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Research Institutions and Initiatives, submitted to the Office of Challenge Grants at the May 1, 2003, deadline.

8. *Date:* July 18, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

9. *Date:* July 21, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

10. *Date:* July 22, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Local History Initiative I, submitted to the Office of Challenge Grants at the May 1, 2003, deadline.

11. *Date:* July 28, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

12. *Date:* July 28, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

13. *Date:* July 29, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

14. *Date:* July 30, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

15. *Date:* July 31, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

16. *Date:* July 31, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003, deadline.

17. *Date:* July 31, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Local History Initiative II, submitted to the Office of Challenge Grants at the May 1, 2003, deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–15830 Filed 6–23–03; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Document Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Application/Permit for Use of the Two White Flint (TWFN) Auditorium.

3. *The form number if applicable:* NRC Form 590.

4. *How often the collection is required:* Each time public use of the auditorium is requested.

5. *Who will be required or asked to report:* Members of the public requesting use of the NRC Auditorium.

6. *An estimate of the number of responses:* 5.

7. *The estimated number of annual respondents:* 5.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA), and the Nuclear Regulatory Commission, the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review and scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Poom O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 24, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0181), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 17th day of June, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–15856 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19913]

Notice of Consideration of Amendment Request for Enviro-Test Laboratories, Casper, Wyoming and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License 49–21194–01, issued to Enviro-Test Laboratories (the licensee), to authorize decommissioning of its facility in Casper, Wyoming.

The licensee is currently authorized to possess a variety of radioactive isotopes for environmental and bioassay sampling; for use as laboratory standards and calibration sources; and for evaluation of leak tests as a customer service. On October 1, 2002, the licensee submitted a decommissioning plan (DP) to the NRC for review and approval. By letter dated January 28, 2003, the NRC requested additional information to supplement the DP. Supplemental information was provided to the NRC by letter dated June 2, 2003. An NRC administrative review, documented in a letter to Enviro-Test Laboratories dated June 11, 2003, found the DP acceptable to begin a technical review. In addition, the licensee submitted an NRC Form 314, ''Certificate of Disposition of Materials,'' dated January 31, 2003, requesting termination of its materials license.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. 49–21194–01. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity to Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005. Telephone: (817) 860–8191, fax (817) 860–8188, e-mail: *dbs@nrc.gov.* Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity to Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile (301–415–1101) addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant; Mr. Erv Callin, Director, Environmental Services, Enviro-Test Laboratories, 9936 67th Ave., Edmonton, AB T6EOP5, and;

2. The NRC staff; by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Public Meeting

There are no public meetings scheduled for this proceeding.

V. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession numbers for the original DP submittal are ML023190414, ML023190459, ML023190490, ML023220319, ML023190486, ML023220321, ML023220067, and ML023190561. The accession numbers for the supplemental information are ML031550560, ML031550604, ML031550624, and ML031550645. The accession number for the DP review acceptance letter is ML031621024. Any questions with respect to this action should be referred to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–4005. Telephone: (817) 860–8191, fax (817) 860–8188.

Dated in Arlington, Texas, this 16th day of June 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–15859 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–31141]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–23754–01, Nextran (Previously Known as DNX), Princeton, New Jersey

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Nextran for Materials License No. 29–23754–01, to authorize release of its facility in Princeton, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Princeton, New Jersey facility for unrestricted use. Nextran (previously known as DNX) has been authorized by NRC since September 12, 1989, to use radioactive materials for research and development purposes at the site. On May 1, 2003, Nextran requested that NRC release the facility for unrestricted use. Nextran has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Nextran's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031671424, ML031350493, ML031350669, and ML031350716). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Kathy Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269.

Dated: King of Prussia, Pennsylvania this 16th day of June, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–15858 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34613]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–30422–01, Praelux Incorporated, Lawrenceville, New Jersey

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Praelux Incorporated (Praelux) for Materials License No. 29–30422–01, to authorize release of its facility in Lawrenceville, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Lawrenceville, New Jersey facility for unrestricted use. Praelux (previously known as seQ, Ltd.) was authorized by NRC from January 16, 1998, to use radioactive materials for research and development purposes at the site. On May 14, 2003, Praelux requested that NRC release the facility for unrestricted use. Praelux has conducted surveys of the facility and determined that the

facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Praelux's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031680934, and ML031350739. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Kathy Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269.

Dated in King of Prussia, Pennsylvania this 17th day of June, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–15857 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of June 23, 30, July 7, 14, 21, 28, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED: emsp;

Week of June 23, 2003

There are no meetings scheduled for the Week of June 23, 2003.

Week of June 30, 2003–Tentative

Tuesday, July 1, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1).

Week of July 7, 2003—Tentative

There are no meetings scheduled for the Week of July 7, 2003.

Week of July 14, 2003—Tentative

There are no meetings scheduled for the Week of July 14, 2003.

Week of July 21, 2003—Tentative

There are no meetings scheduled for the Week of July 21, 2003.

Week of July 28, 2003—Tentative

There are no meetings scheduled for the Week of July 28, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact persons for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: June 19, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–16004 Filed 6–20–03; 11:21 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, May 30, 2003, through June 12, 2003. The last biweekly notice was published on June 10, 2003 (68 FR 28844).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the

Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 24, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's

PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 12, 2003.

Description of amendments request: The proposed amendment would extend several Required Action Completion times for inoperable diesel generators (DGs) identified in Technical Specification 3.8.1, ''AC Sources-Operating.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes do not affect the design, operational characteristics, function or reliability of the DGs. The DGs are not accident initiators, and extending the DG Required Action Completion Times will not impact the frequency of any previously evaluated accidents. The design basis accidents will remain the same postulated events described in the Updated Final Safety Analysis Report. In addition, extending the DG Required Action Completion Times will not impact the consequences of an accident previously evaluated. The consequences of previously evaluated accidents will remain the same during the proposed extended Required Action Completion Times as during the current Required Action Completion Times. The ability of the remaining DGs to mitigate the consequences of an accident will not be affected since no additional failures are postulated while equipment is inoperable within the Technical Specification Required Action Completion Times. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The duration of a Technical Specification Required Action Completion Time is determined considering that there is a minimal possibility that an accident will occur while a component is removed from service. A risk informed assessment was performed that concluded that the plant risk is acceptable and consistent with the guidance contained in Regulatory Guide 1.177.

The additional proposed changes to renumber action requirements and the correction of a misspelled word will not result in any technical changes to the current requirements. Therefore, these additional proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component in a manner that could cause an accident. The proposed changes will not alter the plant configuration or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operator following an accident will not be significantly different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by the DGs is to provide emergency back-up power supply to systems required to mitigate the consequences of postulated accidents. The engineered safety features systems on either of the two trains for each unit provide for the minimum safety functions necessary to shutdown the units and maintain it in a safe shutdown condition. Each of the two trains can be powered from one of the offsite power sources or its associated DG. In addition, the 0C DG (Station Blackout DG) is available to provide power to any of the trains. This design provides adequate defense in-depth to ensure that diverse power sources are available to accomplish the required safety functions. Thus, with a safety-related DG out-of-service, there is sufficient means to accomplish the safety functions and prevent the release of radioactive material in the event of an accident.

The proposed change does not affect any of the assumptions or inputs to the Updated Final Safety Analysis Report and does not reduce the decrease in severe accident risk achieved with the issuance of the Station Blackout Rule, 10 CFR 50.63, ''Loss of All Alternating Current Power.''

Therefore, the proposed change does not involve [a] significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 26, 2003.

Description of amendment request: The proposed amendments would allow the licensee to revise the Updated Final Safety Analysis Report to include a description of a load drop analysis performed for handling reactor cavity shield blocks weighing greater than 110 tons with the Dresden, Units 2 and 3, reactor building crane.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow use of a load drop analysis performed for handling the reactor cavity shield blocks weighing greater than 110 tons with the reactor building crane during power operation. The load drop analysis demonstrates that dropping a reactor cavity shield block within the designated safe load path from the heights assumed in the analysis will not affect the capability of safety-related equipment to perform its function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will allow use of a load drop analysis performed for handling the reactor cavity shield blocks weighing greater than 110 tons with the reactor building crane during power operation. The load drop analysis demonstrates that dropping a reactor cavity shield block within the designated safe load path from the heights assumed in the analysis will not affect the capability of safety-related equipment to perform its function. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change will allow use of a load drop analysis performed for handling the reactor cavity shield blocks weighing

greater than 110 tons with the reactor building crane during power operation. The load drop analysis demonstrates that dropping a reactor cavity shield block within the designated safe load path from the heights assumed in the analysis will not affect the capability of safety-related equipment to perform its function. Therefore, it is concluded that the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of amendment request: May 19, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will decrease the frequency associated with TS Surveillance Requirement (SR) 3.7.7.1 for Turbine Bypass Valve (BPV) testing from 7 to 31 days. The proposed change is consistent with the testing frequency contained in NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001, for BPV testing.

The 7-day frequency associated with SR 3.7.7.1 was established in the LaSalle County Station (LSCS) TS during conversion to Improved Technical Specifications (ITS) format due to the testing frequency contained in the LSCS custom TS and the difficulties experienced with other Electro-Hydraulic Control (EHC) system valves to consistently pass their surveillance tests. LSCS has recently re-evaluated the performance of these valves and has determined that the current performance of these valves supports decreasing the testing frequency of the BPVs from 7 to 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change will decrease the frequency associated with Surveillance Requirement (SR) 3.7.7.1 for turbine bypass valve (BPV) testing from 7 to 31 days. The proposed change is consistent with the testing frequency contained in NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001, for BPV testing. The performance of BPV surveillance testing is not a precursor to any accident previously evaluated.

Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

The Main Turbine Bypass System is required to be operable to limit peak pressure in the main steam lines and maintain reactor pressure within acceptable limits during events that cause rapid pressurization, such that the Safety Limit Minimum Critical Power Ratio (MCPR) is not exceeded. An operable Main Turbine Bypass System requires the BPVs to open in response to increasing main steam line pressure. The performance of BPVs surveillance testing provides assurance that the valves will operate as assumed in accidents previously evaluated. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation and does not introduce any new equipment, modes of system operation or failure mechanisms. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change will decrease the frequency associated with SR 3.7.7.1 for BPV testing from 7 to 31 days. The proposed change is consistent with the BPV testing frequency contained in NUREG–1433, Revision 2, and does not affect the design parameters or the setpoints associated with BPV operation. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: March 26, 2003.

Description of amendment request: The proposed amendments would modify Technical Specifications (TSs) 4.0.1 and 4.0.3 to be consistent with the Improved Standard Technical Specifications. The proposed amendments would also modify the TS requirements for missed surveillances in TS 4.0.3 to be consistent with the Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF), Standard Technical Specification Change TSTF–358, Revision 6.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of that portion of the following NSHC determination, related to the adoption of the TSTF–358, Revision 6, changes to the TSs in its application dated March 26, 2003.

Basis for proposed no significant hazards consideration determination:

Item 1: Modification of TSs 4.0.1 and 4.0.3 to be consistent with the Improved Standard Technical Specifications.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve rewording of the existing Technical Specifications to be

consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve rewording of the existing Technical Specifications to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve rewording of the existing Technical Specifications to be consistent with NUREG–1431, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, there will be no reduction in a margin of safety.

Item 2: Incorporation of TSTF–358—Revision 6.

As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards on consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis of Item 1 and the licensee's reference to the analysis included in the consolidated line-item improvement process **Federal Register** Notice, June 14, 2001 (66 FR 32400) for Item 2, and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 30, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by decreasing the pressurizer high level limit and by revising the required action when the pressurizer is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The new pressurizer high level limit is more restrictive than the existing limit, and accident initial conditions, probability, and assumptions remain as previously analyzed. The proposed change to the pressurizer allowed outage time will have no significant effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the pressurizer high level limit will ensure an adequate margin of safety is maintained. The proposed change to the pressurizer allowed outage time is minimal and will not have a significant effect on any margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: Omaha Public Power District (OPPD) has proposed the following changes to the Technical Specifications (TSs): (1) Use a pressure temperature limits report (PTLR), (2) change the minimum boltup temperature, (3) modify the TSs to reflect the revised low temperature overpressure protection (LTOP) methodology and analysis that is submitted for review and approval, (4) perform LTOP analyses ''in-house,'' (5) change the LTOP enable temperature, (6) modify TS 2.10.1 to exactly specify the reactor coolant system (RCS) temperature at which the reactor can be made critical, and (7) add a TS for a maximum pressure value for the safety injection tanks. The use of a PTLR requires the relocation of TS Figure 2–1 (RCS Pressure—Temperature Limits for Heatup, Cooldown, and In-service Test) into Figure 5–1 of the PTLR. As a result of these changes, the following TSs are required to either be modified or added: define the PTLR in Definitions; TS 2.1.1(8); TS 2.1.1(11); Basis Section of TS 2.1.1; TS 2.1.2, including the TS 2.1.2 Basis and Reference Sections; TS 2.1.6(4); TS 2.3(1)(c); TS 2.3(3); TS 2.3 References; TS 2.10.1 and TS 2.10.1 Basis Section; Table 3–5, item 23, TS 3.3(1)(c); and TS 5.9.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequence of any accident for the following reasons:

(1) The proposed changes relocate the Pressure—Temperature (P–T) limit curves and low temperature over pressure protection (LTOP) system setpoints to the Pressure and Temperature Limits Report (PTLR). Compliance with these curves and limits continues to be required by the Technical Specifications (TSs). Changes to the curves will be controlled by TS 5.9.6, which contains the NRC approved methodologies used in the development of the PTLR. The change to the P–T limit curve as shown on Figure 5–1 of the PTLR is in compliance with Reference 10.11 [of the licensee's October 8, 2002, submittal], Westinghouse Electric Company/Combustion Engineering's (W/CE's) methodology and ASME Code Case N–640 for performing P–T limit curves.

(2) Revisions to the LTOP system limits can only be made in accordance with the approved methodologies stated in TS 5.9.6 with any resulting setpoint changes controlled by the 10 CFR 50.59 process. The PTLR in combination with the limitations imposed by the TSs will ensure the integrity of the reactor vessel pressure boundary.

(3) The conservative, but lower minimum boltup temperature and LTOP enable temperature are in compliance with Reference 10.12 [of the licensee's October 8, 2002, submittal]. Since the P–T limit curves and LTOP analysis are analyzed to the same temperatures as these proposed temperature values, there is no reduction to the margin of safety.

(4) Restricting the RCS temperature at which the reactor can be made critical is more conservative than the minimum temperature requirements for core critical operations based on fracture mechanics considerations as required by Reference 10.11 [of the licensee's October 8, 2002, submittal] during physics testing.

(5) Addition of a maximum pressure to the safety injection tanks (SITs) ensures compliance with Criterion 2 of 10 CFR 50.36(c)(2)(ii).

Therefore, the probability or consequence of any accident is not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision does not change any equipment required to mitigate the consequences of an accident. The continued use of the same TS administrative controls prevents the possibility of a new or different kind of accident. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident events are postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Relocating the P–T limit curves and LTOP system setpoints to the PTLR is in compliance with Reference 10.7 [of the licensee's October 8, 2002, submittal]. Future updates of the PTLR will be conducted under the 10 CFR 50.59 process utilizing NRC approved methodologies. Updating the P–T limit curve is in accordance with Reference 10.11 [of the licensee's October 8, 2002, submittal], W/CE's methodology and ASME Code Case N–640. Reduction of the minimum boltup temperature and LTOP enable temperature is in compliance with Reference 10.12 [of the licensee's October 8, 2002, submittal]. Restricting the reactor coolant system (RCS) temperature at which the reactor can be made critical is more conservative than the minimum temperature requirements for core critical operations based on fracture mechanics considerations as required by Reference 10.11 [of the licensee's October 8, 2002, submittal], during physics testing. Addition of a maximum pressure to the SITs is in accordance with Criterion 2 of 10 CFR 50.36(c)(2)(ii). Additionally, the LTOP methodology and analysis conforms to Reference 10.10 [of the licensee's October 8, 2002, submittal]. Therefore, the proposed changes do not involve a significant reduction to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: April 2, 2003.

Description of amendment requests: The proposed license amendments would revise Technical Specification (TS) 5.5.11, ''Ventilation Filter Testing Program (VFTP),'' to change the surveillance frequency, penetration, and relative humidity requirements for laboratory testing of the charcoal adsorber for the control room, auxiliary building, and fuel handling building ventilation systems. This would also eliminate the charcoal preheater testing requirements. TS 3.7.10, ''Control Room Ventilation System (CRVS),'' and TS 3.7.12, ''Auxiliary Building Ventilation System (ABVS),'' will also be revised to be consistent with these changes. These changes are in accordance with Regulatory Guide 1.52, Revision 3, ''Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Post Accident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants,'' Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' and the requirements in American Society for Testing and Materials D3803–1989, ''Standard Technical Method for Nuclear-Grade Activated Carbon.'' In addition, TS 3.7.10 would be revised by adding a note allowing the control room boundary to be open intermittently under administrative control; adding a new required TS Action for two CRVS

trains being inoperable due to an inoperable control room boundary, and revising the relettered Condition F to add ''for reasons other than Condition B.'' TS Surveillance Requirement (SR) 3.7.12.3 would be revised to limit its applicability and TS 3.7.13, ''Fuel Handling Building Ventilation System (FHBVS),'' would be revised to add the word ''recently'' to qualify the irradiated fuel in the statement of applicability. These proposed revisions are made consistent with NUREG–1431, Revision 2, ''Standard Technical Specifications Westinghouse Plant,'' April 2001, and limit unnecessary surveillance testing when the ABVS is actively performing its safety function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the frequency (from 18 months to 24 months), and acceptance criteria for laboratory testing of the charcoal adsorbers in the engineered safety feature (ESF) ventilation systems. The testing is performed offsite on charcoal samples taken from the ventilation systems, and would have no impact on any accident initiator, or change the consequences of any previously analyzed accident. Continued compliance with industry standards and Diablo Canyon Power Plant test data ensure that the revised requirements would continue to ensure the charcoal adsorbers are capable of performing their intended safety function; therefore, the changes would not affect the accident mitigation capabilities of the ESF ventilation systems.

The preheaters in the control room ventilation system (CRVS) and auxiliary building ventilation system (ABVS) are not initiators of analyzed events, are no longer credited in mitigating design basis accidents or transients, and are therefore not required for system operability. The deletion of the requirement to demonstrate the capability of the preheaters every 24 months, and the changes to the action requirements and surveillance requirements for the CRVS and ABVS would not affect the assumed accident mitigation capabilities of these ESF ventilation systems.

The proposed changes also provide for two trains of the CRVS to be inoperable for up to 24 hours as a result of the CRVS boundary being inoperable. This allowance is contingent on providing and implementing proceduralized compensatory measures to restore the boundary during that time period. Although this change does provide for an increase in the allowed time for continued plant operation in the applicable modes, its acceptability is based on the low probability of any design basis accident during that time period and the protection provided by the compensatory measures that would be established. In addition, this change has no impact on any accident initiator, and does not change the consequences of any previously analyzed accident, because the administrative controls will restore the boundary before it is required to protect control room personnel.

The proposed changes also provide for limiting the applicability of surveillance requirement (SR) 3.7.12.3, which verifies the operability of the ABVS on a safety injection (SI) signal. The limitation is imposed only when the ABVS is aligned and operating in its safety function configuration. Since the ABVS is already performing its safety function when it is in that condition, verifying the automatic capability to transfer to that configuration is unnecessary. Since this limitation is only during periods where the ABVS is in its safety function configuration it has no impact on any accident initiator, or change the consequences of any previously analyzed accident. In addition, this surveillance is still required to be current whenever the ABVS is returned to automatic.

The proposed changes also provide for limiting the required operability of the fuel handling building ventilation system (FHBVS) based on a minimum time period that all fuel assemblies in the fuel pool have not been part of a critical core. This change does reduce the current operability requirements for the FHBVS and increases the consequences of a fuel handling accident with the FHBVS inoperable. However, limiting the FHBVS operability requirements does not increase the probability of any accident, and as determined in the new fuel handling accident (FHA) analysis, the potential release levels are still well within acceptable limits and do not significantly increase the consequences of a FHA.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ABVS, FHBVS and CRVS are accident response systems and as such cannot create accidents. The changes to the charcoal sample test requirements will not affect the method of operation of the systems. The proposed changes only affect the laboratory test acceptance criteria for the charcoal samples, and how the charcoal preheaters are credited for meeting technical specification (TS) requirements. These changes result in a more conservative testing methodology. Deletion of the preheater requirements from the TS is based on the heaters not being credited for mitigation of any accident condition and does not affect the operation of these systems. The design and operation of the CRVS, ABVS, and FHBVS are not affected by these changes. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes.

The proposed changes also provide for two trains of the CRVS to be inoperable for up to 24 hours as a result of the CRVS boundary being inoperable. This allowance requires proceduralized compensatory measures to protect the operators during that time period. Although this change does provide for an increase in the allowed time for continued plant operation, its acceptability is based on the low probability of any design basis accident during that time period and the protection provided by the compensatory measures that would be established. The design and operation of the control room ventilation system is not affected by this change.

The proposed changes also provide for limiting the applicability of SR 3.7.12.3, which verifies the operability of the ABVS on an SI signal. The limitation is imposed only when the ABVS is aligned and operating in its safety function configuration. Since the ABVS is already performing its safety function when it is in this condition, verifying the automatic capability to transfer to this configuration is unnecessary. Since this limitation is only during periods where the ABVS is in its safety function configuration, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes also provide for limiting the required operability of the FHBVS based on a minimum time period that all fuel assemblies in the fuel pool have not been part of a critical core. This change does reduce the current operability requirements for the FHBVS by limiting these requirements to the period when the system would be required to mitigate the radiological consequences of an accident to acceptable limits. However, the design and operation of the FHBVS is not affected by this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The charcoal adsorber sample laboratory testing protocol accurately demonstrates the required performance of the adsorbers in the CRVS and ABVS following a design basis accident or in the FHBVS following a fuel handling accident outside containment. The changes in charcoal testing acceptance criteria and frequency will not affect system performance or operation. They will continue to ensure that the charcoal will perform its safety function. The decontamination efficiencies used in the offsite and control room dose analyses are not affected by this change. Therefore the offsite and control room dose analyses are not affected by this change, and offsite and control room doses will remain within the limits of 10 CFR 100 and 10 CFR 50, Appendix A, GDC [General Design Criterion] 19. Although there is a reduction in the safety factor provided by the previous testing protocol, the revised testing protocol follows current industry standards. These standards ensure adequate margin exists and that the charcoal will perform its design basis function. As a result, there is no significant reduction is [in] a margin of safety.

The proposed changes also provide for two trains of the CRVS to be inoperable for up to

24 hours as a result of the control room boundary being inoperable. Although this change does provide for an increase in the allowed time for continued plant operation under certain conditions, its acceptability is based on a low probability of any design basis accident occurring during that time period and the added protection provided by the compensatory measures that would be established. The increase in inoperability could be considered to be a decrease in the margin of safety of this system. However, based on the low probability of a concurrent accident requiring system operability during the completion time for this condition and the ability of the compensatory measures to restore the boundary before it is needed if an accident occurs, this potential reduction in safety margin is not considered to be significant.

The proposed changes also provide for limiting the applicability of SR 3.7.12.3, which verifies the operability of the ABVS on a SI signal. The limitation is imposed only when the ABVS is aligned and operating in its safety function configuration. Since the ABVS is already performing its safety function when it is in this condition, verifying the automatic capability to transfer to this configuration is unnecessary. Since this limitation is only during periods where the ABVS is already in its safety function configuration, the margin of safety is actually increased because the ABVS does not have to change configuration as a result of an accident to perform its safety function.

The proposed changes also provide for limiting the required operability of the FHBVS based on a minimum time period (''recently irradiated fuel'') that all fuel assemblies in the fuel pool have not been part of a critical core. This change does reduce the current operability requirements for the FHBVS by limiting operability to the period when the system would be required to mitigate the radiological consequences of an accident to acceptable limits. This proposed change creates the potential for increased dose in the control room and at the site boundary due to a FHA outside containment. However, the new analysis demonstrates that the resultant doses are well within the Regulatory Guide (RG) 1.183 limits and within the GDC 19 limits. In the case of the offsite dose values, they remain within the RG 1.183 limits, which is considered acceptable. Based on this, the margin of safety is not significantly reduced.

In the new FHA analysis, the offsite and control room doses due to a FHA outside containment have been evaluated using conservative assumptions, such as no credit being taken for the functionality of either FHBVS train's activated charcoal adsorber sections, the control room ventilation system remains in normal mode with no charcoal filtration available, and all airborne activity caused by the FHA is released at a linear rate over two hours. These conservative assumptions ensure the results of the calculation bounds the expected dose. The normal availability of the fuel handling building and control room filtration systems will reduce the potential control room and offsite doses in the event of a FHA, and provides additional margin to the calculated doses.

Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, PO Box 7442, San Francisco, CA 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: May 29, 2003.

Description of amendment requests: The proposed changes to the technical specifications would extend the completion time for restoring an inoperable diesel generator from 7 days to 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the Technical Specification (TS) 3.8.1 completion times for Required Actions A.2 and B.4 associated with the diesel generators (DGs). The proposed changes allow an extension of the current TS completion time from 7 days to 14 days for an inoperable DG.

The proposed changes do not affect the design of the DGs, the operational characteristics or function of the DGs, the interfaces between the DGs and other plant systems, or the reliability of the DGs. Required Actions and the associated completion times are not initiating conditions for any accident previously evaluated, and the DGs are not initiators of any previously evaluated accidents. The DGs mitigate the consequences of previously evaluated accidents including loss of offsite power. The consequences of a previously analyzed event will not be significantly affected by the extended DG completion time since the DGs will continue to be capable of performing their accident mitigation function as assumed in the accident analysis. Thus the consequences of accidents previously analyzed are unchanged between the existing TS requirements and the proposed changes. The consequences of an accident are independent of the time the DGs are out of service as long as adequate DG availability is assured. The proposed changes will not result in a significant decrease in DG availability so that the assumptions regarding DG availability are not impacted.

To fully evaluate the effect of the proposed DG completion time extension, probabilistic risk assessment methods and a deterministic analysis were utilized. The results of the analysis show no significant increase in core damage frequency and large early release frequency.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

The proposed changes do not involve a change in the design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure that the plant remains within analyzed limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed 14 day DG completion time is based upon both a deterministic evaluation and a risk-informed assessment. The availability of offsite power coupled with the availability of the other DGs in the affected unit, the unit auxiliary feedwater pumps, and all auxiliary saltwater trains (including the cross-tie) and utilization of the Online Risk Management Program while a DG is inoperable, provide adequate compensation for the potential small incremental increase in plant risk of the extended DG completion time. In addition, the increased availability of the DGs during refueling outages provides a reduction in plant risk during shutdown periods.

The risk assessment performed to support this license amendment request concluded that the increase in plant risk is small and consistent with the NRC's Safety Goal Policy Statement, ''Use of Probabilistic Risk Assessment Methods in Nuclear Activities: Final Policy Statement,'' **Federal Register**, Volume 60, p. 42622, August 16, 1995 and guidance contained in [* * *] Regulatory Guides (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' dated July 1998 and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision making: Technical Specifications,'' dated August 1998. Together, the deterministic evaluation and the risk-informed assessment provide high assurance of the capability to provide power to the engineered safety feature buses during the proposed 14 day DG completion time.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: May 6, 2003.

Description of amendment request: The proposed amendments would delete SSES 1 and 2 Technical Specifications (TSs) 3.3.1.3, ''Oscillation Power Range Monitor (OPRM) Instrumentation,'' and revise TS 3.4.1, ''Recirculation Loops Operating.'' These changes would reverse approved TS Amendment Nos. 184 (Unit 1) and 158 (Unit 2) dated July 30, 1999, that are not yet implemented, which effectively results in no change to the current SSES 1 and 2 operation. Extension of the implementation date was needed to provide time to address continuing hardware and software deficiencies with the OPRM system. The extension of the implementation date until November 1, 2001, was approved by Amendment Nos. 187 (Unit 1) and 161 (Unit 2) dated June 2, 2000. A second extension of the implementation date until November 1, 2003, was approved by Amendment Nos. 196 (Unit 1) and 172 (Unit 2) dated October 29, 2001. This deferral was based on a Title 10 Code of Federal Regulations (10 CFR), part 21, report issued by General Electric Company on August 31, 2001, which identified a non-conservative deficiency in the OPRM trip setpoint methodology. The licensee stated that the OPRM system cannot be declared OPERABLE until a revised NRC-approved methodology providing a valid basis for the trip setpoints is available and adopted for the SSES 1 and 2 OPRM systems. The implementation requirements associated with Amendment Nos. 187, 161, 196 and 172 would also be superceded with this proposed amendment. The proposed amendment would formally reinstate the requirements currently governing operation, which define appropriately conservative restrictions to plant operation and operator response to thermal hydraulic instability events.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The OPRM system is not an initiator to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). The changes do not involve a physical change to structures, systems, or components (SSCs) since the RPS [reactor protection system] trip function has not been installed and does not alter the method of operation or control of SSCs since the OPRM system has not been declared OPERABLE. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents (including assumed protection of fuel design limits) are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

Operation in accordance with the proposed Technical Specification (TS) ensures that the protection from thermal hydraulic instabilities remains as previously evaluated and the protection for fuel design limits remain as described in the FSAR. Therefore, the mitigative functions will continue to provide the protection assumed by the existing analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints affected by this change at which protective or mitigative actions are initiated. This change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the required protection from thermal hydraulic instabilities remains as previously evaluated and the protection for fuel design limits remain as described in the FSAR. Operation in accordance with the proposed TS ensures that the margin of safety is maintained. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 14, 2003.

Description of amendment request: The proposed amendment revises surveillance requirement 4.6.2.1 for demonstrating operability of containment spray system spray nozzles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The Containment Spray System is not considered an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that may initiate an analyzed event. The proposed change will not alter the operation or otherwise increase the failure probability of any plant equipment that can initiate an analyzed accident.

This change does not affect the plant design. There is no increase in the likelihood of formation of significant corrosion products. Due to their location at the top of the containment, introduction of foreign material into the spray headers is unlikely. Foreign material introduced during maintenance activities would be the most likely source for obstruction, and verification following such maintenance would confirm the nozzles remain unobstructed.

Consequently, there is no significant increase in the probability of an accident previously evaluated.

The Containment Spray System is designed to address the consequences of a LOCA [loss

of coolant accident]. The Containment Spray System is capable of performing its function effectively with the single failure of any active component in the system, any of its subsystems, or any of its support systems. A plugged nozzle would have negligible impact on the capability of the Containment Spray System to respond to a Loss of Coolant Accident.

Therefore, the consequences of an accident previously evaluated are not significantly affected by the proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? The proposed change will not physically alter the plant (no new or different type of equipment will be installed) or change the methods governing normal plant operation. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The system is not susceptible to corrosion-induced obstruction or obstruction from sources external to the system. Maintenance activities that could introduce foreign material into the system would require subsequent verification to ensure there is no nozzle blockage. The spray header nozzles are expected to remain unblocked and available in the event that the safety function is required. Therefore, the capacity of the system would remain unaffected. Hence, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2003.

Description of amendment request: The proposed amendments revise Technical Specification (TS) 3.4.2.2, ''Reactor Coolant System,'' to relax the lift setting tolerance of the pressurizer safety valves from ±2 percent to +2 percent, -3 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change takes credit for the assumptions made in the reanalysis of the rod withdrawal from power event already evaluated in the UFSAR [Updated Final Safety Analysis Report]. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change takes credit for the assumptions made in the reanalysis of the rod withdrawal from [the] power event already evaluated in the UFSAR. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed TS change takes credit for the assumptions made in the reanalysis of the rod withdrawal from power event already evaluated in the UFSAR. That analysis demonstrated that the fuel design limits were maintained by the reactor protection system since the DNBR [Departure from Nucleate Boiling Ratio] was maintained above the limit value. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92 and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority (TVA), Docket No. 50–328, Sequoyah Nuclear Plant (SQN), Unit 2, Hamilton County, Tennessee

Date of amendment request: June 5, 2003 (TSC 03–08).

Description of amendment request: The proposed amendment would revise the reactor coolant system (RCS) heatup and cooldown curves (pressure-temperature (P–T) limits). The revision replaces the P–T limits that are currently analyzed for 14.5 Effective Full Power Years (EFPYs) with new limits analyzed for 32 EFPYs. In addition, the amendment includes corresponding changes to the Technical Specification (TS) figure associated with the Low Temperature Over Pressure Protection and the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed revision does not affect plant equipment, test methods or operating practices. The modification to SQN TSs is consistent 10 CFR 50, Appendix G in conjunction with alternative methods provided in American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1.'' The proposed change continues to provide controls for safe operation within the required limits. The proposed changes do not contribute to events or assumptions associated with postulated design basis accidents (DBA). The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed revision is not the result of changes to plant equipment, test methods, or operating practices. The proposed revision to the SQN Unit 2 P–T limits continues to ensure that conservative fracture toughness margins are maintained to protect against reactor pressure vessel failure. In addition, SQN's current setpoints for low-temperature overpressure protection were evaluated and are bounding for the proposed 32 EFPY P–T limits. The updated P–T limits are based on NRC approved methodology in conjunction with alternative methods provided in American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1.''

The reactor vessel P–T limits are operational limits and are not considered to be contributors to the generation of postulated accidents. The safety functions of the associated systems remain unchanged and do not affect the assumptions of DBAs. The operational limits continue to be governed within the TSs. Accordingly, the proposed change does not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. TVA's proposed TS amendment provides revised reactor pressure vessel P–T limits that are within the design capabilities of the pressure control systems for protection of the RCS. The limits are based on conservative design margins that ensure that plant operation is within the design capacity of the reactor vessel materials. Accordingly, the function of the RCS to provide a fission product barrier is not compromised.

TVA's proposed change to revise P–T limits does not result in a change to system design features. The proposed change does not affect plant conditions that result in precursors to accidents or cause degradation of accident mitigation systems. The plant system safety functions are not altered by the proposed change.

The proposed changes allow plant operation with different P–T limits while continuing to retain conservative margins for assuring integrity of the reactor vessel and the RCS. Consequently, the proposed TS revisions do not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, TN 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: June 5, 2003 (TSC 03–09).

Description of amendment request: The proposed change to the Updated Final Safety Analysis Report (UFSAR) would amend the design and licensing basis to identify that operator action may be necessary to ensure containment design pressure is not exceeded subsequent to a high energy line break (HELB) such as loss-of-coolant-accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The procedure changes/additions being implemented to mitigate a SCSA [station control and service air] leak in containment will only be used following a HELB in containment, a consequential rupture of an SCSA line and a failure of the outboard CIV [containment isolation valve] on the SCSA containment supply.

Operators isolate the SCSA leak on the accident unit by either manually closing a valve upstream of the stuck-open CIV or by shutting down the station air compressors. If the station air compressors are shut down prior to performing an emergency shut down of the non-accident unit or if an operator error results in an isolation of the control air supply to the non-accident unit, then at-worst, a UFSAR Condition II event is induced on the non-accident unit. For example a reactor trip from full power or a loss of normal feedwater—loss of control air to the feedwater regulator valves resulting in a loss of normal feedwater to the non-accident unit.

A UFSAR Condition II event has a frequency of one per year. Therefore, the proposed procedure changes/additions, including the potential for operator error do not result in more than a minimal increase in a previously evaluated Condition II event (1+1/40 = 1.025 less than 10 percent increase).

The operator actions being implemented to mitigate a SCSA leak in containment are performed after the occurrence of an accident on primarily non-safety-related systems, structures or components [SSCs] so they do not increase the likelihood of the occurrence of a malfunction of equipment previously evaluated in the UFSAR.

The air operated containment isolation valve is assumed to fail open due to single failure criteria and, containment isolation/integrity is maintained by the inboard check valve. The containment boundary is unaffected by the operator actions being implemented to mitigate a SCSA leak in containment. Therefore, the consequences of all accidents previously evaluated in the UFSAR remain unchanged.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. This change implements new manual actions for accident failure modes not previously evaluated in the UFSAR. The manual actions are required to ensure containment design pressure is not exceeded.

Operators isolate the SCSA leak on the accident unit by either manually closing an upstream isolation valve on the accident unit's SCSA containment supply or by shutting down the station air compressors. The operator actions being implemented have been determined to meet the criteria for safety-related operator actions in NRC Information Notice (IN) 97–78/ANS–58.8 and; therefore, there are no credible operator actions which would prevent isolation of a SCSA leak prior to containment design pressure being exceeded. If the station air compressors are shut down prior to performing an emergency shutdown of the non-accident unit or if an operator error results in an isolation of the SCSA supply to the non-accident unit, then at-worst, a UFSAR Condition II event occurs. Because UFSAR Condition II events have been previously identified, the operator actions being added under this change do not create the possibility of an accident of a different type than previously evaluated.

The operator actions being implemented to mitigate a SCSA leak in containment are performed after the occurrence of an accident on primarily non-safety-related SSCs so they do not create a possibility for a malfunction of an SSC important to safety with a different result than previously evaluated in the UFSAR.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The established limits for the fuel, reactor vessel or containment are not affected by the addition of operator actions to isolate a SCSA leak inside containment. Isolation of the air leak within two hours of a large break loss-of-coolant accident (LBLOCA) prevents containment pressure exceeding the peak calculated pressure. Consequently, this change does not represent a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, TN 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear (WBN) Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: May 14, 2003.

Description of amendment request: The proposed amendment would allow an alternate Westinghouse methodology for the measurement of reactor coolant system (RCS) total flow rate via measurement of the RCS elbow tap differential pressures. TVA stated that this methodology is similar to that reviewed and approved by the NRC for other utilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. TVA's evaluation for WBN Unit 1 determined that the probability of an accident will not increase since adequate RCS flow will still be assured. Sufficient margin exists to account for all reasonable instrument uncertainties; therefore, no changes to installed equipment or hardware in the plant are required, thus the probability of an accident occurring remains unchanged. The initial conditions for all accident

scenarios modeled are the same and the conditions at the time of trip, as modeled in the various safety analyses are the same. Therefore, the consequences of an accident will be the same as those previously analyzed.

Therefore, since the actual plant configuration, performance of systems, and initiating event mechanisms are not being changed, TVA has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. There are no changes in operation of the plant that could introduce a new failure mode. No new accident scenarios have been identified. Operation of the plant will be consistent with that previously modeled, *i.e.*, the time of reactor trip in the various safety analyses is the same, thus plant response will be the same and will not introduce any different accident scenarios that have not been evaluated.

Therefore, TVA concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change reflects changes due to the method used to verify RCS flow at the beginning of each cycle. However, no changes to the Safety Analysis assumptions were required; therefore, the margin of safety will remain the same. Therefore, TVA concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 16, 2002, as supplemented on April 1, 2003.

Brief description of amendment: The amendment revised the Technical Specifications, changing the safety limit minimum critical power ratio (SLMCPR) from 1.11 to 1.09 for both four- or five-recirculation-loop operation, and from 1.12 to 1.10 for three-recirculation-loop operation. It also added a paragraph to explain that the lower SLMCPR values are due primarily to an improved treatment of the power distribution uncertainty.

Date of issuance: June 5, 2003.

Effective date: June 5, 2003 and shall be implemented within 30 days of issuance.

Amendment No.: 238.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2799).

The April 1, 2003, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 5, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 2, 2002, as supplemented by letter dated April 14, 2003.

Brief description of amendments: The amendments revise the Technical Specifications for Administrative Controls in Section 5.0 concerning Responsibility, Unit Staff, Unit Staff Qualifications, and controls for the High Radiation Area.

Date of issuance: June 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 213 and 194.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 800).

The supplement dated April 14, 2003, provided clarifying information that did not change the scope of the December 2, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: December 30, 2002, and its supplement dated April 28, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.1.1.2, ''Minimum Critical Power Ratio Safety Limit

(MCPRSL)'' to support operating during Cycle 17. Cycle 17 is the first cycle of operation with a mixed core of ABB/CE/Westinghouse SVEA–96 fuel and Framatome ANP Atrium™-10 reload fuel. The amendment also revises Surveillance Requirement (SR) 3.3.1.3.2—the low power range monitor (LPRM) calibration frequency specified in the TS for the oscillation power range monitor. This change corrects an inconsistency between the LPRM calibration frequency specified in SR 3.3.1.3.2 and SR 3.3.1.1.7, ''Reactor Protection System (RPS) Instrumentation.''

Date of issuance: June 2, 2003.

Effective date: June 2, 2003, and shall be implemented before the plant restarts after completion of Refueling Outage 16.

Amendment No.: 186.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7815).

The April 28, 2003, supplemental letter provided additional clarifying information, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 4, 2002.

Brief description of amendment: Change the Technical Specifications (TSs) by extending the primary containment integrated leak rate testing interval from 10 years to no longer than approximately 10.6 years, on a one-time basis.

Date of issuance: June 2, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 215.

Facility Operating License No. DPR–28: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68736).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 2, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 23, 2002, as supplemented January 24 and April 21, 2003.

Description of amendment request: The amendment relocates, intact, Technical Specification (TS) 6.2.3, ''Independent Technical Reviews;'' TS 6.4, ''Review and Audit;'' TS 6.7.2 through 6.7.5 (specific descriptions of the procedure review and approval process); and TS 6.9, ''Records Retention'' to the Operational Quality Assurance Program. The amendment also changes the title of the senior onsite official from ''Executive Vice President and Chief Nuclear Officer'' to ''Site Vice President,'' revises the 10 CFR 20 references in the TSs to bring them into consistency with 10 CFR 20, and makes other minor editorial changes.

Date of issuance: June 6, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 88.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7817).

The April 21, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expanded the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 10, 2002, as supplemented by letter dated April 16, 2003.

Brief description of amendment: The amendment replaces the fire protection requirements contained in Facility Operating License (FOL) Section 2.C.(4) with the standard fire protection FOL condition recommended by Generic Letter 86–10, Section F, adapted to Cooper Nuclear Station.

Date of issuance: June 5, 2003.

Effective date: June 5, 2003.

Amendment No.: 199.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 808).

The supplement dated April 16, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: October 7, 2002, as supplemented by letter dated March 24, 2003.

Brief description of amendment: The amendment (1) adds a new Surveillance Requirement (SR) 4.0.3 to extend the delay period, up to 24 hours or up to the limit of the specified frequency, whichever is greater, before entering a Limiting Condition for Operation following a missed surveillance; (2) adds a new SR 4.0.1 to define general conditions for use of SRs; and (3) makes various editorial and administrative changes.

Date of issuance: June 3, 2003.

Effective date: June 3, 2003, to be implemented within 60 days of issuance.

Amendment No.: 182.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68739) and April 29, 2003 (68 FR 22748).

The supplement expanded the scope of the application, and was addressed by the second notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 11, 2002.

Brief description of amendments: These amendments revise Technical Specification 3.1.8, ''Physics Tests Exceptions—Mode 2,'' to correct an error in the numbering of a function. Specifically, the reference in Limiting Condition for Operation 3.1.8 to Function 17.d has been changed to Function 17.e.

Date of issuance: June 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 208 & 213.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56325).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 2003.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 6, 2003.

Brief description of amendments: The amendments revise Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 of the Technical Specifications on the reactor trip system instrumentation. The proposed changes to SR 3.3.1.2 move Note 1 to the body of the SR, replace the reference to nuclear instrumentation system channel output by a reference to power range channel output, and delete the reference to the absolute difference. The change to SR 3.3.1.3 is editorial.

Date of issuance: June 2, 2003.

Effective date: June 2, 2003, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–157; Unit 2–157.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18282).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 2003.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of application for amendments: March 3, 2003, and its supplement dated March 5, 2003.

Brief description of amendments: The amendment authorizes revisions to the Final Safety Analysis Report (FSAR) Update to incorporate the NRC approval of a probability of detection of 1.0 to one bobbin indication, contained in Diablo Canyon Nuclear Power Plant (DCPP) Unit 2 steam generator 4 tube at row 44, column 45 at the second tube support plate on the hot leg side, for the beginning of cycle voltage distribution for the DCPP Unit 2 Cycle 12 operational assessment. In a **Federal Register** notice dated April 15, 2003 (68 FR 18284), the NRC described the amendment request as follows:

> The proposed license amendment would revise Technical Specification (TS) 5.5.9, ''Steam Generator Tube Surveillance Program,'' and TS 5.6.10, ''Steam Generator Tube Inspection Report,'' for Diablo Canyon Power Plant (DCPP) Unit 2, to apply a probability of detection (POD) of 1.0 to the bobbin indication in the steam generator (SG) 4 tube at row 44, column 45 at the second tube support plate (TSP) on the hot leg side (R44C45–2H) for the beginning of cycle (BOC) voltage distribution for the DCPP Unit 2 BOC Cycle 12 operational assessment.

The change from a TS to an FSAR revision resulted from the March 5, 2003, supplement and is not substantial in that the technical issues and no significant hazards consideration determination remain the same.

Date of issuance: June 3, 2003.

Effective date: June 3, 2003, and shall be implemented within 30 days of the date of issuance. The implementation of the amendment includes the incorporation into the FSAR Update the changes discussed above, as described in the licensee's application dated March 3, 2003, its supplement dated March 5, 2003, and evaluated in the staff's safety evaluation attached to the amendment.

Amendment No.: 158.

Facility Operating License No. DPR–82: The amendment authorized revision of the FSAR Update.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18284).

The March 5, 2003, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 31, 2002.

Brief description of amendments: These amendments revised the Technical Specifications, Section 3.7.6, ''Main Turbine Bypass System,'' to change the requirement for operability of the main turbine bypass system bypass valves. Specifically, Surveillance Requirement 3.7.6 would be revised to test only each required turbine bypass valve every 31 days.

Date of issuance: May 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 210 and 185.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78524).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 30, 2002.

Brief description of amendments: These amendments revise Technical Specifications Section 5.5.7, ''Ventilation Filter Testing Program,'' to change the control room emergency outside air supply system (CREOASS) maximum allowed filter train pressure drop from <9.1 inches water gage (wg) to <7.3 inches wg.

Date of issuance: May 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 211 and 186.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78523).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 3, 2003.

Brief description of amendments: The amendments delete Technical Specification (TS) 5.5.3, ''Post Accident Sampling,'' and thereby eliminate the requirements to have and maintain the post-accident sampling systems. The amendments also address related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment.''

Date of issuance: June 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 212 and 187.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 29, 2003. (68 FR 22752).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 31, 2002.

Brief description of amendments: These amendments revised Technical Specifications, Section 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' to add an ACTIONS Note allowing intermittent opening, under administrative control, of penetration flow paths that are isolated. Additionally, these amendments revised TSs Section 3.3.6.1 to breakout the traversing incore probe system isolation as a separate isolation Function with an associated Required Action to isolate the penetration within 24 hours rather than immediately initiating a unit shutdown.

Date of issuance: June 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 213 and 188.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78523).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 8, 2002, as supplemented by letters dated November 26, 2002, and April 10, 2003.

Brief description of amendments: The amendments revise the Reactor Core Safety Limits curve in Technical Specifications (TS) Figure 2.1.1–1, and the Over Temperature Delta Temperature (OTDT) and Over Power Delta Temperature (OPDT) reactor trip functions described in TS Table 3.3.1–1. These changes will provide Vogtle Electric Generating Plant (VEGP), Units 1 and 2 with increased operating margins that will increase the OTDT and OPDT setpoints to account for hot leg temperature fluctuations that are part of the VEGP Setpoint Margin Recovery Program.

Date of issuance: June 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 128/106.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 23, 2002.

The supplements dated November 26, 2002, and April 10, 2003, provided clarifying information that did not change the scope of the May 8, 2002, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Units 1and 2, Hamilton County, Tennessee

Date of application for amendment: October 4, 2002, as supplemented February 19, 2003, and May 19, 2003.

Brief description of amendment: The amendments revise Technical Specification (TS) 6.8.4.h, Containment Leakage Rate Testing Program, to allow the licensee to postpone its Appendix J, Type A, Containment Integrated Leak Rate Test (ILRT) for 5 years. Specifically, for Unit 1 the performance of the spring 2003 ILRT may be deferred up to 5 years but no later than spring 2008, and for Unit 2 performance of the fall 2003 ILRT may be deferred up to an additional 3.5 years but no later than spring 2007. In Amendment No. 265 to the Facility Operating License No. DPR–79 for SQN, Unit 2, TS 6.8.4.h was revised to allow the licensee to postpone the ILRT one cycle (*i.e.*, 1.5 years) from spring 2002. Therefore, the total deferral for SQN, Unit 2 from the original requirement to perform a ILRT in spring 2002 will be up to 5 years.

Date of issuance: May 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 287 and 276.

Facility Operating License No. DPR–77: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** February 4, 2003 (68 FR 5681).

The February 19, and May 19, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 2003.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 19, 2002, as supplemented by letters dated February 5 and May 5, 2003.

Brief description of amendments: The amendments revise Appendix B to the Facility Operating License, Environmental Protection Plan (EPP), to replace references to the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System expired permit. The amendments also contain minor changes to the EPP to be consistent with the provisions of the current Texas Pollutant Discharge Elimination System permit and the Final Environmental Statement—Operating License Stage, and consolidate the Unit 1 and Unit 2 EPPs into a single document.

Date of issuance: May 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 104 and 104.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating License, Appendix B, ''Environmental Protection Plan.''

Date of initial notice in **Federal Register:** December 24, 2002 (67 FR 78524).

The supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 2003.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 21, 2003.

Brief description of amendment: The amendment revises paragraphs in Section 5.0, ''Administrative Controls,'' of the Technical Specifications to allow the use of generic personnel titles in place of plant-specific personnel titles and requires either the operations manager or assistant operations manager to hold a senior reactor operator license.

Date of issuance: June 3, 2003.

Effective date: June 3, 2003, and shall be implemented within 30 days of the date of issuance, including the incorporation of the Final Safety Analysis Report changes described in the licensee's application dated March 21, 2003, and the staff's Safety Evaluation for this amendment.

Amendment No.: 155.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 16, 2003 (68 FR 18714).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 2003.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of no Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 24, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 1, 2003, as supplemented May 2 and May 15, 2003.

Brief description of amendments: The amendments modify technical specification surveillance requirements to provide an alternative means of testing the Unit 1 main steam Electromatic relief valves, including those that provide the automatic depressurization and the low set relief functions, and provide an alternative means for testing the Units 1 and 2 dual function Target Rock safety/relief valves.

Date of issuance: May 28, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 216/210.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. 68 FR 25645, dated May 13, 2003. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The supplements dated May 2 and May 15, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed NSHC determination. The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated May 28, 2003.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Dated at Rockville, Maryland, this 16th day of June 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–15597 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement Regarding Extension of Reactor Coolant Pump Motor Flywheel Examination for Westinghouse Plants Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to a change in the technical specification

(TS) required inspection interval for reactor coolant pump (RCP) flywheels at Westinghouse-designed reactors. This change was proposed for incorporation into the Standard Technical Specifications (STS) for Westinghouse Plants (NUREG–1431) by the Westinghouse Owners Group (WOG) participants in the Nuclear Energy Institute's Technical Specification Task Force (TSTF), and is designated as TSTF–421, Revision 0. The proposed change to the TS would extend the RCP motor flywheel examination frequency from the currently approved 10-year inspection interval, to an interval not to exceed 20 years. The allowed extension in the inspection interval would allow licensees to improve their coordination of the flywheel examination with planned RCP refurbishments. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of this model is to permit the NRC to efficiently process amendments that propose to incorporate this change into plant-specific TSs. Licensees of nuclear power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires July 24, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that extends the inspection interval for RCP flywheels from 10 years to 20 years. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to extend the inspection interval for RCP flywheels for those plants with Westinghouse designs. This proposed change was proposed for incorporation into the STS by the WOG as TSTF–421, Revision 0. Much of the technical support for TSTF–421, Revision 0, was provided in topical report WCAP–15666, Revision 0, ''Extension of Reactor Coolant Pump Motor Flywheel Examination,'' submitted on August 24, 2001. The NRC staff's acceptance of the topical report is documented in an SE dated May 5, 2003, which is accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML031250595). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Applicability

This proposed change to the inspection interval for RCP motor flywheels is applicable to plants with Westinghouse-designed nuclear steam supply systems. The CLIIP does not prevent licensees from requesting an alternative approach or proposing changes other than those proposed in TSTF–421. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or proposed NSHC determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation: U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–421, Extension of Reactor Coolant Pump Motor Flywheel Examinations

1.0 Introduction

By application dated [ ], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would extend the reactor coolant pump (RCP)

motor flywheel examination frequency from the currently approved 10-year inspection interval to an interval not to exceed 20 years. These changes are based on Technical Specification Task Force (TSTF) change traveler TSTF–421 (Revision 0) that has been approved generically for the Westinghouse Standard Technical Specifications (STS), NUREG–1431. A notice announcing the availability of this proposed TS change using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on [ ] (xx FR yyyyy).

2.0 Regulatory Evaluation

The function of the RCP in the reactor coolant system (RCS) of a pressurized water reactor plant is to maintain an adequate cooling flow rate by circulating a large volume of primary coolant water at high temperature and pressure through the RCS. Following an assumed loss of power to the RCP motor, the flywheel, in conjunction with the impeller and motor assembly, provides sufficient rotational inertia to assure adequate primary coolant flow during RCP coastdown, thus resulting in adequate core cooling. A concern regarding the overspeed of the RCP and its potential for failure led to the issuance of Regulatory Guide (RG) 1.14, ''Reactor Coolant Pump Flywheel Integrity,'' Revision 1, dated August 1975. RG 1.14 describes a method acceptable to the NRC staff of addressing concerns related to RCP vibration and the possible effects of missiles that might result from the failure of the RCP flywheel. The need to protect components important to safety from such missiles are included in General Design Criterion 4, ''Environmental and Dynamic Effects Design Basis,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50, ''Licensing of Production and Utilization Facilities,'' which is applicable to plants that obtained their construction permits after May 21, 1971.

Specific requirements to have an RCP Flywheel Inspection Program consistent with RG 1.14 or previously issued relaxations from the RG are included in the Administrative Controls Section of the TSs. The purpose of the testing and inspection programs defined in the TSs is to ensure that the probability of a flywheel failure is sufficiently small such that additional safety features are not needed to protect against a flywheel failure. The RG provides criteria in terms of critical speeds that could result in the failure of a RCP flywheel during normal or accident conditions. In addition to the guidance in RG 1.14, the NRC has more recently issued RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' which provides guidance and criteria for evaluating proposed changes that use risk-informed justifications.

A proposed justification for extending the RCP flywheel inspections from a 10-year inspection interval to an interval not to exceed 20 years was provided by the Westinghouse Owners Group (WOG) in topical report WCAP–15666, ''Extension of Reactor Coolant Pump Motor Flywheel Examination,'' transmitted by letter dated August 24, 2001. The topical report addressed the proposed extension for all domestic WOG plants. The NRC accepted the topical report for referencing in license applications in a letter and safety evaluation dated May 5, 2003 (ADAMS Accession No. ML031250595).

3.0 Technical Evaluation

TS [5.5.7], Reactor Coolant Pump Flywheel Inspection Program, reflects the licensee's previous adoption of a TS change that defined the allowable alternative to the inspections described in RG 1.14. The inspections are defined as in-place ultrasonic examination over the volume from the inner bore of the flywheel to the circle of one-half the outer radius or an alternative surface examination (magnetic particle testing [MT] and/or liquid penetrant testing [PT]) of exposed surfaces defined by the volume of the disassembled flywheel. The allowable interval for these inspections was extended in the previous amendment to ''approximately 10 year intervals coinciding with the Inservice Inspection schedule as required by ASME [American Society of Mechanical Engineers, Boiler and Pressure Vessel Code,] Section XI.'' The change proposed in this amendment application would revise the allowable inspection interval to ''20 year intervals.''

The justification for the proposed change was provided in WCAP–15666, which the staff accepted for referencing in license applications by a letter and safety evaluation dated May 5, 2003. The topical report addresses the three critical speeds defined in RG 1.14: (a) the critical speed for ductile failure, (b) the critical speed for non-ductile failure, and (c) the critical speed for excessive deformation of the flywheel. The staff found that the topical report adequately addressed these issues and demonstrated that acceptance criteria, for normal and accident conditions defined in RG 1.14, would continue to be met for all domestic WOG plants following an extension of the inspection interval. The topical report also provided a risk assessment for extending the RCP flywheel inspection interval. The staff's review, documented in the SE for the topical report, determined that the analysis methods and risk estimates are acceptable when compared to the guidance in RG 1.174.

In conclusion, the staff finds that the regulatory positions in RG 1.14 concerning the three critical speeds are satisfied, and that the evaluation indicating that critical crack sizes are not expected to be attained during a 20-year inspection interval is reasonable and acceptable. The potential for failure of the RCP flywheel is, and will continue to be, negligible during normal and accident conditions. The change is therefore acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [State] State official was notified of the proposed issuance of the amendments. The State official had [choose one: (1) no comments, or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and changes surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding (xx FR xxxxx). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's

regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment revises TS [5.5.7, ''Reactor Coolant Pump Flywheel Inspection Program,''] to extend the allowable inspection interval to 20 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change to the RCP flywheel examination frequency does not change the response of the plant to any accidents. The RCP will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. Given the extremely low failure probabilities for the RCP motor flywheel during normal and accident conditions, the extremely low probability of a loss-of-coolant accident (LOCA) with loss of offsite power (LOOP), and assuming a conditional core damage probability (CCDP) of 1.0 (complete failure of safety systems), the core damage frequency (CDF) and change in risk would still not exceed the NRC's acceptance guidelines contined in RG 1.174 (<1.0E–6 per year). Moreover, considering the uncertainties involved in this evaluation, the risk associated with the postulated failure of an RCP motor flywheel is significantly low. Even if all four RCP motor flywheels are considered in the bounding plant configuration case, the risk is still acceptably low.

The proposed change does not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or configuration of the facility, or the manner in which the plant is operated and maintained; alter or prevent the ability of structures, systems, components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits; or affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the type or amount of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change in flywheel inspection frequency does not involve any change in the design or operation of the RCP. Nor does the change to examination frequency affect any existing accident scenarios, or create any new or different accident scenarios. Further, the change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or alter the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements, and does not alter any assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174. There are no significant mechanisms for inservice degradation of the RCP flywheel. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated in Rockville, Maryland, this 13th day of June, 2003.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Acting Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–15860 Filed 6–23–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

July 10, 2003, Public Hearing

Time and Date: 2 p.m., Thursday, July 10, 2003.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing open to the public at 2 p.m.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 7, 2003. The notice must include the individual name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 7, 2003. Such statements must be typwewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Contact Person for Information: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: June 20, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–15982 Filed 6–20–03; 9:49 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Azco Mining Inc., Common Stock, $.002 Par Value) File No. 1–12974

June 18, 2003.

Azco Mining Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.002 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is taking such action because the Issuer has been notified that it is not in compliance with the Amex's listing standards. In addition, the Issuer believes that its needs would be better served by listing its Security on the OTC Bulletin Board (''OTCBB'').

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before July 9, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–15883 Filed 6–23–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48045; File No. SR–PCX–2003–28]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 by the Pacific Exchange, Inc. To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Certain Stocks Trading Under $20

June 17, 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 June 13, 2003, the Pacific Exchange, Inc. (''PCX'' 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 PCX filed Amendments No. 1 and 2 to the proposal on June 16, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, through June 5, 2004.

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 13, 2003 (''Amendment No. 1''). Amendment No. 1 revises the text of the proposed rule to state that the pilot program will expire on June 5, 2004. In addition, Amendment No. 1 revises the proposal's description of the Exchange's current strike price intervals for equity options. *See also* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 16, 2003 (''Amendment No. 2''). Amendment No. 2 corrects a typographical error in the text of the proposed rule by replacing a reference to the interval of ''stock'' prices in the first sentence of proposed PCX Rule 6.4, Commentary .04 with a reference to the interval of ''strike'' prices.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to initiate a pilot program (''Pilot Program'') that will allow the Exchange to list options on selected stocks trading below $20 at one-point intervals. The text of the proposed rule change appears below. Additions are in *italics;* deletions are in brackets.

4745 Series of Options Open for Trading

Rule 6.4(a)–(e)—No change.

Commentary .01–.03—No change.

.04 The Exchange may select a limited number of its listed options on individual stocks for which the interval of strike prices will be $1.00 (''$1 strike prices'') provided the strike price is $20.00 or less, but not less than $3. The listing of $1 strike prices will be limited to options issues overlying no more than five (5) individual stocks (the ''$1 Strike Pilot Program'') as specifically designated by the Exchange. The Exchange may list $1 strike prices on any other option issues if those issues are specifically designated by other securities exchanges that employ a $1 Strike Pilot Program under their respective rules. To be eligible for inclusion into the $1 Strike Pilot Program, an underlying stock must close below $20 in its primary market on the previous trading day. After a stock is added to the $1 Strike Pilot Program, the Exchange may list $1 strike prices from $3 to $20 that are no more than $5 from the closing price of the underlying on the preceding day. For example, if the underlying stock closes at $13, the Exchange may list strike prices from $8 to $18. The Exchange may not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price (e.g., $12.50, $17.50) in the same series, and may not list $2.50 intervals (e.g. $12.50, $17.50) below $20 under Commentary .03 of this Rule for any issue included within the $1 Strike Pilot Program if the addition of $2.50 intervals would cause the issue to have strike price intervals that are $.50 apart. Additionally, the Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any option class selected for the $1 Strike Pilot Program. A stock shall remain in the $1 Strike Pilot Program until otherwise designated by the Exchange. The $1 Strike Pilot Program shall expire on June 5, 2004.

[.04] *.05*—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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX policy establishes the guidelines regarding the addition of series for trading on the Exchange.[4] The Exchange may list $2.50 intervals for strike prices at $25 or less, $5.00 intervals for strikes over $25 but less than $200, and $10 intervals for strikes at or above $200.[5] The PCX currently lists options on more than 400 stocks trading under $20, including Cisco, Sun Microsystems, Lucent, JDS Uniphase, Nextel, AT&T, Motorola, Intel, Apple, Tyco, AOL Time Warner, and Calpine. These stocks are among the most widely held and actively traded equities listed on the New York Stock Exchange, Inc. (''NYSE'') or Nasdaq and the options overlying these stocks also trade actively.

When a stock underlying an option trades at a lower price, it takes a larger percentage gain in the stock for an option to become in-the money. For example, when a stock trades at $8 an investor who wants to buy a slightly out-of-the-money call option would have to buy the call with a $10 strike price. At these levels, the stock price would need to register a 25% change before it reached $10 (*i.e.*, in-the-money status). A 25% gain in the underlying is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Due to the recent preponderance of low priced stocks, Member Firms have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to implement a Pilot Program, as described below.

Pilot Program Eligibility

The Exchange proposes to amend PCX Rule 6.4 in order to list series with $1 strike price intervals on equity option issues that overlie up to five individual stocks, provided that the strike prices are $20 or less, but not less than $3. The PCX's Options Listing Committee would make the determination of which underlying stocks are to be included in the Pilot Program. An issue becomes eligible for inclusion in the Pilot Program when the underlying stock closes below $20 in its primary market on the previous business day. Underlying stocks trading under $20 that are not a part of the Pilot Program would continue to be eligible for trading in $2.50 and $5.00 intervals. Although the PCX may select only up to five individual stocks to be included in the Pilot Program, the Exchange would not be precluded from also listing options on other individual stocks at $1 strike price intervals if other options exchanges listed those series pursuant to their respective $1 strikes pilot programs.

Procedures for Adding $1 Strike Price Intervals

The Exchange proposes to amend Rule 6.4 to specify the standards that will apply when adding additional $1 strike price intervals under the Pilot Program. Under the proposal, the closing price of the underlying stock serves as the reference point for determining which $1 strike prices the Exchange may open for trading. Specifically, the Exchange will only list $1 strike prices that fall within a $5 range of the underlying stock price, and no strike prices will be added outside of the $5 range. For example, if the underlying stock trades at $6, the Exchange could list $1 strikes from $3 to $11.[6] The Exchange believes that this proposed range-format will significantly restrict the number of series that may be added at any one time.

The Exchange may currently list strike prices with $2.50 intervals when an underlying stock trades below $25.[7] Accordingly, several option issues have $7.50, $12.50, and $17.50 strike prices (the ''$2.50 series'' or ''$2.50 intervals''). To further avoid the proliferation of series, the Exchange does not intend to list $1 strike prices at levels that ''bracket'' existing $2.50 intervals (*e.g.*, $7 and $8 strikes around a $7.50 strike). Accordingly, the Exchange does not intend to list $7, $8, $12, $13, $17, and $18 levels in an expiration month where there is a corresponding $2.50 level. As the $2.50 intervals are ''phased-out,'' as described below, the Exchange would introduce the $1 levels that bracket the phased-out price. For example, when the $7.50 series expires, the Exchange would replace it by issuing a new month with $7 and $8 intervals.

Procedures for Phasing-out $2.50 Strike Price Intervals

When a stock becomes part of the Pilot Program, the Exchange will begin the corresponding process of phasing-out the existing $2.50 intervals on the same stock in favor of $1 intervals. To phase out the $2.50 intervals, the Exchange would first delist those $2.50 series for which there is no open interest. Second, the Exchange would no longer add new expiration months at $2.50 intervals below $20 when the existing months expire. This would cause the $2.50 strike price intervals below $20 to be phased-out when the farthest-out month with a $2.50 interval eventually expires.

$1 Strikes for LEAPS

The Exchange will not list long-term options (also known as ''LEAPS'') in equity option classes at $1 strike price intervals.

Procedures for Adding Expiration Months

PCX Rule 6.4 will govern the addition of expiration months for the Pilot Program. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon initial listing of an options class for trading, and upon expiration of the near-term month, the Exchange lists an additional expiration month. With respect to options in the Pilot Program, the Exchange may list an additional expiration month for a $1 strike series provided that the underlying strike price closes blow $20 on its primary market on expiration Friday. If the underlying closes at or above $20 on expiration Friday, the Exchange would not list an additional month for $1strike series until the stock again closes below $20.

Procedures for Deleting $1 Strike Price Intervals

At any time, the Exchange may cease trading options series, including series

[4] *See* Securities Exchange Act Release No. 21985 (April 25, 1985), 50 FR 18595 (May 1, 1985) (order approving File Nos. SR–PSE–85–9 and PHLX–85–9) (''1985 Order'').

[5] *See* 1985 Order, *supra* note 4. Additionally, PCX Rule 6.4, Commentary .03 establishes guidelines for listing $2.50 strikes for a set number of issues with series trading between $25 and $50.

[6] As indicated above, strike prices for options included in the Pilot Program may not be greater than $20 or less than $3.

[7] *See* 1985 Order, *supra* note 4.

with $1 strike prices, by submitting a cessation notice to the Options Clearing Corporation (''OCC'').[8] As discussed above, if the underlying closes at or above $20 on expiration Friday, the Exchange would not list any additional months with $1 strike prices until the stock subsequently closed below $20. If the underlying does not subsequently close below $20, thereby precluding the listing of additional strike prices and months, the existing $1 series will eventually expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the five stock Pilot Program, thereby allowing the Exchange to list issues on an additional stock. Once the Exchange submits the cessation notice, it would not list any additional months for trading with $1 strikes below $20 (unless the underlying once again closed below $20).[9]

Options Price Reporting Authority (''OPRA'') Capacity

The PCX believes that OPRA has the capacity to accommodate the increase in the number of series added pursuant to the Pilot Program. The Pilot Program is limited to only five underlying securities, and the Pilot Program will result in an increase of between seven and 14 additional strikes for each underlying (depending on the number of existing $2.50 strikes listed). Thus, the Pilot Program will result in a maximum of 70 additional series, which is a small increase in the 59,000 series currently traded on the PCX. Currently, OPRA's one-minute peak has been less than one-third its total capacity.

2. Basis

The Exchange believes that the addition of $1 strike prices would stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that $1 strike prices would provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–28 and should be submitted by July 15, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than $3 but less than $20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the PCX monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the PCX's proposal on a pilot basis. In the event that PCX proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission

[8] Among the reasons for submitting a cessation notice are the expiration of available $1 strikes (*i.e.*, underlying stock price remains at or above $20), series proliferation concerns, and delisting because of low price, merger, takeover, or other events. In any event, with prior notice to the membership and customers, the PCX would continue to have the ability to cease trading series that become inactive and have no open interest.

[9] If the underlying stock trades below $20 after submission of the cessation notice by the Exchange, the PCX could list $1 strike prices again provided it included the class as one of the five classes permitted under the Pilot Program.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

along with the filing of such proposal.[14] The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the Pilot Program and how the PCX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The PCX's Pilot Program is identical to a CBOE pilot program (''CBOE Pilot'') that the Commission approved.[15] Notice of the CBOE Pilot was published for comment [16] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the PCX's Pilot Program proposal raises no issues of regulatory concern. Amendment No. 1 to the proposal clarifies the proposal by specifying the date on which the Pilot Program will expire and describing the PCX's current strike price intervals for equity options. Amendment No. 2 corrects a typographical error in the text of the proposed rule. For these reasons, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,[17] to approve the PCX's proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–2003–28) and Amendments No. 1 and 2, are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15835 Filed 6–23–03; 8:45 am]

BILLING CODE 8010–01–P

[14] The Commission expects the PCX to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the PCX wishes to extend, expand, or seek permanent approval of the Pilot Program.

[15] *See* Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR–CBOE–2001–60).

[16] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[17] 15 U.S.C. 78f(b)(5) and 78s(b).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48052; File No. SR–Phlx–2003–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Eliminate and Refund a Specialist Transaction Fee

June 17, 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 23, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange amended the proposal on June 5, 2003.[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 Exchange proposes to (1) eliminate the Nasdaq-100 Index Tracking Stock (''QQQ'') [SM] [4] specialist transaction fee of $0.002 per share, retroactive to its implementation date;[5] and (2) refund the amounts that were billed to and collected from the Phlx QQQ specialist unit [6] during the time period in which the QQQ specialist $0.002 per share transaction fee was in effect.[7]

On December 8, 2000, the Phlx filed a proposed rule change with the Commission to amend its fee schedule to accommodate the trading of the QQQ.[8] Pursuant to that filing, the Exchange was to assess no charge to members for customer trades entered through the Phlx Automated Communication and Execution System (''PACE''),[9] but was to impose a fee of $1.00 per transaction to customers for non-PACE trades.[10] Specialists were to be charged a fee of $0.002 per share, with a maximum charge of $50.00 per trade, whether or not the QQQ trade took place on PACE.

Due to a programming error, the QQQ specialist $0.002 per share transaction fee was programmed for non-PACE trades only, thereby erroneously excluding PACE trades from it.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 5, 2003, the Exchange filed a Form 19b–4, which completely replaced and superceded the original filing in its entirety (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the proposal to designate the proposed rule change as filed under Section 19(b)(3)(A)(ii), rather than Section 19(b)(2), of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 5, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

[4] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares [SM], Nasdaq-100 Trust [SM], Nasdaq-100 Index Tracking Stock [SM], and QQQ [SM] are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust [SM], or the beneficial owners of Nasdaq-100 Shares [SM]. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[5] *See* Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–00–103) (imposing, among other things, a QQQ specialist $0.002 per share transaction fee, with a maximum charge of $50.00 per trade). On January 31, 2003, the Phlx filed a proposed rule change which eliminated the QQQ specialist $0.002 per share transaction fee for transactions settling on or after February 3, 2003. *See* Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06). The instant proposal seeks to eliminate this fee from on or after December 15, 2000, the date of implementation, through February 2, 2003.

[6] The Exchange uses the terms ''specialist'' and ''specialist unit'' interchangeably herein.

[7] During the time period during which this fee was in effect, there was only one Phlx specialist unit that traded the QQQ.

[8] *See* Securities Exchange Act Release No. 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–00–103).

[9] PACE is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. *See* Phlx Rules 229 and 229A.

[10] The customer, non-PACE per trade fee was amended on January 31, 2003. *See* Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06).

[11] It is not uncommon for the Exchange to distinguish between PACE and non-PACE trades in its fee structure. For instance, the Exchange charges QQQ customer non-PACE transaction charges, but does not charge for customer PACE transactions.

Continued

Thereafter, the Phlx eliminated the QQQ specialist $0.002 per share transaction fee for transactions settling on or after February 3, 2003.[12] The Phlx now seeks to eliminate the QQQ specialist transaction fee of $0.002 per share retroactive to its implementation date through February 2, 2003, and to refund the amounts billed to and collected from the Phlx QQQ specialist unit during the time period in which the QQQ specialist $0.002 per share transaction fee was in effect.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rectify the effects of a programming error that occurred in connection with the billing of the QQQ specialist $0.002 per share transaction fee. The QQQ specialist $0.002 per share transaction fee had been programmed for non-PACE trades only, thereby erroneously excluding PACE trades from it. The Exchange believes that, had the fee been billed as originally filed, the Exchange would have amended or terminated the fee in order to remain competitive in its charges to specialists trading the QQQ product.[13]

This proposal corrects the billing error by eliminating the QQQ specialist fee retroactive to its implementation date and refunding to the Phlx specialist the QQQ specialist $0.002 per share transaction fees that were billed and collected, specifically as applied to non-PACE QQQ trades, during the time period that the fee was in effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of section 6(b)(4) of the Act,[15] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The effect of correcting the QQQ specialist transaction fee billing error in the manner described above will be that the $0.002 per share charges to the specialist for both QQQ PACE and non-PACE transaction fees would not have been charged at all. The Exchange believes that waiving the QQQ specialist transaction fee and refunding any amounts collected should provide for an equitable way in which to resolve this billing error and minimize confusion by resulting in a situation whereby the fee, in effect, was never implemented.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose 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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–33 and should be submitted by July 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15836 Filed 6–23–03; 8:45 am]

BILLING CODE 8010–01–P

See Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06), and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–00–103). However, the Exchange notes that the QQQ specialist $0.002 per share transaction fee, as filed, treated PACE and non-PACE trades the same.

[12] *See* Securities Exchange Act Release No. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06).

[13] Moreover, had the fee been billed correctly, it would have been potentially unduly burdensome to the specialist trading the QQQ, especially in light of decimal trading.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 24, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency

Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Surety Bond Guarantee Assistance.

No's: 990, 991, 994, 994B, 994C, 994F, 994H.

Frequency: On occasion.

Description of Respondents: Small business contractors applying for the Surety Bond Guarantee Program.

Responses: 31,113.

Annual Burden: 1,164.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–15893 Filed 6–23–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P010]

State of Arkansas (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 10, 2003, the above numbered declaration is hereby amended to establish the incidence period for this disaster as beginning on May 2, 2003, and continuing through June 10, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008.)

Dated: June 18, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–15892 Filed 6–23–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be sent to the individuals listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Social Security Disability Report—20 CFR 404.1512 & 416.912—0960–0579

The Social Security Act requires applicants to furnish medical, work history and other evidence or information to prove they are disabled. The information on the Adult Disability Report, together with other evidence and information, will be used by State Disability Determination Services (DDS) to develop medical evidence, assess the alleged disability, and make a determination on whether or not the applicant is disabled under the Act. DDSs are State agencies that make disability determinations on behalf of SSA.

In addition to the traditional paper application, claimants for disability benefits will have the option to complete the Disability Report through the Internet (i3368) or in an interview format with an SSA representative at an SSA field office using the Electronic Disability Collection System (EDCS). Both the i3368 and EDCS formats collect the same information as that contained on the paper SSA–3368, but include enhancements to guide the claimant or interviewer through the application process. For example, the i3368 provides applicants with self-help screens and propagates certain information. Both the i3368 and EDCS applications will, when needed, collect additional information on a claimant's work history. In the paper-based process, however, additional work history information is collected through another form, the SSA–3369, OMB control number 0960–0578. The respondents are applicants for title II and title XVI disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Collection format	Number of respondents	Frequency of responses	Average burden per response (hours)	Estimated annual burden (hours)
SSA–3368 (Paper Form)	2,040,667	1	1	2,040,667
Electronic Disability Collection System (EDCS)	10,000	1	1	10,000
I3368 (Internet) (Hour burden varies between 1½ hours and 3 hours based on information required)	66,000	1	2½	165,000

Total estimated annual burden: 2,215,667.

2. Supplement to Claim of Person Outside the United States—20 CFR 404.460, 422.505(b), 404.460, 404.463 and 42 CFR 407.27(c)—0960–0051

The information collected on Form SSA–21 is used by SSA to determine continuing entitlement to Social Security benefits and the proper benefit amounts of alien beneficiaries living outside the United States (U.S.). It is also used to determine whether benefits are subject to withholding tax. The respondents are comprised of individuals entitled to Social Security benefits who are, will be, or have been residing outside the U.S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,917.

3. Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR, Subpart A, 422.120—0960–0508

SSA uses Forms SSA–L2765, SSA–L3365 and SSA–L4002 to request correct information when an employer, employee or self-employed person reports an individual's earnings without a Social Security Number (SSN) or with an incorrect name or SSN. The respondents are employers, employees or self-employed individuals who are requested to furnish additional identifying information.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,000,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 500,000 hours.

4. Statement of Claimant or Other Person—20 CFR 404.702 & 416.570—0960–0045

In special situations, when there is no standard form or questionnaire, Form SSA–795 is used by SSA to obtain information from claimants or other persons having knowledge of facts in connection with many aspects of the Social Security or Supplementary Supplemental Security Income (SSI) programs. The information requested on form SSA–795 must be of sufficient importance that a signed statement, including a penalty clause, is necessary. The information collected is used to process such issues as claims for benefits or continuing eligibility, benefit amount, insure status, use of funds by a representative payee or a myriad of other program-related matters. The most typical respondents are applicants for Social Security or SSI benefits or beneficiaries of these programs. However, respondents could also include friends and relatives of the involved parties, coworkers, neighbors, or anyone else in a position to provide information pertinent to the issue(s).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 76,375 hours.

5. Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations—20 CFR Part 435–0960–0616

These rules cover the basic administrative reporting and recordkeeping requirements for applicable recipients of grants and agreements. Because very specific requirements must be met, it is necessary that SSA collect significant information from the applicants and grantees to determine if they meet, or continue to meet, the conditions specified. The respondents are institutions of higher education, hospitals, and other non-profit and commercial organizations. SSA currently has a total of 17 grant recipients that are subject to the requirements of the proposed rule.

Type of Requests: Extension of an OMB-approved information collection. The hourly burden as estimated for each of the reporting (Rpt) and recordkeeping (Reckp) requirements is reflected in the following table:

Section No.	Number of responses	Frequency of response	Average burden (hours)	Estimated annual (hours)
435.21 Rec-	1	N/A	40	40
435.23 Rec-	94	Quarterly (4)	1	376
435.25 Rpt	14	Biannually	4	112
435.33 Rpt	1	Annually (1)	1	1
435.44 Rpt	1	Annually (1)	2	2
435.51 Rpt	150	Quarterly (4)	12	7,200
435.53 Rec-	150	Annually (1)	8	1,200
435.81 Rpt	1	Annually (1)	16	16
435.82 Rpt	1	Annually (1)	8	8

Total estimated annual burden: 8,955 hours.

6. State Mental Institution Policy Review—20 CFR, Subpart U, 404.2001–2065, Subpart F, 416.601–416.665–0960–0110

The Social Security Act provides that the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each state that serve as a representative payee for recipients of Social Security and SSI benefits. As part of this accountability process, SSA collects information on Form SSA–9584 to determine whether the institution policies and practices conform to SSA's regulations on the use of benefits and whether the institution is performing other duties and responsibilities required of a representative payee. The information also provides a basis for conducting an onsite review of the institution and is used in the preparation of the subsequent report of findings. The respondents are state mental institutions that serve as representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 125.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 125 hours.

7. Application for Search of Census Records for Proof of Age—20 CFR 404.716–0960–0097

The information collected on Form SSA–1535–U3 is required to provide the Census Bureau with sufficient identification information, which will allow an accurate search of census records to establish proof of age for an individual applying for Social Security Benefits. It is used for individuals who must establish age as a factor for entitlement. The respondents are individuals applying for Social Security benefits who need to document their date of birth.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 18,000.

Number of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Average Burden: 3,600.

8. Function Report—Adult—20 CFR 404.1512 and 416.912—0960–NEW

Form SSA–3373 records information about the disability applicant's impairment-related limitations and ability to function. It documents the types of information specified in SSA regulations and provides disability inteviewers with a convenient means to record information about how the claimant's condition affects his or her ability to function. This information, together with medical evidence, forms the evidentiary basis upon which the initial disaiblity proces is founded. The respondents are title II and XVI benefits applicants.

Type of Request: New information collection.

Number of Respondents: 4,005,367.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 2,002,684.

II. The information collections listed below have been submitted to OMB for clearance.

Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Request for Internet Services Representative Payee Report—20 CFR 401.45—0960–0668

Background

SSA is testing the Internet Representative Payee Report form (I623) that electronically reports on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipeints. In support of this process, a proof of concept (POC) test limited to 40 organizational representative payees use the I623 to complete and file the representative payee report instead of using the paper SSA–623. Initially SSA projected a 6-month POC test, but is planning to expand the POC to a full operational year.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizatioanal representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of Request: Extensioin of an OMB-approved information collection.

Number of Respondents: 40 organizations.

Frequency of Response: 117.5 per respondent.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,175 hours.

2. Employee Work Activity Questionnair—20 CFR, Subpart P, 404.1574 and 404.1592—0960–0483

Form SSA–3033 is used to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date of disability. When a possible unsuccessful work attempt or nonspecific subsidy is involved, Form SSA–3033 will be used to request a description of the employee's work effort. The respondents are employers of Old-Age and Survivors Disability Insurance (OASDI) and SSI disability applicants and beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,750 hours.

3. Disability Hearing Officer's Decision Title XVI Disabled Child Continuing Disability Review—20 CFR 404 Subpart J and 20 CFR 416 Subpart I&N—OMB No. 0960–0657

Both federal and state disability hearing officers (DHOs) use the SSA–1209 in preparing the disability determination. The form provides the framework for addressing the crucial elements of the case in a sequential and logical fashion. The completed form will be the official document of the decision. A copy becomes the personalized portion of the notice to the claimant/representative. the respondents are both federal and state disability hearing officers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 1 hour 25 minutes.

Estimated Annual Burden: 49,583 hours.

4. Claimant's Statement About Loan of Food and Shelter (SSA–5062), and Statement About Food or Shelter Provided to Another (SSA–L5063)—20 CFR 416.1130 through 416.1148—0950–0529

Forms SSA–5062 and SSA–L5063 are used to obtain statements about food and/or shelter provided to an SSI claimant. SSA uses the information to determine whether food and/or shelter are a bona fide loan or should be counted as income. This determination can affect eligibility for SSI and the amount of SSI that is payable. The respondents are claimants for SSI benefits and individuals, who provide (loan) food or shelter to SSI claimants.

Type of Request: Extension of an OMB-approved information collection

	SSA 5062	SSA L5063
Number of respondents	65,540	65,540
Frequency of Response	1	1
Average Burden of Response	10	10
Estimated Annual Burden	10,923	10,923

Dated: June 8, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–15884 Filed 6–23–03; 8:45 am]

BILLING CODE 4191–02–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Granting Exemption

AGENCY: Department of Transportation.

ACTION: Notice of order granting exemption (Order 2003–6–15, Docket OST–03–13807).

SUMMARY: The Department of Transportation has granted an application by the International Air Transport Association (IATA) to permit IATA to implement certain resolutions and recommended practices of its worldwide Passenger Services Conference (PSC), without filing the resolutions and recommended practices for prior approval by the Department and without obtaining immunity from the U.S. antitrust laws.

FOR FURTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Bernice Gray, Pricing & Multilateral Affairs Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2435.

Dated: June 16, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–15894 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Granting Exemption

AGENCY: Department of Transportation.

ACTION: Notice of Orders Granting Exemptions (Order 2002–1–15, Docket OST–01–9575; Order 2002–7–3, Docket OST–02–11798; and Order 2002–8–16, Docket OST–02–11589).

SUMMARY: The Department of Transportation has granted these applications by the International Air Transport Association (IATA) to permit IATA to implement certain resolutions and recommended practices of its worldwide Passenger Services Conference (PSC) and Cargo Service Conference (CSC), without filing the resolutions and recommended practices for prior approval by the Department and without obtaining immunity from the U.S. antitrust laws.

FOR FUTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Bernice Gray, Pricing & Multilateral Affairs Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2435.

Dated: June 16, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–15895 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICS) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 28, 2003, pages 15259–15260.

DATES: Comments must be submitted on or before July 24, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Bird and Other Wildlife Strike Report.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0045.

Forms(s): FAA Form 5200–7.

Affected Public: A total of 6,100 air carriers and commercial operators.

Abstract: Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. The FAA form 5200–7 is most often completed by the pilot-in-charge of an aircraft involved in a wildlife collision or by Air Traffic control Tower personnel, or other airline personnel who have knowledge of the incident.

Estimated Burden Hours: An estimated 488 hours annually.

2. *Title:* Passenger Facility Charge (PFC) Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0557.

Forms(s): FAA form 5500–1.

Affected Public: A total of 450 public agencies and members of the aviation industry.

Abstract: Title 49 USC 40117 authorizes airports to impose passenger facility charges (PFCs). This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the FAA.

Estimated Burden Hours: A total of 26,548 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on June 18, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–15958 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–35]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified

requirements of 14 CFR, dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 14, 2003.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 19, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14803.
Petitioner: TAG Air, Inc.
Section of 14 CFR Affected: 14 CFR 125.209.
Description of Relief Sought: To permit TAG Air, Inc. to substitute the emergency equipment requirements of 14 CFR 121.339 in place of the emergency equipment requirements of § 125.209 for extended overwater operations on its Boeing 747–200.

[FR Doc. 03–15955 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2002–14013]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 14, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14013 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave, SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on June 19, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–14013.
Petitioner: Embraer.
Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(ii).
Description of Relief Sought: Exemption of EMBRAER ERJ–170 airplanes from 14 CFR 25.841(a)(2)(ii) affected by cabin altitude exceeding 40,000 feet following a rare event of an uncontained engine rotor burst hitting the pressurized cabin.

[FR Doc. 03–15956 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federation Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from Monday, July 28, to Wednesday, July 30, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Radisson Paper Valley Hotel, 333 W. College Avenue, Appleton, Wisconsin 54913.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Clayborn, Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Monday, July 28, to Wednesday,

July 30, from 9 a.m. to 4:30 p.m. The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 25, 2003. The next quarterly meeting of the FAA ATPAC is planned to be held from October 20–23, 2003, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 12, 2003.

John A. Clayborn,

Executive Director, Air Traffic, Procedures Advisory Committee.

[FR Doc. 03–15957 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 25, 2003 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The revised agenda will include:

- June 25:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Publication Consideration/Approval:
  - Final Draft, Plans and Principles for the Implementation of Aeronautical Data Link System (ADLS) Edition 1. Aeronautical Telecommunications Network (ATN) Baseline 1, RTCA Paper No. 083–03/PMC–277, prepared by SC–194
  - Final Draft, NEXCOM Plan, US National Airspace System (NAS) Plan for Transition to Air/Ground ICAO VDL Mode 3 Based Integrated Voice and Data Communications, RTCA Paper No. 067–03/PMC–274, prepared by SC–198.
  - Final Draft, Change 1 to DO–284, Next Generation Air/Ground Communications system (NEXCOM) Safety and Performance Requirements (SPR), RTCA Paper No. 097–03/PMC–278, prepared by SC–198.
  - Final Draft, Revised DO–257—Minimum Operational Performance Standards for the Depiction of Navigational Information on Electronic Maps, RTCA Paper No. 114–03/PMC–282, prepared by SC–181.
- Discussion:
  - Special Committee 202, Portable Electronic Devices
  - Update Terms of Reference
  - special Committee Chairman's Reports
- Action Item Review:
  - Review/Status—All open action items
  - Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 9, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–15961 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 24, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tay Yoshitani, Executive Director, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the

Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 28, 2003, the FAA determined that the application to impose and use a PFC submitted by the Port of Oakland was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 31, 2003. The following is a brief overview of the application No. 03–13–C–00–OAK:

Level of proposed PFC: $4.50.

Proposed charge effective date: March 1, 2004.

Proposed charge expiration date: September 1, 2010.

Total estimated PFC revenue: $176,267,000.

Brief description of proposed impose and use projects: Terminal Two Building and Security Improvements, Reconstruction of Taxiway Uniform, Multi-User System Equipment (MUSE) Phase 3, Security Checkpoint Enhancements, and Airports BART Connector Project, Phase One.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Nonscheduled/on-demand air carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on June 13, 2003.

Mark McClardy,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–15960 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–03–C–00–UNV To Impose and use the Revenue From a Passenger Facility Charge (PFC) at University Park Airport, University Park, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University Park Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before date, which is 30 days after date of publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William R. Stacey of The Pennsylvania State University at the following address: Room 106 Physical Plant, University Park, Pennsylvania 16803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to The Pennsylvania State University under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at University Park Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 5, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by The Pennsylvania State University was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 2003.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: August 1, 2009.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,510,612,

Brief description of proposed project(s):

Replace AWOS III
Acquire ARFF Vehicle (15 gallons)
Acquire Snow Removal Vehicles
Remove Obstructions RW 6–24 RPZ
Automatic Deicing Containment Facility
Conduct 5 Year Environmental Assessment
Relocate REILS (RW 6)
Update Hold Position Markings
Rehabilitate and Expand Terminal Apron
Security Enhancements (Conduct Security Study)
Conduct Terminal Area Plan
Conduct Airport Geographic Information System, Phase II
Modify Terminal Building
Acquire Land for Runway Approach—Emberton
Acquire ARFF Safety Equipment (Fire Suits)
Construct Deicing Contaminant Facility, Phase I—Study/Design & Phase II—Construction
Acquire Handicap Passenger Boarding Device
Design & Construct Snow Removal Storage Building
PFC Audits

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxis operating Part 135, and filing form 1100—1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The Pennsylvania State University.

Issued in Camp Hill, PA on June 17, 2003.

Lori Ledebohm,

PFC Coordinator, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 03–15959 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement Program To Address Impaired Motorcycle Operation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of a discretionary cooperative agreement program to address Impaired Motorcycle Operation.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement to provide funding to individuals and organizations to address impaired motorcycle operation. The National Agenda for Motorcycle Safety lists reducing impaired riding as an urgent recommendation. The National Agenda for Motorcycle Safety was developed by a diverse group of motorcycle advocates, injury prevention specialists, health care, insurance, and safety research representatives working together. Sponsored by NHTSA and the Motorcycle Safety Foundation, the National Agenda provides eighty-two (82) recommendations, five (5) of which address impaired driving. The five recommendations on impaired driving are: (1) Study how alcohol, drugs and other substances, including over-the-counter medications, can affect a motorcyclists operating skills; (2) Study the alcohol, drug and other substance use patterns of motorcyclist's; (3) continue to discourage mixing alcohol and other drugs with motorcycling; (4) educate law enforcement about unique alcohol-related behavior of motorcyclists; (5) encourage partnerships with groups already involved in alcohol/substance abuse issues related to motor vehicle crashes (e.g., Mothers Against Drunk Driving, Students Against Destructive Decisions).

In February 2003, NHTSA published results of a focus group study that sought input from motorcyclists, those in leadership positions in motorcycling organizations and in traffic safety on what they perceived would be effective approaches in reducing impaired riding. The final report, Drinking, Riding, and Prevention: A Focus Group Study discusses the following approaches: (1) Peer to peer activities; (2) intervention techniques; and (3) social norms models; and (4) motorcycle impoundment.

In addition to the guidance provided National Agenda and Drinking, Riding, and Prevention: A Focus Group Study, other possible approaches include law enforcement and prosecutor training and in the detection of impaired motorcyclists, educating judges in the efficient handling of impaired riding cases, and projects that may be implemented by State motorcycle training programs.

These recommendations and approaches are designed to be a road map for interested motorcycle organizations or individuals as they develop programs to reduce impaired motorcycle operation.

NHTSA anticipates funding approximately four competitive cooperative agreements for a minimum of 2 years and a maximum of 3 years. To this end, this cooperative agreement will develop programs and projects that foster implementation of the National Agenda for Motorcycle Safety and Drinking, Riding, and Prevention: A Focus Group Study.

This notice solicits applications from public and private, non-profit, not for-profit, and for-profit organizations, State and local governments and their agencies or a consortium of the above. Interested applicants must submit an application packet as further described in the application section of this notice. The application will be evaluated to determine the proposals that will receive funding under this announcement. Non-federal employees under contract to NHTSA may serve on an application review team that will evaluate the applications.

DATES: Applications must be received in the office designated below on or before 3 p.m. (EST), on July 22, 2003.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220), Attention: Ross S. Jeffries, Contract Specialist, 400 Seventh Street SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–03–H–05133.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Ross S. Jeffries, Office of Contracts and Procurement at (202) 366–6283, or by e-mail at rjeffries@nhtsa.dot.gov. Programmatic questions relating to this cooperative agreement program should be directed to Robert L. Hohn, Impaired Driving Division, NHTSA, 400 Seventh Street, SW., (NTI–111), Washington, DC 20590, by e-mail at *bhohn@nhtsa.dot.gov,* or by phone at (202) 366–9712. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Despite significant gains since the enactment of Federal motor vehicle and highway safety legislation in the mid 1960s, the annual toll of traffic crashes remains tragically high. In 2001, the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) and General Estimates System (GES) reported that approximately 42,116 people were killed and another 3.03 million were injured on our Nation's roadways. Traffic crashes continue to account for 95 percent of all transportation fatalities and 99 percent of injuries, and represent the leading cause of death for individuals ages 4 through 33. The large number of crashes has placed a considerable burden on our Nation's health care system affecting the economy—reaching $230.6 billion a year, or an average of $820 for every person living in the United States.

Recent data indicate that injuries and deaths attributable to motorcycle crashes are becoming a larger portion of this grave public health problem. Motorcycle crash-related fatalities have been increasing since 1997, while injuries have been increasing since 1999. More than 100,000 motorcyclists have died in traffic crashes since the enactment of the Highway Safety Act and the National Traffic and Motor Vehicle Safety Act of 1966. Like other roadway users who are urged to protect themselves from injury or death by wearing safety belts, driving sober, and observing traffic rules, many motorcycle deaths could be prevented if motorcyclists would take responsibility for ensuring they have done everything possible to make the ride safe by taking operator training, becoming properly licensed, wearing protective gear, and riding sober.

The effects of a crash involving a motorcycle can often be devastating. While 20 percent of passenger vehicle crashes result in injury or death, an astounding 80 percent of motorcycle crashes result in injury or death. According to NHTSA's data, while total traffic deaths increased by four tenths of a percent in 2001, motorcycle deaths were up by 10 percent, compared to 2000. Motorcyclist fatalities have increased each year since reaching an historic low of 2,116 fatalities in 1997. It is estimated in 2002, 3,216 motorcyclists were killed, an increase of almost 55 percent between 1997 and 2002. Without this substantial increase in motorcyclist fatalities between 1997

and 2001, overall highway fatalities would have experienced a marked reduction of about 2.5 percent over this same time period.

The motorcycle community is experiencing astounding growth. New unit sales of on-highway motorcycles have increased approximately 91 percent since 1997. The Motorcycle Industry Council (MIC) estimates that 471,000 new on-highway motorcycles were sold in the United States in 2000 alone compared to 379,000 in 1999. In 2001, motorcycles represented 2.2 percent of all registered vehicles in the United States and accounted for 0.34 percent of vehicle miles traveled, but crashes involving motorcycles accounted for 7.6 percent of total traffic fatalities on America's roadways. MIC expects motorcycle sales to continue to increase over the next 5 to 7 years—meaning more motorcycles on our Nation's roadways.

Exposure, measured in terms of vehicle miles of travel (VMT) in 2001, shows that motorcyclists were about 26 times as likely to die in a crash than someone riding in a passenger car, and are 5 times as likely to be injured. This is a steep increase from 1997, when motorcyclists were 14 times as likely to die in a crash than someone riding in a passenger car. Per registered vehicle, the fatality rate for motorcyclists in 2001 was 4.1 times the fatality rate for passenger car occupants. The injury rate for passenger car occupants per registered vehicle was 1.2 times the injury rate for motorcyclists.

Like operators of other vehicles, motorcycle operator impairment, mainly from the use of alcohol, is a serious problem. In 2001, motorcycle operators in fatal crashes had higher intoxication rates than any other type of driver. Twenty-nine percent of fatally injured motorcycle operators were intoxicated at 0.08 g/dl or greater blood alcohol concentration (BAC), and another 7 percent were reported to be at BAC 0.01 to 0.07 g/dl. In single vehicle motorcycle crashes, 41 percent of the fatally injured motorcyclists were intoxicated with a BAC ≥.08 g/dl.

The risk entailed in drinking and then riding is exacerbated by other risk-taking behaviors, such as riding without the proper protective gear, including protective clothing and a motorcycle helmet. Data indicate that in 2001, only 40 percent of intoxicated motorcycle operators killed wore helmets, compared with 60 percent for those who were sober. The intoxication rate was highest for fatally injured operators between 40 to 44 years old (42 percent), followed by ages 35 to 39 (40 percent) and ages 30 to 34 (35 percent). More than 5 percent of motorcycle operators in fatal crashes in 2001 had at least one prior conviction for driving while intoxicated on their driver records, compared to fewer than 4 percent of passenger vehicle drivers.

The National Agenda for Motorcycle Safety reflects the thoughts and visions of the participants who developed recommendations that address motorcycle safety on a variety of fronts. The publication is used as a stepping-stone in the process of changing the motorcycling environment as it relates to motorcycle safety.

The approaches outlined in the Drinking, Riding and Prevention: A Focus Group Study are considered, by the participants, to be those that will have the most impact on changing the behavior and attitude of motorcyclists regarding impaired riding. The recommended approaches are: (1) Peer to peer activities—the strong social fabric of motorcyclists and ongoing informal peer-based activities to reduce drinking riding suggests building upon this foundation to effectively reduce impaired riding. The goal is to encourage peers to promote personal responsibility safe drinking and riding practices (through drinking and riding awareness); (2) intervention techniques—many of the riders participating in the focus groups discussed the need for awareness training for servers and event staff for intervention with intoxicated riders. The riders stressed the importance of server expertise in responsible alcohol service and intervention strategies; (3) social norms models—social norms models may be effective because many riders report that their groups already discourage drinking and riding and that new and independent riders may harbor misconceptions of rider views toward drinking and riding. These models may serve to reinforce ongoing and future peer-based interventions; and (4) motorcycle impoundment—riders participating the focus groups suggested that impounding motorcycles might be an effective countermeasure to drinking and riding. Since motorcyclists prize their motorcycles, the possibility of losing motorcycles through impoundment for violating impaired driving laws could possibly deter irresponsible drinking.

The challenge is to determine which approaches are most effective and have the most impact on reducing the incidence of impaired riding. To help facilitate this evaluation process, NHTSA proposes to support four (4) cooperative agreement programs aimed at implementing one or more of the approaches outlined in the National Agenda for Motorcycle Safety and Drinking, Riding, and Prevention: A Focus Group Study.

Copies of the National Agenda for Motorcycle Safety and Drinking, Riding, and Prevention: A Focus Group Study are available on the NHTSA Web site at *http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/index.html.*

Purpose

The purpose of this cooperative agreement program is to support implementation of the approaches recommended in Drinking, Riding, and Prevention: A Focus Group Study. Approximately four projects will be supported. Applications based upon the recommendations of the National Agenda will be considered if they support the approaches discussed in Drinking, Riding, and Prevention: A Focus Group Study. Each cooperative agreement recipient will be expected to implement and evaluate an approach to determine the effectiveness of reducing the incidence of impaired riding. Project length will vary depending on the scope of the proposed effort. However, projects will be considered for a minimum of two years and a maximum of three years. Upon completion, the programs may be implemented in other areas for a more thorough evaluation.

Objective

The objective of this cooperative agreement is to provide funds for implementing and evaluating one or more of the approaches outlined in Drinking, Riding, and Prevention: A Focus Group Study to determine the effectiveness in reducing impaired riding. Applications may address any one or more of the approaches. Applications based upon the recommendations of the National Agenda will be considered if they support the approaches discussed in Drinking, Riding, and Prevention: A Focus Group Study. Examples of possible projects include activities or program that:

1. Enhance peer-to-peer activities relating to personal responsibility.

2. Enhance social norms within groups to discourage drinking and riding.

3. Focus on training servers and event staff in intervention with impaired riders.

4. Effectively separate impaired riders from their motorcycle, while providing appropriate security for the motorcycle.

5. Provide training to law enforcement personnel and prosecutors in the detection of impaired motorcyclists and conduct specialized enforcement

campaigns to reduce the incidence of impaired riding.

6. Develop educational programs for judges to increase efficiency in handling impaired motorcyclist cases.

7. Develop and evaluate projects to be implemented by State motorcycle training programs that will impact the impaired motorcyclist.

Proposal seeking support for a public information and education campaign will not be considered. However, public information and education materials used to support an activity or programs are acceptable.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this cooperative agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from state and local government sources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and others (Federal, State and local) interested in reducing motorcycle-related injuries and fatalities and promoting the activities of the grantee.

4. Review and provide comments on program content, reviews materials, and evaluation activities.

5. Stimulate the transfer of information among grant recipients and others engaged in motorcycle safety activities.

Availability of Funds

Approximately $400,000 is available to fund a number of projects. The total number of awards will depend on the nature of the projects submitted for consideration. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the Federal funds. At the discretion of the government, funds may be obligated fully at the time of award of the cooperative agreement or incrementally over the period of the cooperative agreement. Nothing in this solicitation should be constructed as committing NHTSA to make any award.

Period of Performance

The period of performance for this cooperative agreement will be up to 3 years from the effective date of award. However, the actual period of performance will depend on the scope of work for the submitted project.

Eligibility Requirements

Public and private, non-profit, not-for-profit, and for-profit organizations, and State and/or local governments and their agencies or a consortium of the above may submit applications. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, and state and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program. Preference may be given to those applications that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement. Applications seeking support for only a public information and education campaign will not be considered.

To be eligible to participate in this cooperative agreement, applicants must meet the following special competencies:

1. Demonstrate expertise in traffic safety, program development and implementation, and knowledge and experience in motorcycle safety issues, especially related to the specific approaches addressed by applicant.

2. Demonstrate capability of technical and management skills to successfully administer and complete projects in a timely manner. Include a narrative description of the documented experience, clearly indicating the relationship to this project and providing details such as project description and sponsoring agency. References to completed final project reports should include author's name.

3. Demonstrate capacity to:

a. Design, implement, and evaluate innovative approaches for addressing difficult problems related to issues associated with impaired motorcycle riding;

b. Work successfully with motorcycle and other community groups;

c. Collect and analyze both quantitative and qualitative data; and

d. Synthesize, summarize, and report results, which are useable and decision-oriented.

4. Demonstrate experience in working in partnership with others, for example, law enforcement, health care systems, government agencies, the media, etc.

Application Procedure

Each applicant must submit one (1) original and five (5) copies of the application package to: NHTSA, Office of Contracts and Procurement (NPO–220), Attention: Ross S. Jeffries, Contract Specialist, 400 Seventh Street SW., Room 5301, Washington, DC 20590. Applications must include a completed Application for Federal Assistance (Standard Form 424—Revised 4/88).

Only complete packages received on or before 3 p.m., July 22, 2003 will be considered. No facsimile transmissions will be accepted. Due to the large number of actions being processed, applications must be typed on one side of the page only and contain a reference to NHTSA Cooperative Agreement Number DTNH22–03–H–05133. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Please direct application questions to Ross S. Jeffries, at (202) 366–6283 or by email at *rjeffries@nhtsa.dot.gov.* Programmatic questions should be directed to Robert L. Hohn, at (202) 366–9712 or by email at *bhohn@nhtsa.dot.gov.*

Application Procedure and Contents

A. The application package must be submitted with OMB Standard Form 424, (Rev 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, including 424A, Budget Information-Nonconstruction Program, and 424B, Assurances-Nonconstruction Programs, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail, which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakout of the proposed costs (detail labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the projects in the project plan.

B. Funding sources other than the funds being provided through this cooperative agreement are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the project will be met.

C. Program Narrative Statement: Proposal must fully describe the scope

of the project, detailing the activities and costs for which funding is being requested. Also, applications for this program must include the following information in the program narrative statement:

1. A table of contents including page number references.

2. A description of the community (if applicable to effort proposed by grantee) in which the grantee proposes to implement a motorcycle safety program effort in support of the selected approach identified in Drinking, Riding, and Prevention: A Focus Group Study or the National Agenda for Motorcycle Safety that support the approaches identified in the focus group study. For the purpose of this program a community includes a city, town or county, small metropolitan area or a group of cities, towns or counties in particular region. It should be large enough so that the program can have a demonstrable effect on motorcycling and motorcycle safety. The description of the community should include, at a minimum, community demographics including motorcycle population, the community's motorcycle impaired riding problems, data sources available, existing traffic safety programs, motorcycle education programs and community resources.

3. A description of the project or program's goal and how the grantee plans to meet the goal. The grantee must be *specific* with respect to the particular approach being addressed and how the grantee will successfully address the issues addressed in the approach. For example, if the grantee is proposing to develop training for law enforcement personnel and prosecutors in the detection of impaired motorcyclists, how will the training program be selected? How will specialized enforcement be conducted? What partnerships may be necessary? What criteria will be used to evaluate the training? How will the results be reported?

4. A description of the specific activity proposed by the grantee. What actions will be undertaken to support the proposed project? What partners need to be involved in the effort to ensure success? To what degree has the buy-in of these groups been secured? How does the proposed project contribute to reducing impaired motorcycle riding? What is ''success'' and how will it be determined?

5. A description of the evaluation plan, including how information (data) will be obtained, compiled, analyzed, and reported.

6. A description of how the proposed projects will be managed. The application shall identify the proposed project manager and other personnel considered critical to the successful accomplishment of the project, including a brief description of their qualifications and respective organizational responsibilities. The role and responsibilities of the grantee and any others included in the application package shall be specified. The proposed level of effort in performing the various activities shall also be identified.

7. A detailed explanation of time schedules, milestones, and product deliverables, including monthly reports and draft and final reports. (See Terms and Conditions of Award.)

8. A separately-labeled section with information demonstrating that the applicant meets all of the special requirements outlined in the Eligibility Requirements section of this announcement.

D. Commitment and Support: When other sources and organizations are required to complete the proposed effort, the grantee shall provide proof of said organization's willingness to cooperate on the effort. Such proof can be a letter of support or buy-in indicating what the organization will supply to the grantee.

Application Review Process and Criteria

Each application package will be reviewed initially to confirm that the applicant is an eligible recipient, meets applicant competency factors listed in the Eligibility Requirements section, and has included all of the items specified in the Application Procedures section of this announcement. An Evaluation Committee will then evaluate each complete application from an eligible recipient. Non-federal employees under contract to NHTSA may serve on this Evaluation Committee.

The applications will be evaluated using the following criteria:

A. Project Management and Staffing (30 percent)

The extent to which the proposed staff are clearly described, appropriately assigned, and have adequate skills and experiences; the extent to which the applicant has the capacity and facilities to administer and execute the proposed project; the extent to which the applicant has the expertise in program development and evaluation and meets the special competency requirements; and to the extent to which the applicant has provided details regarding the level of effort and allocation of time for each staff position. The applicant must furnish an organizational chart and résumés of each proposed staff member. Is the applicant's staffing plan reasonable for accomplishing the objectives of the project within the time frame set forth in the announcement? Is the timeline submitted by the grantee reasonable? Has the applicant's financial budget provided sufficient detail to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort? Has financial or in-kind commitment of resources by the applicant's organization or other supporting organizations been clearly identified? Documented experience in developing, implementing and evaluating motorcycle safety or impaired driving programs.

B. Goals, Objectives, and Work Plan (25 percent)

The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, action-oriented, measurable, and achievable. The extent to which the work plan will achieve an outcome-oriented result that ultimately will reduce the incidence of impaired motorcycle riding. The work plan must address what the applicant proposes to develop and implement; how this will be accomplished; and must include the major tasks/milestones necessary to complete the project. This involves identification of, and solutions to, potential technical problems and critical issues related to successful completion of the project. The work plan will be evaluated with respect to its feasibility, realism, and ability to achieve desired outcomes.

C. Evaluation Plan (20 percent)

The extent to which the evaluation plan clearly articulates the project's potential to make a significant impact on reducing impaired motorcycle riding and the associated crashes, injuries and fatalities. This should be more than a process evaluation. The extent, to which the evaluation plan indicates how the information/data collected in the project will be compiled, analyzed, interpreted and reported. When information is qualitative, what criteria will be used to analyze it? Are there sufficient data/information sources and is access ensured from appropriate owners or collectors of data to obtain and appropriately analyze the quantitative and qualitative information needed on the proposed project?

D. Program Approach (15 percent)

The extent to which the applicant is knowledgeable about impaired

motorcycle riding and programs. The extent to which the applicant clearly identifies and explains creative approaches to address reducing impaired motorcycle riding, based on the selection of one or more of the approaches previously listed. If building on an existing approach or program, what are the innovative, new, or creative features that make this project different from what has been tried in the past? Has the applicant identified potential barriers associated with developing and implementing the new, creative approach? Has the applicant offered solutions for addressing the barriers? Has the applicant demonstrated how the project maybe adaptable to other jurisdictions at a reasonable cost? Has the applicant identified partners and groups to work on the proposed project? Has the applicant specified who will be involved and what each will contribute to the project? What new or non-traditional partners has the applicant involved in the project?

E. Special Competencies (10 percent)

The extent to which the applicant has met the special competencies (see Eligibility Requirements) including knowledge and familiarity with motorcycle impairment issues associated with the proposed intervention or effort; technical and management skills needed to successfully design, conduct, and evaluate the proposed effort; ability to work with various organizations and the motorcycle community to implement programs or compile data; ability to design and implement approaches for addressing motorcycle safety related problems; and experience in fostering new partnership with nontraditional partners.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, State, local, and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration of award, preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for Drug Free Work Place (Grants).

2. Reporting Requirements and Deliverables: A. Monthly Progress Reports must include a summary of the previous month's activities and accomplishments, as well as the proposed activities for the upcoming month. Any decisions and actions required in the upcoming month should be included in the report. Any problems and issues that may arise and need the Contracting Officer's Technical Representative (COTR) or Contracting Officer (CO) attention should be clearly identified in the monthly report in a specific, identified section. The grantee shall supply the progress report to the COTR every thirty (30) days, following date of award.

B. Initial and Subsequent Meetings with COTR: The grantee will meet with the COTR and appropriate NHTSA staff in Washington, DC at NHTSA's offices to discuss and refine the development, implementation, and evaluation of the project. The grantee will prepare a 20 to 30 minute presentation describing the project and will be prepared to answer questions from the COTR and others present at the briefing. After this initial meeting with the COTR, the grantee should meet at least once a year with the COTR in Washington, DC at NHTSA's offices to discuss the project's progress and results. These meetings will be a minimum of 4 hours in length.

C. Revised Project Plan: If needed, the grantee will submit a revised project plan incorporating verbal and written comments from the COTR. This revised plan is due no more than one (1) month from date of the initial meeting with COTR.

D. *Draft Final Report:* The grantee will prepare a Draft Final Report that includes a description of the project, issue addressed, program implementation (if relevant), evaluation strategies, findings and recommendations. With regard to technology transfer, it is important to know what worked and what did not work, under what circumstances, what can be done to enhance replication in similar communities, and what can be done to avoid potential problems for future replication of the project. This is true even if the applicant reviewed and documented existing programs. The grantee will submit Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

E. *Final Report:* The grantee will revise the Draft Final Report to reflect the COTR's comments. The revised final report will be delivered to the COTR 15 days before the end of the performance period.

F. *Requirements for Printed Material:* The print materials shall be provided to NHTSA in both camera ready and appropriate media formats (disk, CD–ROM) with graphics and printing specifications to guide NHTSA's printing office and any outside organization implementing the program. Printing Specifications follow.

1. Digital artwork for printing shall be provided to NHTSA on diskette (250 meg Zip disk or CD ROM). Files should be in current desktop design and publication programs, for example, Adobe Illustrator, Adobe Photoshop, Adobe PageMaker, Macromedia Freehand, QuarkXPress. The contractor shall provide all supporting files and fonts (both screen and printers) needed for successful output, black and white laser separations of all pages, disk directory(s) with printing specifications provided to the Government Printing Office (GPO) on GPO Form 952 to guide NHTSA's printing office, GPO, and any outside organizations assisting with program production. The contractor shall confer with the COTR to verify all media format and language.

2. Additionally, the program materials shall be submitted in the following format for placement on NHTSA's homepage of the World Wide Web.

- Original application format, for example, *pm5; *.doc; *.ppt; *etc.*
- HTML level 3.2 or later.
- A PDF file for viewing with Adobe Acrobat.

3. All HTML deliverables must be delivered on either a standard 3.5'' floppy disk or on a Windows 95 compatible formatted Iomega zip disk and labeled with the following information:

- Contractor name and phone number.
- Names of relevant files.
- Application program and version used to create the file(s).
- If the files exceed the capacity of a high density floppy, a Windows 95 compatible formatted Iomega zip disk is acceptable

4. Graphics must be saved in Graphic Interchange Format (GIF) or Joint Photographic Expert Group (JPEG). Graphics should be prepared in the smallest size possible, without reducing the usefulness or the readability of the figure on the screen. Use GIF for solid color or black and white images, such as bar charts, maps, or diagrams. Use JPEG (highest resolution and lowest

compression) for photographic images having a wider range of color or grayscale tones. When in doubt, try both formats and use the one that gives the best image quality for the smallest file size. Graphic files can be embedded in the body of the text or linked form the body text in their own files: the latter is preferable when a figure needs to be viewed full screen (640 X 480 pixels) to be readable.

- Tabular data must be displayed in HTML table format.
- List data must be displayed in HTML list format.
- Pre-formatted text is not acceptable.
- Currently, frames are not acceptable.
- JAVA, if used, must not affect the readability or usefulness of the document, only enhance it.
- Table background colors may be used, but must not be relied upon (for example, a white document background with a table with colored background may look nice with white text, but the colored background does not show up on the user's browser the text will be white against white and unreadable).
- All HTML documents must be saved in PC format and tested on a PC before delivery.

5. During all phases of program development, draft program content and materials shall be provided to the COTR, as appropriate, for approval and coordination within NHTSA. If applicable, draft materials shall also be used for program message testing (the method of testing chosen in consultation with and approved by the COTR) to ensure that the content and messages are clear, easily understood and produce the desired effect with intended audiences.

6. All HTML deliverables rendered under this contract must comply with the accessibility standards at 36 CFR 1194.22 that implements Section 508 of the Rehabilitation Act of 1973, as amended. This standard is available for viewing at the Access Board Web site at: *http://www.access-board.gov/sec508/guide/1194.22.htm.*

Unless otherwise indicated, the contractor represents by signature of this contract that all deliverables comply with the Access Board standards.

G. *Final project briefing to NHTSA and a presentation to a national meeting:* The grantee will deliver a briefing in Washington, DC at NHTSA's offices to the COTR and appropriate NHTSA staff to review the project implementation, evaluation, and results. This presentation shall last no less than 30 minutes and the grantee shall be prepared to answer questions from the briefing's attendees.

In consultation with the COTR, the grantee will select a national meeting to deliver a presentation of the project and it effectiveness.

H. An electronic Microsoft PowerPoint (2000) presentation that NHTSA staff shall be able to use to brief senior staff or motorcycle partners at various meetings and conference.

3. During the effective performance period of the cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreement, dated July 1995.

Issued on: July 22, 2003.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 03–15925 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–14880]

Cancellation of Public Meeting Regarding NHTSA's Initial Decision That Certain Motorcycle Helmets Manufactured by NexL Sports Products Fail To Comply With Federal Motor Vehicle Safety Standard No. 218

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Cancellation of Public Meeting.

SUMMARY: NHTSA has cancelled the public meeting scheduled for June 27, 2003 regarding its Initial Decision that NexL Sports Products (NexL) ''Beanie DOT Motorcycle Helmets'' (model 02) fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets.* NHTSA has also cancelled the hearing to determine if NexL's remedy for the noncompliance of its model 01 helmets with FMVSS No. 218 was adequate.

FOR FURTHER INFORMATION CONTACT: George Gillespie, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–5299. NHTSA's Initial Decision, and the information on which it is based, are available at NHTSA's Technical Information Services, Room 5111, 400 Seventh Street, SW., Washington, DC 20590; Telephone: 202–366–2588. When visiting Technical Information Services or contacting it via the telephone, refer to Investigation File CI–218–020612.

SUPPLEMENTARY INFORMATION: On April 11, 2003, NHTSA published a Notice in the **Federal Register** that it would hold a public meeting regarding its Initial Decision that model 02 motorcycle helmets manufactured by NexL Sports Products (NexL) fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, Motorcycle Helmets, 49 CFR 571.218 and a hearing to determine whether the remedy provided by NexL to address a noncompliance in its model 01 helmets was adequate. 68 FR 17857 (April 11, 2003). That public meeting and the associated remedy adequacy hearing were rescheduled for June 27, 2003. NexL has submitted a 49 CFR part 573 noncompliance report stating that its Model 02 helmets fail to comply with FMVSS 218 and that it will provide a free remedy at no charge. In addition, NexL has agreed that its remedy campaign will include the remedy for the noncompliance of its model 01 helmets. As a result of that submission, the public meeting is moot and has been cancelled.

Authority: 49 U.S.C. 30118(a), (b), and 49 U.S.C. 30120(c), (e); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: June 18, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–15876 Filed 6–19–03; 12:45 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer, Brown, Rowe & Maw on behalf of The Burlington Northern and Santa Fe Railway Company (BNSF) (WB461–9—6/17/2003) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 03–15780 Filed 6–23–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—American Manufacturers Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, title 31, sections 9304–9308, to quality as an acceptable surety on Federal bonds it terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44298, July 1, 2002.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 12, 2003.

Wanda J. Rogers,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–15879 Filed 6–23–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptance on Federal Bonds: Termination—American Motorists Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The company was last listed as an acceptable surety on Federal bonds at 67 FR 44298, July 1, 2002.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 12, 2003.

Wanda J. Rogers,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–15880 Filed 06–23–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Lexington Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 15 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7116.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44316 to reflect this addition:

Company Name: Lexington Insurance Company. *Business Address:* 200 State Street, Boston, MA 02109. *Phone:* (212) 458–7018. *Underwriting Limitation b/:* $176,365,000. *Surety Licenses c/:* DE. *Incorporated In:* Delaware.

Certificate of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch,

3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 9, 2003.

Michael Shandor,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–15878 Filed 6–23–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Lumbermens Mutual Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 18 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44317, July 1, 2002.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 12, 2003.

Wanda J. Rogers,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–15881 Filed 6–23–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13369

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13369, Agreement to Mediate.

DATES: Written comments should be received on or before August 25, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Agreement to Mediate.

OMB Number: 1545–1844.

Form Number: 13369.

Abstract: Fast Track Mediation is a dispute resolution process designed to expedite case resolution. In order to avail themselves of this process, taxpayers and Compliance must complete the Agreement to Mediate (Form 13369) once an examination or collection determination is made. Once signed by both parties, the Agreement to Mediate will be forwarded to Appeals to schedule a mediation session.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal, state, local or tribal governments.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 15.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 17, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–15934 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

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 Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Thursday, June 26, 2003 from 1 p.m. EDT to 2 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 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference line, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 13, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel

[FR Doc. 03–15935 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–M

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, July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

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, July 23, 2003, from 12 noon EDT to 1 pm 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: June 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15936 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez 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 Area 3 Taxpayer Advocacy Panel will be held Friday, July 18, 2003, from 11 am EDT to 12:30 pm 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 Rd., 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 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15937 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6098.

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 Area 7 Taxpayer Advocacy Panel will be held Monday, July 21, 2003 from 8 a.m. Pacific Time to 9 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. 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 206–220–6098, or write to Mary Peterson

O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6098.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 17, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15938 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

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 Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, July 31, 2003 from 3 p.m. EST to 4 p.m. EST via a telephone conference call. The public is invited to make oral comments. 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 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 17, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15939 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

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 Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, July 8, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. 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 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: June 17, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–15940 Filed 6–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office

Government Owned Invention Available for Licensing

AGENCY: Research and Development Office.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with title 35 U.S.C. 207 and title 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *mindy.aisen@mail.va.gov.* Any request for information should include the number and title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: PCT/US03/06715 ''Method and Kit for Identifying Pseudomonas Aeruginosa.''

Dated: June 12, 2003.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 03–15834 Filed 6–23–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Saint Cloud, MN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate approximately five acres of land at the Department of Veterans Affairs Medical Center, Saint

Cloud, Minnesota, for an enhanced-use leasing development. The Department intends to enter into a 35 to 75-year lease of real property with a lessee/developer who will finance, design, develop, maintain and manage a Community Center Complex, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: June 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–15833 Filed 6–23–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 121

Tuesday, June 24, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–15311; Airspace Docket No. 03–ASO–6]

Amendment of Class D, E4, E5 Airspace; Elizabeth City, NC

Correction

In rule document 03–15143 beginning on page 35534 in the issue of Monday, June 16, 2003, make the following corrections:

§ 71.1 [Corrected]

1. On page 35535, in § 71.1, in the first column, under the heading **ASO NC E4 Elizabeth City, NC [Revised]**, in the first line, ''Elizabaeth'' should read, ''Elizabeth''.

2. On the same page, in the same section, in the same column, under the same heading, in the sixth line, ''long. 76°15′52″'' should read, ''long. 76°17′52″''.

3. On the same page, in the same section, in the second column, the heading **''ASO NC ET Elizabaeth City, NC [Revised]''** should read, ''**ASO NC E5 Elizabeth City, NC [Revised]**''.

[FR Doc. C3–15143 Filed 6–23–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103805–99]

Proposed Collection; Comment Request for Regulation Project

Correction

In notice document 03–15284 beginning on page 36632 in the issue of Wednesday, June 18, 2003, make the following correction:

On page 36632, in the third column, in the **DATES** section, in the second line, ''August 6, 2003,'' should read, ''August 18, 2003.''

[FR Doc. C3–15284 Filed 6–23–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,

June 24, 2003

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15351]

RIN 2127–AI34

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document makes a number of revisions to the Federal safety standard for child restraint systems, including amendments for incorporating improved test dummies and updated procedures used to test child restraints and extension of the standard to apply it to child restraints recommended for use by children up to 65 pounds (30 kilograms). This action strengthens the technical underpinnings of the standard and ensures that a firmer foundation is laid for possible technical improvements in the future. Child restraints will be tested using the most advanced test dummies available today and tested to conditions representing current model vehicles. This final rule fulfills the mandate of the Transportation Recall Enhancement, Accountability and Documentation Act of 2000 that the agency undertake rulemaking on the safety of child restraints.

DATES: The amendments made in this rule are effective December 22, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 22, 2003. If you wish to petition for reconsideration of this rule, your petition must be received by August 8, 2003.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Executive Summary

This document makes a number of revisions to Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems'' (49 CFR 571.213). The revisions incorporate four elements into the standard: (a) An updated bench seat used to dynamically test add-on child restraint systems; (b) a sled pulse that provides a wider test corridor; (c) improved child test dummies; and (d) expanded applicability to child restraint systems recommended for use by children weighing up to 65 pounds. This action strengthens the technical underpinnings of the standard and ensures that a firmer foundation is laid for possible technical improvements in the future. Child restraints will be tested using the most advanced test dummies available today and tested to conditions representing current model vehicles. This final rule does not adopt the scaled injury criteria developed for the occupant protection standard (FMVSS No. 208), except that the time interval used to calculate the head injury criterion is amended from an unlimited time interval to 36 milliseconds.

This final rule fulfills the mandate in the Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act) (November 1, 2000, Pub. L. 106–414, 114 Stat. 1800) to initiate a rulemaking for the purpose of improving the safety of child restraints.[1]

Section 14(a) of the TREAD Act mandated that the agency ''initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.'' Section 14(b) identified specific elements that the agency must consider in its rulemaking. The Act gave the agency substantial discretion over the decision whether to issue a final rule on the specific elements. Section 14(c) specified that if the agency does not incorporate any element described in § 14(b) in a final rule, the agency shall explain in a report to Congress the reasons for not incorporating the element in a final rule.

In response to Section 14, the agency examined possible ways of revising and updating its child restraint standard. Today's final rule is substantially based on a combination of pre- and post-TREAD Act agency activities, including research studies of child restraints and dummies by NHTSA following issuance of the NPRM. This final rule was also developed based on extensive information provided by comments to the NPRM. Several factors relating to child restraint performance and use in this country guided the agency in its decision-making on this rulemaking, in addition to the statutory mandates

[1] It also follows up on the agency's announcement in its November 2000 Draft Child Restraint Systems Safety Plan (Docket NHTSA–7938) that the agency will be undertaking rulemaking on these and other elements of Standard No. 213 (65 FR 70687; November 27, 2000).

governing the agency's rulemaking activities. These factors are outlined in Section IV of this preamble.

The agency also issued an advance notice of proposed rulemaking (ANPRM) published concurrently with the NPRM, in which comments were sought on the agency's work on developing a possible side impact protection standard for child restraint systems. This advanced notice is discussed in Section V of today's preamble. The ANPRM announced that the agency had conducted extensive testing and analysis over the year proceeding the ANPRM to develop a possible side impact protection standard for children in child restraints but acknowledged that there are many unknowns. The agency sought comment on the suitability of the test procedures it was considering, on appropriate injury criteria for children in side impacts, on cost beneficial countermeasures, and on other issues. Additionally, after the ANPRM was published the agency evaluated possible mitigation concepts, such as adding padding material to the child restraint system. After reviewing the comments and the results of its post-ANPRM study, the agency has decided that the level and amount of effort needed to further develop and validate a side impact component for incorporation into FMVSS No. 213 far exceeds what could be accomplished within the time constraints of the TREAD Act. While an NPRM is not feasible at this time, NHTSA's research into improved side impact protection requirements for child restraints will continue as an ongoing agency program.

The updates to the seat assembly are based on studies that NHTSA contracted to have done in response to the TREAD Act. This final rule makes the following changes: the seat bottom cushion angle is increased from 8 degrees off horizontal to 15 degrees; the seat back cushion angle is increased from 15 degrees off the vertical to 20 ± 1 degrees; the spacing between the anchors of the lap belt is increased from 222 millimeters (mm) to 400 mm in the center seating position and from 356 mm to 472 mm in the outboard seating positions; and the seat back of the seat assembly is changed, from a flexible seat back to one that is fixed, to represent a typical rear seat in a passenger car.

The changes to the sled pulse are based on studies conducted in response to the TREAD Act. The test corridor is widened to make it easier for more test facilities to reproduce. The wider corridor extends the pulse from 80 milliseconds (ms) to approximately 90 ms in duration. The expanded corridor does not reduce the stringency of the test, and makes it easier to conduct compliance tests at speeds closer to 30 mph.

This document enhances the use of test dummies in the evaluation of child restraints under Standard No. 213. NHTSA replaces most of the existing dummies with the new 12-month-old Child Restraint Air Bag Interaction (CRABI) dummy, and the state-of-the art Hybrid III 3- and 6-year-old dummies. NHTSA also incorporates a weighted 6-year-old dummy (*i.e.*, a Hybrid III 6-year-old dummy to which weights have been added) to test the structural integrity of child restraints recommended for use by children weighing 50 to 65 lb. Incorporation of the weighted, 62 lb, dummy is viewed as an interim measure until such time as the Hybrid III 10-year-old dummy becomes available. Because the weighted dummy will be available for use in dynamic testing of child restraints for older children, this final rule extends the application of FMVSS No. 213 to child restraint systems for children who weigh 65 lb or less.

The agency has decided against adopting the scaled injury criteria developed in the context of the advanced air bag rulemaking of FMVSS No. 208. The agency was unable to confirm the existence of a safety problem that the scaled injury limits of FMVSS No. 208 would remedy. Relatedly, not enough is known about what modifications to child restraints could be made for the restraints to meet the proposed injury limits. In balancing the effects of meeting the scaled injury criteria against the possible impacts on the price of restraints, the agency determined that the scaled injury limits should not be added to FMVSS No. 213 at this time.

NHTSA has examined the benefits and costs of these amendments, wishing to adopt only those amendments that contribute to improved safety, and mindful of the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review. Its efforts to do so, however, have been limited by several factors. One is the limited time allowed by the schedule specified in the TREAD Act for initiating and completing this rulemaking. That has limited the amount and variety of information that the agency could obtain and testing that the agency could conduct to examine the efficacy of possible countermeasures under consideration and the effects of the various proposed amendments on child restraint performance. The other is the lack of specific accident data on children in motor vehicle crashes generally. For example, there is little available data on neck injury in children involved in motor vehicle crashes. Together, these limitations have made it difficult to assess and compare the benefits and costs of this rulemaking.

The agency does not believe that updating the seat assembly and revising the crash pulse would affect dummy performance to an extent that benefits would accrue from such changes. The amendment of FMVSS No. 213 incorporating use of the new dummies in compliance tests, including testing with a weighted 6-year-old dummy, would result in a one-time cost of $1.68 million for manufacturers to purchase the new test dummies and $1.39 to $3.44 million to certify existing child restraints to the new dummies and test requirements. The annual long-term costs are estimated to be $31,200 to test new models of booster seats (including built-in restraints) with a weighted 6-year-old dummy. We believe that use of the new dummies, in itself, would not necessitate redesign of child restraints.

II. Background

Of the 31,910 passenger vehicle occupants killed in 2001, 1,003 were children ages 0 through 10 years old. Four hundred ninety-seven (497) of these were less than 5 years old. The failure to use occupant restraints is a significant factor in most fatalities resulting from motor vehicle crashes for both adults and children. Of the 31,910 passenger vehicle occupants killed in 2001, over half (55 percent) were unrestrained. Forty-six (46) percent of the 1,003 child occupant fatalities, ages 0 through 10 years old, were unrestrained. For child occupants less than 5 years old, 45 percent of the 497 fatalities were unrestrained.[2] In 2001, 202 child occupants under 5 years of age were killed while restrained in child restraints, and another 32,000 were injured.

NHTSA developed three strategies for reducing the number of children killed and injured in motor vehicle crashes in this country. (*See* Planning Document, 65 FR 70687; November 27, 2000; Docket NHTSA 7938.) The first of these was a strategy designed to increase restraint use among all children and to ensure that the appropriate restraint systems are used correctly. The agency

[2] Of the 2,787,000 passenger vehicle occupants injured in crashes in 2001, only 12 percent (324,000) were reported as unrestrained. The rates are about the same for child occupants. For children ages 0–10 years old, an estimated 147,000 were injured in motor vehicle traffic crashes in 2001, and 12 percent (18,000) of these children were unrestrained. Of the 59,000 child occupants less than 5 years of age who were injured, 11 percent (6,000) were unrestrained.

estimated that if all children ages 0–4 years old were restrained in child restraint systems, 173 lives could have been saved in 1998. Additional studies have shown that as many as 68 additional deaths to children ages 0–6 years old could be prevented each year by eliminating misuse of child restraints. The agency conducts national campaigns to educate the public about the importance of buckling children into child restraint systems.

The second strategy was to improve existing requirements for the performance and testing of child restraint systems. Since NHTSA first began regulating child safety seats in 1971, the agency has made numerous improvements to the original Federal safety standard. On a frequent basis, the agency has issued planning documents or has held public meetings on child passenger safety issues at the attention of the agency and the agency's long view of possible regulatory actions that might be taken in response. The public is invited to comment on the agency's plans. The November 2000 Planning Document announced that the agency planned to undertake rulemaking to update the bench seat and belt geometry used in Standard No. 213's compliance test, revise the crash pulse used in the test, incorporate state-of-the art infant, 3-year-old and 6-year-old crash test dummies and child-specific injury criteria, and continue efforts working with the Society of Automotive Engineers in developing a 10-year-old child test dummy. The plan also stated that the agency would conduct research into possible side impact test requirements for child restraints and developing a test dummy appropriate for use in side impact tests. In addition, the plan announced that NHTSA would begin testing child restraints in full frontal and side impact vehicle crash tests under the agency's New Car Assessment Program.

The third strategy called for improved mechanisms for getting safety information to consumers, to increase the likelihood that child restraints would be purchased and correctly used. The agency sought to improve the information it provided to consumers, both on the performance and proper use of child restraint systems, as well as on defect investigations and safety recalls.

In November 2000, the TREAD Act was enacted. Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints and included specific elements, listed below, that the agency had to consider as part of the rulemaking. Most of the elements for consideration had been included in NHTSA's Planning Document as part of the strategy for improving the safety of child restraints. Thus, Section 14 reaffirmed the importance of the agency's planned programs for amending Standard No. 213. Nonetheless, the TREAD Act had very tight deadlines for initiating and completing the rulemaking which also defined for the agency the actions it could take and complete within those deadlines.

III. The TREAD Act

Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002. The relevant provisions in Section 14 are as follows:

(a) In General. Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.

(b) Elements for Consideration. In the rulemaking required by subsection (a), the Secretary shall consider—

(1) Whether to require more comprehensive tests for child restraints than the current Federal motor vehicle safety standards requires, including the use of dynamic tests that—

(A) Replicate an array of crash conditions, such as side-impact crashes and rear-impact crashes; and

(B) Reflect the designs of passenger motor vehicles as of the date of enactment of this Act;

(2) Whether to require the use of anthropomorphic test devices that—

(A) Represent a greater range of sizes of children including the need to require the use of an anthropomorphic test device that is representative of a ten-year-old child; and

(B) Are Hybrid III anthropomorphic test devices;

(3) Whether to require improved protection from head injuries in side-impact and rear-impact crashes;

(4) How to provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis;

(5) Whether to prescribe clearer and simpler labels and instructions required to be placed on child restraints;

(6) Whether to amend Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213) to cover restraints for children weighing up to 80 pounds;

(7) Whether to establish booster seat performance and structural integrity requirements to be dynamically tested in 3-point lap and shoulder belts;

(8) Whether to apply scaled injury criteria performance levels, including neck injury, developed for Federal Motor Vehicle Safety Standard No. 208 to child restraints and booster seats covered by in [sic] Federal Motor Vehicle Safety Standard No. 213; and

(9) Whether to include [a] child restraint in each vehicle crash tested under the New Car Assessment Program.

(c) Report to Congress. If the Secretary does not incorporate any element described in subsection (b) in the final rule, the Secretary shall explain, in a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce submitted within 30 days after issuing the final rule, specifically why the Secretary did not incorporate any such element in the final rule.

(d) Completion. Notwithstanding any other provision of law, the Secretary shall complete the rulemaking required by subsection (a) not later than 24 months after the date of the enactment of this Act.

IV. Responsible Regulation

The agency developed its proposed and final rules responding to the TREAD Act while bearing in mind and in some cases, balancing, several compelling principles and considerations that generally come to the forefront in rulemaking in this area. These are discussed below.

(a) When used, child restraints are highly effective in reducing the likelihood of death and or serious injury in motor vehicle crashes. NHTSA estimates (''Revised Estimates of Child Restraint Effectiveness,'' Hertz, 1996) that for children less than one-year-old, a child restraint can reduce the risk of fatality by 71 percent when used in a passenger car and by 58 percent when used in a pickup truck, van, or sport utility vehicle (light truck). Child restraint effectiveness for children between the ages 1 to 4 years old is 54 percent in passenger cars and 59 percent in light trucks. The failure to use occupant restraints is a significant factor in most fatalities resulting from motor vehicle crashes. For child occupants less than 5 years old, 45 percent of the 497 fatalities in 2001 were unrestrained.

Over the past decade, the agency has sought to increase use of vehicle seat belt and child restraint systems. NHTSA conducts national campaigns to educate the public about the importance of buckling children into child restraint systems, supports efforts by state and

local organizations that wish to establish child safety seat fitting stations (locations within a community where parents and caregivers can learn how to install and properly use child restraints), and works with partners to train educators that can teach the public about using child restraints. If more child restraints were used, children's lives would certainly be saved in significant numbers.

If child restraints were made more effective, some lives could also possibly be saved. However, in making regulatory decisions on possible enhancements, the agency must bear in mind the consumer acceptance of cost increases to an already highly-effective item of safety equipment. Any enhancement that would significantly raise the price of the restraints could potentially have an adverse effect on the sales of this voluntarily-purchased equipment. The net effect on safety could be negative if the effect of sales losses exceeds the benefit of the improved performance of the restraints that are purchased. Thus, to maximize the total safety benefits of its efforts to extend and upgrade its restraint requirements, the agency must balance those improvements against impacts on the price of restraints. The agency must also consider the effects of improved performance on the ease of using child restraints. If the use of child restraints becomes overly complex, the twin problems of misuse and nonuse of child restraints could be exacerbated.

(b) Estimating the net effect on safety of this rulemaking, consistent with the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review, was limited by several factors. One was the lack of specific accident data on children in motor vehicle crashes generally. Second, the limited time allowed by the schedule specified in the TREAD Act for initiating and completing this rulemaking limited the amount and variety of information that the agency could obtain and testing that the agency could conduct to examine the efficacy of possible countermeasures and the effects of various proposed amendments on child restraint performance. Together, these limitations made it difficult to assess and compare the benefits and costs of this rulemaking.

(c) The rulemaking schedule imposed by the TREAD Act also limited the rulemaking to elements that could be completed within the statutory schedule. The development of an anthropomorphic test device representing a 10-year-old child could not be completed within the timeframe of the TREAD Act and so was not part of the rulemaking, notwithstanding its inclusion as an element for consideration in NHTSA's Planning Document and in Section 14 of the TREAD Act. Development of a seat cushion with different stiffness characteristics for the test seat assembly could not be completed and analyzed in time to be included in this rulemaking. Development of a side impact test procedure, injury criteria, and cost-effective countermeasures also could not be completed within the TREAD Act rulemaking schedule. Work is continuing in some of these areas. While ideally the agency would have wanted to address all related aspects of the standard, what could be accomplished in the near term was addressed and what could not but should will be pursued in the future.

V. Response to the TREAD Act

Bearing in mind the principles and considerations discussed in the previous section, the agency initiated several actions following enactment of the TREAD Act. These are summarized below.

a. NPRM for This Final Rule

On May 1, 2002 (67 FR 21806, docket 11707), the agency published a notice of proposed rulemaking (NPRM) proposing to incorporate five elements into the standard: (a) An updated bench seat used to dynamically test add-on child restraint systems; (b) a sled pulse that provides a wider test corridor; (c) improved child test dummies; (d) expanded applicability to child restraint systems recommended for use by children weighing up to 65 pounds; and (e) new or revised injury criteria to assess the dynamic performance of child restraints. The 60-day comment period provided by the NPRM on the proposals was extended an additional 30 days in response to petitions from the Juvenile Products Manufacturers Association and ARCCA, Inc. 67 FR 44416; July 2, 2002.

The proposed updates to the seat assembly were based on studies that NHTSA contracted to have done in response to the TREAD Act. The NPRM proposed the following changes: the seat bottom cushion angle would be increased from 8 degrees off horizontal to 15 degrees; the seat back cushion angle would be increased from 15 degrees off the vertical to 22 degrees; the spacing between the anchors of the lap belt would be increased from 222 millimeters (mm) to 392 mm in the center seating position and from 356 mm to 472 mm in the outboard seating positions; and the seat back of the seat assembly would be changed, from a flexible seat back to one that is fixed, to represent a typical rear seat in a passenger car.

The agency also proposed to widen the corridor of the sled pulse to make it easier for more test facilities to reproduce. The wider corridor extends the pulse from 80 milliseconds (ms) to approximately 90 ms in duration. The agency believed that the expanded corridor would not reduce the stringency of the test, and would also make it easier to conduct compliance tests at speeds closer to 30 mph.

The NPRM proposed two initiatives toward enhancing the use of test dummies in the evaluation of child restraints under Standard No. 213. NHTSA proposed to replace some of the existing dummies with the new 12-month-old Child Restraint Air Bag Interaction (CRABI) dummy, and the state-of-the art Hybrid III 3- and 6-year-old dummies. NHTSA also proposed testing child restraints for older children with a weighted 6-year-old dummy (*i.e.*, a Hybrid III 6-year-old dummy to which weights have been added). The total weight of the dummy would be 62 lb. The agency sought to use the weighted dummy as an interim measure to test child restraints that are recommended for children weighing 50 to 65 lb, until such time as a Hybrid III 10-year-old dummy now in development becomes available.

The NPRM proposed to extend Standard No. 213 to apply to child restraint systems for children who weigh 65 lb or less. Restraints recommended for children weighing 50 to 65 lb would be tested with the weighted 6-year-old dummy.

The proposal to use the new and scaled injury criteria of Standard No. 208 was based on research that the agency had done in support of the agency's May 2000 final rule on advanced air bag technology, which amended Standard No. 208 by, among other things, adjusting the criteria and performance limits to account for motor vehicle injury risks faced by different size occupants (65 FR 30680; May 12, 2000), as well as on NCAP and sled testing done in response to the TREAD Act. The NPRM proposed to adopt the scaled Head Injury Criterion (HIC) limits from the Standard No. 208 rulemaking into Standard No. 213, as well as the chest deflection and acceleration limits. The Nij neck criterion was also proposed to be added to Standard No. 213, but without the limits on axial force.

NHTSA estimated that the proposal to use the new and scaled injury criteria of Standard No. 208 would prevent an estimated 3–5 fatalities and 5 MAIS 2–

5 non-fatal injuries for children ages 0–1 annually. In addition, the proposal would save 1 fatality and mitigate 1 MAIS 2–5 injury in the 4- to 6-year-old age group annually. The agency did not believe that updating the seat assembly and revising the crash pulse would affect dummy performance to an extent that benefits would accrue from such changes.

NHTSA did not identify countermeasures to improve child restraint performance in frontal tests that would allow child restraint manufacturers to meet the proposed neck injury criterion. Consequently, the agency was unable to estimate the costs of such countermeasures. Comments were requested on possible countermeasures and their costs. The agency believed that the proposal to use new dummies in compliance tests, including testing with a weighted 6-year-old dummy, could result in increased testing costs for manufacturers that want to certify their restraints using the tests that NHTSA will use in compliance testing. NHTSA estimated that use of the new dummies and other changes to the test procedure would add testing costs of $2.72 million. The agency believed that those changes would not result in redesign of child restraints.

b. ANPRM On Side Impact Protection

On May 1, 2002, concurrent with the publication of the NPRM and in further response to section 14(b) of the TREAD Act, NHTSA issued an advance notice of proposed rulemaking (ANPRM) seeking public comments on the agency's work on developing near-term a possible side impact protection standard for child restraint systems. 67 FR 21836, May 1, 2002; Docket No. 02–12151.

The ANPRM primarily addressed side impact protection for children in child restraints in the following areas: (a) Determination of child injury mechanisms in side impacts, and crash characteristics associated with serious and fatal injuries to children in child restraints; (b) development of test procedures, a suitable test dummy and appropriate injury criteria; and (c) identification of cost beneficial countermeasures. Uncertainties in these areas, together with the statutory schedule for this rulemaking, made it difficult for the agency to assess and make judgments on the benefits and costs of a rulemaking on side impact protection. The ANPRM also requested comments on the appropriateness of proposing to incorporate a rear impact test procedure into FMVSS No. 213 for rear-facing child restraint systems.

The agency received approximately 17 comments on the ANPRM. Commenters expressed qualified support for NHTSA's efforts to enhance child passenger protection in side impact crashes, but were concerned about the uncertainties with respect to the three areas highlighted above. A number of commenters believed that a dynamic test should account for some degree of vehicle intrusion into the occupant compartment, which overall the tests that the agency had been considering did not.

Following publication of the ANPRM, the agency began a program of child restraint systems side impact testing that continues today, for completion in fall 2003. Some of the side impact testing in which the agency is engaged is as follows:

—Initial evaluation of mitigation concepts, such as adding padding material to the child restraint system (CRS), modifying the size of the side wings of the CRS, effect of rigid lower anchorages and additional tethering of the CRS for rear-facing CRS in a side impact.

—Initial evaluation of mitigation concepts, such as adding padding material to the child restraint, modifying the size of the side wings of the CRS, rigid lower anchorages and additional tethering of the CRS for forward-facing CRS in a side impact.

If the results from the above two evaluations are successful in reducing injury levels, NHTSA will consider conducting a test series to determine if the stiffer shoulder/upper arm area of the HIII 3-year-old dummy influences head/neck performance, as compared to the TNO Q3 dummy developed by a European test dummy manufacturer.

Upon further consideration of the comments on the ANPRM and the agency's side impact test program, we have decided not to issue an NPRM and final rule on side and rear impact protection at this time and thus are withdrawing the action. A full explanation of the agency's reasons for this decision is set forth in a report to Congress that NHTSA has issued concurrently with today's final rule.[3] To summarize, the agency found that for side crashes: (a) Data are not widely available as to how children are being injured and killed in side impacts (*e.g.*, to what degree injuries are caused by intrusion of an impacting vehicle or other object); (b) potential countermeasures for side impact intrusion have not been developed; and (c) there is not a consensus on an appropriate child test dummy and associated injury criteria for side impact testing. There was widespread support for NHTSA to monitor the progress of the International Standards Organization (ISO) to develop a harmonized side impact test procedure. A preliminary draft of an ISO side impact test procedure includes specifications for an intruding door member. However, no dummies are available at the present time whose construction is designed for side impact validation. Given the lack of an approved test device, and corresponding injury criteria, a final version of an ISO test procedure is not expected in the near future.

The level and amount of effort needed to further develop and validate the ISO side impact test procedure far exceeds what could be accomplished within the time constraints of the TREAD Act. While an NPRM is not feasible at this time, NHTSA's research into improved side impact protection requirements for child restraints will continue as an ongoing agency program.

c. TREAD Programs on Labeling and Consumer Information

Two other regulatory initiatives on child restraint systems were completed in response to Section 14 of the TREAD Act. Pursuant to § 14(b)(5) of the Act, the agency issued a final rule on October 1, 2002 (67 FR 61523, Docket 10916) on Standard No. 213's labeling and owner's manual requirements. The final rule amends the format, location, and content of some of Standard No. 213's labeling requirements to make the labels and instructions clearer and simpler.

In addition, pursuant to § 14(g) of the Act, NHTSA published a final rule establishing an ease-of-use child restraint ratings program on November 2, 2002 (*see* 67 FR 67491; November 5, 2002, Docket 01–10053). The ratings program constituted the first step toward enhancing the safety of children through a consumer information program. The program established no binding obligation on any manufacturer. Rather, it will inform consumers about the features of child restraints that make child restraints easier to use, and will evaluate each child restraint on those features.

NHTSA is also continuing an evaluation of whether to establish two complementary consumer information programs. The first would be based on child restraint dynamic performance.

[3] The report is issued in response to subsection 14(c) of the TREAD Act, which directs NHTSA to explain in a report to Congress why the agency did not incorporate any element described in subsection 14(b) in a final rule.

The second would involve expanding the agency's New Car Assessment Program to include consumer information on how vehicles do in protecting child occupants. The agency will be conducting two pilot programs in these areas to assess how the agency should proceed. These programs are described in detail in a Response to Comments, Notice of Final Decision accompanying the November 5, 2002 final rule (67 FR 67448; Docket 01–10053–67).

VI. Post-NPRM Testing

The agency conducted several research projects since publication of the NPRM in an effort to assess whether the proposed changes would reduce the safety currently afforded by child restraints. NHTSA conducted three test projects, which are fully discussed in sections VIII.a.1, VIII.c.1, and VIII.e.1 of this preamble. The first test project related to the effect the revisions to the test seat assembly might have on the dynamic performance of child restraints. Dummies currently specified in FMVSS No. 213 were tested with child restraints on the revised seat assembly, and the performance of the dummies was compared to that observed in compliance tests. The second test project related to assessing any performance differences that may exist between the Hybrid II and the Hybrid III dummies. The third test project involved evaluating whether child restraints tested with the Hybrid III dummies could meet the proposed scaled HIC, chest injury limits, and Nij measures. Reports relating to these projects have been placed in the docket for this rulemaking.

VII. Summary of Comments on the NPRM

NHTSA received approximately 35 comments on the May 1, 2002 NPRM for this final rule. Commenters included child restraint manufacturers, motor vehicle manufacturers, motor vehicle dealers and other industry associations, child passenger safety consumer groups, the National Transportation Safety Board, child safety research and testing organizations, and private individuals. The Juvenile Products Manufacturers Association (JPMA) conducted a series of 80 sled tests of child restraints in response to the NPRM and included the results of the testing in its comment.

a. General Comments on the Proposals

The commenters generally expressed support for the regulatory goals of the NPRM to enhance child passenger safety.[4] However, many underscored concerns that the rulemaking undertaken by the agency in response to the TREAD Act could possibly indirectly cause a reduction in child passenger safety, particularly with respect to applying new (neck loading, chest deflection) and revised (scaled HIC and chest acceleration limits) injury criteria used to assess the dynamic performance of child restraints. Commenters expressing these concerns were diverse. The JPMA, representing child restraint manufacturers Britax, Cosco, Evenflo, Graco/Century, and Peg Perego, believed that NHTSA should be concerned about ''unintended consequences of multiple, unevaluated changes to 213, as well as the adverse consequences of substantial cost increases.'' In a separate comment on the NPRM, Evenflo expressed opposition to ''revisions that do not have proven likelihood of enhancing child passenger safety on an aggregate basis.'' Evenflo urged: ''Our goal should be to adopt changes that will definitively enhance child passenger safety, not to undertake changes solely for the purpose of making changes.'' Graco was concerned that some portions of the proposed revisions may have little benefit to child passenger safety and may ''negatively affect the past efforts of the agency.'' The commenter said it assumed that costs of child restraints will increase ''because of increased testing costs and most likely increased parts or the use of more advanced technology that will enable the restraints to meet new requirements.'' The commenter was concerned that, as the child restraint costs rise, the rates of child restraint use may fall.

This concern was echoed by other commenters. TraumaLink at the Children's Hospital of Philadelphia stated that data collected through its ''Partners for Child Passenger Safety'' study indicate that children in child restraints do extremely well in all types of crashes. ''The extremely low injury rate in child restraints indicates that despite substantial misuse, these devices perform exceedingly well across the range of crash severities and directions of impact * * * It is important to consider the unintended consequences of these [proposed] changes, both in terms of inadvertent reduction in the current excellent performance of the CRS [child restraint system] or the resultant increase in cost.'' The National Safe Kids Campaign (Safe Kids) urged the agency ''to be mindful of the practicalities and costs associated with changes that might overly burden child restraint and vehicle manufacturers, thereby requiring them to discontinue certain product models or pass on unreasonable costs to consumers. Child safety seats must remain both affordable and safe.'' The American Academy of Pediatrics stated, ''While the Academy strongly supports the proposed measures to make child restraints even more protective than they are today, these improvements cannot come at the expense of fewer children using child restraints or more children using outdated car safety seats.'' The Association of International Automobile Manufacturers, Inc., expressed concern that ''the lack of use or the misuse of child restraint systems presents a far greater opportunity to improve child passenger safety than seeking enhanced performance of child restraint systems, particularly if the consequence of the enhanced performance is decreased use and increased misuse.''

Safe Kids also expressed concern that increased prices of child restraints could affect State child restraint use laws. Safe Kids stated that most parents and caregivers will be expected to purchase a minimum of two or three restraints for each child to comply with evolving State child restraint use laws that extend coverage to more and more children. ''As those seats become more expensive, legislators may be reluctant to make important legislative

[4] Several commenters believed that the NPRM did not ''meet the spirit intended by Congress'' in enacting Section 14 of the TREAD Act because the estimated benefits of the proposed changes were at most 6 fatalities and 6 serious injuries annually (quote from ARCCA's comment, page 2.) Stephen Syson (Syson-Hille & Associates), Martha Bidez (Bidez & Associates) and ARCCA suggested that the agency undertake rulemaking beyond the proposals of the NPRM. Among the suggested rulemaking were the following from these commenters: the prohibition of lap belts; require manufacturers to put child-safe restraints in cars; recall all low-shield booster seats; require that Standard No. 208 (49 CFR § 571.208) criteria for children be met in every passenger seating position; require manufacturers to label vehicle seats that do not meet Standard No. 213 requirements without a child restraint in place; require that ''survival space'' be maintained in the rear seat in rear impact crashes; and require all seats, seat belts and child restraints be designed to prevent submarining and to retain occupants under all collision circumstances; require vehicles to provide a minimum allowable clearance for all seating positions where a child restraint system can be installed; require child restraints to provide both upper and lower body restraint on the hard boney portions of the body; amend Standard No. 213 to limit protrusions and sharp corners contactable in any crash and to improve padding on back and side wings.

The rulemakings suggested by these commenters go beyond those included in the NPRM for consideration by the agency within the tight deadlines of the act. The suggestions will be considered suggestions for future rulemaking. Copies of the comments will be placed in Docket 7938 (NHTSA plan for future work on child passenger safety).

improvements to their states child restraint laws.''

b. Updated Bench Seat

There was unanimous support for amending Standard No. 213's specifications for the test seat assembly used to test child restraints in the agency's compliance tests. Almost all of the commenters believed that the test seat assembly should be more representative of the seats of newer passenger vehicles. Two commenters (Martha Bidez, Public Citizen) had an opposing view. Ms. Bidez believed that the seat assembly should either have features representing seats in the average age vehicle in the U.S. (which the commenter stated is 9 years old) or features that present the most demanding (''worst case'') conditions under which child restraints should be tested. Public Citizen suggested that the agency should adjust its testing, or create another test, that will measure the effectiveness of child restraints in older cars.

Amending the seat cushion angle by increasing it from 8 degrees off horizontal to 15 degrees was generally supported, as was amending the seat back angle by increasing it from 15 degrees off vertical to 22 degrees. Several commenters viewed these changes as aligning the bench seat more with the ECE Regulation 44 seat assembly bench and suggested that the agency completely use the ECE Regulation 44 seat dimensions.

Most commenters agreed with the proposals for amending the seat belts on the test seat assembly. Some commenters expressed concerns about certain aspects of the test seat assembly's seat belts that were not addressed by the NPRM, such as the vertical location of the lap belt anchorages.

On the other hand, commenters did not see eye-to-eye on the proposal to change the seat back to represent a fixed vehicle seat. Supporters of the change believed that a fixed seat back replicates today's seat back in passenger cars and harmonizes with the test bench setups for ECE, Canadian and Australian regulations. Some commenters were concerned that not enough was known about how fixing the seat back would affect child restraint system performance, while others opposed the proposal believing that fixing the seat back would result in a less rigorous test condition.

Several commenters responded to the NPRM's request for comments on the agency's decisions against changing, at this time the length of the bench seat's bottom seat cushion, including a floor to the seat assembly; and changing the stiffness of the seat assembly's cushion. A number of commenters believed that the stiffness of the seat cushion has a strong effect on child restraint performance. Some commenters were uncertain whether performance would be affected and suggested that testing and research be completed before changing the foam.

c. Crash Pulse

The comments focused generally on the issues of the sled pulse shape (widening of the corridor) and severity. Many commenters agreed with the agency that widening the corridor of the sled pulse from 80 milliseconds (ms) to approximately 90 ms in duration would allow more laboratories to run the compliance test without decreasing the effectiveness of the testing. However, child restraint manufacturers expressed concern that widening the corridor will make the standard more stringent, because child restraint manufacturers will have to design products that can comply at the new extremes of the compliance corridor. These commenters also believed that a wider test corridor will necessarily lead to more lab-to-lab variability during certification and compliance testing, which, the commenters stated, increases the compliance burden on manufacturers.

ARCCA, Inc. believed that the Standard No. 213 pulse is actually less severe than all of the 30 mph barrier test pulses from actual vehicles, and that the standard's pulse severity should be increased. All other commenters did not want to increase the severity of the crash pulse. Many expressed the view that the velocity change should not be raised because the current test is already reflective of the top few percent of crashes. A number of commenters believed that the crash pulse should be reduced in severity because the most frequent crashes involving children in child restraints are those with lower crash pulse severities than the test pulse. Others believed that a relatively severe, ''worst case'' scenario should be replicated.

d. New Dummies

Commenters generally supported using the CRABI and Hybrid III 3-year-old dummies in Standard No. 213 compliance tests, in place of the 9-month and Hybrid II 3-year-old dummies now used by the agency. However, a number of commenters expressed concerns that the Hybrid III 6-year-old dummy's neck was too flexible for use in testing child restraints. These commenters suggested that the agency continue its use of the Hybrid II 6-year-old dummy rather than use the Hybrid III dummy in its place. Most commenters objected to using the weighted Hybrid III 6-year-old dummy (weighted to 62 lb) to assess injury reference values in compliance tests of child restraints recommended for use by children weighing over 50 lb. Most believed that the dummy's weighting produced a dummy that was unrepresentative of a 62 lb child. Some were concerned that the weights could interfere with the proper functioning of the dummy's instrumentation. Some of these commenters suggested that the dummy should be used only to assess the structural integrity of child restraints in the standard's dynamic test, and not the capability of the restraint to limit head excursion or forces to the dummy's head, neck or chest areas.

e. Application of the Standard

Of the commenters addressing application of the standard, a majority supported increasing the weight limit contained in the ''child restraint system'' definition. Most of these commenters supported increasing the weight limit to 65 lb with a future increase to 80 lb upon introduction of the 10-year-old dummy. A few commenters opposed establishing 65 lb as an intermediate step in favor of amending the standard directly to 80 lb. There were also a few divergent comments on whether the agency should extend the regulation to a maximum weight beyond that of the heaviest dummy used in the standard.

f. Injury Criteria

The agency received widely divergent comments on the proposal to limit measurement of HIC to 15 milliseconds and to use the injury criteria of Standard No. 208 that were scaled for children. The Alliance, UMTRI and SafetyBeltSafe supported the use of a 15 ms limit on the head injury criterion (HIC) limit as a more realistic way to assess head and brain injury, with the lower HIC values proposed for each dummy. JPMA stated that it was willing to consider supporting a 15 ms limit (HIC 15), if the agency can undertake research to assure that there will not be unintended consequences from countermeasures needed to meet HIC 15. However, JPMA did not support the other proposed new injury criteria, including the scaled HIC values. The commenter stated that the tests of child restraints it conducted with the proposed CRABI and Hybrid III dummies produced injury reference values that exceeded the proposed limits, which the commenter said is a concern given the high level of

effectiveness of current child restraints. The commenter suggested that it might be more feasible to use the FMVSS No. 208 criteria in FMVSS No. 213 if the agency were to specify a ''more realistic crash pulse for FMVSS No. 213, such as the one contained in the FMVSS No. 208 sled test.'' Graco was concerned that some seats that have historically performed well in the real world and in compliance testing would fail the new criteria.

A few commenters supported while others opposed the proposals to adopt a new chest deflection criterion and to adopt the chest acceleration limits that were scaled for children and incorporated into FMVSS No. 208. JPMA, TraumaLink, UMTRI, SafetyBeltSafe and others opposed incorporation of the proposed chest deflection and reduced chest acceleration limits, because these types of injuries do not occur in children in child restraint systems. These commenters and others suggested that the agency collect data on chest deflection to establish a database that could be used to evaluate these measures more in the future.

Virtually all parties commenting on this aspect of the proposal opposed the modified Nij neck criterion (modified from the criterion in FMVSS No. 208 in that the limits on axial force were excluded). JPMA, SafetyBeltSafe, UMTRI, TraumaLink and others did not support adopting the proposed Nij criterion at this time because the relationship between the criterion and real-world injuries ''under the type of loading simulated by FMVSS 213'' is ''not well established'' (quoting UMTRI). SafetyBeltSafe believed that neither Nij as proposed nor Nij with a limit on tension should be used as a compliance criterion unless these are proven to be useful predictors of child neck injury. The Insurance Institute for Highway Safety (IIHS) was concerned that studies of real-world crashes indicate that neck injuries due to inertial forces appear to be rare, and, the commenter stated, it is not clear how child restraints could be better designed to lower neck injury measures.

VIII. Amendments

a. Updated Bench Seat

1. Post-NPRM Test Program

As discussed in the NPRM, NHTSA had initiated a test program in response to the TREAD Act to assess seat parameters of production seats, working with the U.S. Naval Air Warfare Center Aircraft Division at Patuxent River, Maryland (PAX). PAX analyzed seat geometry data, including seat cushion angle, seat back angle, seat cushion length, seat back length, tether anchor locations, child restraint anchorage system anchor locations, and seat belt locations.

After publication of the NPRM, PAX conducted a series of dynamic tests using a revised test seat assembly that had been constructed incorporating the changes to the test seat assembly proposed in the NPRM. These tests were conducted with the dummies currently specified in FMVSS No. 213 (the newborn and TNO 9-month, and Hybrid II 3- and 6-year-old dummies), and with various types of child restraints (rear-facing infant only, rear- and forward-facing convertible, forward-facing ''hybrid boosters'' (a child restraint that can be used as a forward-facing restraint with harness for toddlers up to 40 lb and as a belt-positioning booster with children over 40 lb), and both backless and high-back boosters).

The results from this series of dynamic sled tests were compared to actual compliance tests that the agency had conducted to determine what effect, if any, the revisions to the test seat assembly might have on the dynamic performance of child restraints. NHTSA compared measurements taken for seat back rotation in rear-facing tests, and HIC, chest acceleration, and head and knee excursion in forward-facing tests. All of the proposed changes were simultaneously incorporated into the test seat assembly, and were not individually assessed for its effect on child restraint performance.

i. Seat Back Rotation. The effect of the revised test seat assembly on measured seat back rotation in rear-facing tests did not show a clear pattern.

Rear-facing tests were conducted using the revised test seat assembly with rear-facing infant only seats using the newborn dummy, and rear-facing convertible restraints using the newborn and Hybrid II 9-month-old dummies. In tests of rear-facing restraints, HIC and chest acceleration are not currently measured, since the newborn and 9-month-old dummies are not instrumented. Further, head and knee excursion are not measured. The only measured parameter in testing rear-facing child restraints is provided in S5.1.4 of FMVSS No. 213, which specifies that when a rear-facing child restraint is tested, the angle between the system's back support surface for the child and the vertical shall not exceed 70°.

The seat back rotation measured in these tests is compared to the seat back rotation measured in NHTSA compliance tests of the identical child restraints in Table 1 below.

TABLE 1.—SEAT BACK ROTATION IN REAR-FACING TESTS

Child restraint	Type	Dummy	Seat back rotation (degrees) relative to vertical— Test seat assembly		Change (%)
			Existing	Revised	
Evenflo On-My-Way	Infant only	Newborn	43	51.5	+19.8
Century 560	Infant only	Newborn	46	42.5	−7.6
Evenflo On-My-Way	Infant only	9-month	57	53.9	−5.4
Century 560	Infant only	9-month	52	52.9	+1.7
Century Accel	Convertible	Newborn	Not tested	50.7	N/A
Century STE 2000	Convertible	Newborn	Not tested	40	N/A
Cosco Triad (LATCH[5])	Convertible	Newborn	Not tested	43.1	N/A
Century STE 2000	Convertible	9-month	42	50.6	+20.5
Cosco Touriva	Convertible	9-month	51	63	+23.5

[5] ''LATCH'' stands for ''Lower Anchors and Tethers for Children,'' a term that was developed by manufacturers and retailers to refer to the standardized child restraint anchorage system required by FMVSS No. 225. This preamble uses the term to describe either an FMVSS No. 225 anchorage system in a vehicle or a child seat that attaches to an FMVSS No. 225 child restraint anchorage system.

The data indicated no clear effect of the revised test seat assembly on measured seat back rotation in rear-facing tests. In tests using the newborn dummy and two different rear-facing infant-only child restraints, the seat back rotation angle increased by 19.8 percent over that measured in the comparable compliance test in one, and decreased by 7.6 percent in the other. When the same infant-only seats were tested rear facing with the 9-month-old dummy, the restraint that had previously shown increased seat back rotation with the newborn dummy decreased by 5.4 percent over that measured in the comparable compliance test, while the restraint that had shown decreased seat back rotation with the newborn dummy increased by 1.7 percent over that measured in the comparable compliance test. In all cases, the measured seat back rotation was well under the FMVSS No. 213 limit of 70°.

Tests were conducted using the revised test seat assembly on three different rear-facing convertible child restraints with the newborn dummy. In each case, the measured seat back rotation angle was well below the FMVSS No. 213 limit.

PAX also conducted tests of two different rear-facing convertible child restraints with the 9-month-old dummy using the revised test seat assembly. In each of these tests, the seat back rotation increased by at least 20 percent over that measured in the comparable FMVSS No. 213 compliance tests conducted on the existing test seat assembly. Again, however, the rotation was within the allowable limits.

ii. HIC Measurements. Generally speaking, HIC increased in tests with the Hybrid II 3-year-old dummy, and decreased in tests with the 6-year-old.

Sled tests were conducted using the revised test seat assembly with the Hybrid II 3-year-old dummy in forward-facing convertible restraints, and in forward-facing hybrid boosters using the restraint's internal harness (in the toddler seat mode), and with the Hybrid II 6-year-old dummy in both backless and high back belt-positioning booster restraints. The HIC measured in these tests is compared to the HIC measured in NHTSA compliance tests of the same model child restraints in Table 2 below.

TABLE 2.—HIC IN TESTS OF FORWARD-FACING CHILD RESTRAINTS

Child restraint	Type	Dummy (Hybrid II)	HIC_{∞} Test seat assembly		Change (%)
			Existing	Revised	
Cosco Touriva	Convertible	3-year	500	703	+40.6
Century Accel	Convertible	3-year	480	627	+30.5
Century Breverra	Hybrid Booster	3-year	659	670	+1.6
Cosco High Back Booster	Hybrid Booster	3-year	535	446	−16.6
Cosco Grand Explorer	Backless BPB	6-year	438	267	−39.0
Cosco Grand Explorer	Backless BPB	6-year	438	328	−25.1
Century Breverra	High-back BPB	6-year	308	209	−32.0
Cosco High Back Booster	High-back BPB	6-year	399	381	−4.6

The effect of the revised seat assembly on HIC measurements appear to be varied, and largely dependent on the dummy used in the testing. In three of four tests conducted with the 3-year-old dummy, the measured HIC was higher using the revised test seat assembly as compared to compliance tests performed on the existing test seat assembly. This includes both tests conducted using forward-facing convertible restraints, and one of two tests using a forward-facing hybrid booster with its internal harness system. However, in each of four tests conducted with the 6-year-old dummy, two each with backless boosters and high back boosters, the measured HIC was lower than in the identical compliance tests conducted on the existing test seat assembly. Overall, some measurements differed by as much as ± 40 percent between tests conducted on the two different test seat assemblies. All HIC measurements were well within the existing limit of 1000.

iii. Chest Acceleration. Chest acceleration measurements were recorded using the Hybrid II 3- and 6-year-old dummies in the same series of tests outlined in Table 2 above. Table 3 details the recorded chest acceleration in these tests as well as the comparable compliance tests of the identical child restraints. The measured chest accelerations decreased in each of the tests using the 3-year-old dummy in the revised test seat assembly. The measured chest accelerations generally increased in tests using the 6-year-old dummy in the revised test seat assembly.

TABLE 3.—CHEST ACCELERATION IN TESTS OF FORWARD-FACING CHILD RESTRAINTS

Child restraint	Type	Dummy (Hybrid II)	Chest acceleration (g)—Test seat assembly		Change (%)
			Existing	Revised	
Cosco Touriva	Convertible	3-year-old	42	40.4	−3.8
Century Accel	Convertible	3-year-old	46	26.8	−41.7
Century Breverra	Hybrid Booster	3-year-old	40	29.2	−27.0
Cosco High Back Booster	Hybrid Booster	3-year-old	44	41.6	−5.5
Cosco Grand Explorer	Backless BPB	6-year-old	44	49.2	+11.8
Cosco Grand Explorer	Backless BPB	6-year-old	44	38.6	−12.3
Century Breverra	High-back BPB	6-year-old	33	35.1	+6.4
Cosco High Back Booster	High-back BPB	6-year-old	40	42.4	+5.5

All chest acceleration measurements recorded were well within the current limit of 60 g's maximum. It is noted, however, that while most chest acceleration measurements were comparable in magnitude between the two test seat assemblies, there was one test in which the measured values differed by 42 percent for the same child restraint. *iv. Head Excursion.* It is not evident whether use of the revised test seat assembly will have a positive or negative effect on measured head excursion.

In the tests outlined in Tables 2 and 3, supra, head excursion was measured. In addition, head excursion was measured in sled tests performed with the TNO 9-month-old dummy on two different forward-facing convertible restraints. Head excursion was compared to the head excursion measured in compliance tests of the identical child restraints using the same dummies. Table 4 provides this comparison.

TABLE 4.—HEAD EXCURSION IN TESTS OF FORWARD-FACING CHILD RESTRAINTS

Child restraint	Type	Dummy (Hybrid II)	Head excursion (mm)—Test seat assembly		Change (%)
			Existing	Revised	
Cosco Touriva	Convertible	9-month-old	432	434	+0.6
Century Accel	Convertible	9-month-old	483	396	−17.9
Cosco Touriva	Convertible	3-year-old ..	660	498	−24.6
Century Accel	Convertible	3-year-old ..	635	495	−22.0
Century Breverra	Hybrid Booster	3-year-old ..	483	572	+18.4
Cosco High Back Booster	Hybrid Booster	3-year-old ..	432	572	+32.4
Cosco Grand Explorer	Backless Booster	6-year-old ..	381	363	−4.7
Cosco Grand Explorer	Backless Booster	6-year-old ..	381	457	+20.0
Century Breverra	High-back Booster	6-year-old ..	457	500	+9.4
Cosco High Back Booster	High-back Booster	6-year-old ..	432	447	+3.5

In three of four tests conducted using forward-facing convertible child restraints, a decrease in head excursion was observed in tests using the revised test seat assembly. However, in tests conducted on the revised seat assembly using forward-facing hybrid boosters, backless and high back belt-positioning booster seats, a marginal increase in head excursion was observed. All measured head excursions, on the existing and revised test seat assemblies, were well within the established 813 mm limit prescribed in FMVSS No. 213.[6]

v. Knee Excursion. For the tests of forward-facing child restraints outlined in Table 4 above, NHTSA also measured the dummy's knee excursion. These results were compared to the knee excursion measured in compliance tests of the identical child restraints using the same dummies. The knee excursion measurements did not demonstrate a direct correlation between tests conducted with the revised test seat assembly versus the existing test seat assembly, or with the type of child restraint used or the test dummy used. Table 5 presents the results. As with the other injury criteria discussed above, all knee excursion measurements were well within the established 915 mm limit prescribed in FMVSS No. 213.

TABLE 5.—KNEE EXCURSION IN TESTS OF FORWARD-FACING CHILD RESTRAINTS

Child restraint	Type	Dummy (Hybrid II)	Knee excursion (mm)—Test seat assembly		Change (%)
			Existing	Revised	
Cosco Touriva	Convertible	9-month-old	483	546	+13.2
Century Accel	Convertible	9-month-old	559	485	−13.2
Cosco Touriva	Convertible	3-year-old ..	813	671	−17.5
Century Accel	Convertible	3-year-old ..	762	681	−10.7
Century Breverra	Hybrid Booster	3-year-old ..	584	696	+19.1
Cosco High Back Booster	Hybrid Booster	3-year-old ..	635	660	+4.0
Cosco Grand Explorer	Backless Booster	6-year-old ..	686	610	−11.1
Cosco Grand Explorer	Backless Booster	6-year-old ..	686	653	−4.8
Century Breverra	High-back Booster	6-year-old ..	610	500	−17.9
Cosco High Back Booster	High-back Booster	6-year-old ..	686	701	+2.2

vi. Summary of PAX Testing. Overall, while differences were seen in tests using identical child restraints on the existing versus the revised test seat assembly, NHTSA did not identify any specific trends along specified parameters, *i.e.*, child restraint type, dummy, *etc.* All of the measured injury criteria in the tests were well within the established limits of FMVSS No. 213. This leads the agency to conclude that the changes to the standard test seat assembly will not have a significant effect on compliance test results of child restraint systems that meet the current requirements of the standard. Manufacturers will not need to redesign their restraints due to the changes in the seat assembly.

2. Response to Comments

There was unanimous support for amending Standard No. 213's specifications for the test seat assembly

[6] Excursions are measured from Point Z identified in Figure 1B of FMVSS No. 213, which is located in the same place on both the existing and revised test seat assemblies.

used to test child restraints in the agency's compliance tests. Almost all of the commenters believed that the test seat assembly should be more representative of the seats of newer passenger vehicles.

i. Seat Back and Cushion Angles. Amending the seat cushion angle by increasing it from 8 degrees off horizontal to 15 degrees was generally supported. Several commenters viewed these changes as aligning the bench seat more with the ECE Regulation 44 seat assembly bench. Ford believed that the proposed change to the seat cushion angle would help make rigid attachment LATCH infant seats commercially viable in the U.S., and would help facilitate the use of infant restraints by reducing the need for consumers to add towels or pool noodles as spacers under the restraints. Ms. Bidez and Public Citizen opposed the proposed change to the seat cushion angle, stating that seat cushion angle should represent the average angle of a 9-year-old vehicle, not a new vehicle. Ms. Bidez stated that older seat cushions are more horizontal and do not contain any anti-submarining structural components.

The agency has decided to revise the seat cushion angle as proposed. Increasing seat cushion angle from 8 degrees off horizontal to 15 degrees will make the seat assembly more representative of currently manufactured vehicle seats and will reduce or eliminate the need for supplementary devices, such as rolled towels or swimming noodles, now being used with infant seats to compensate for the difference in seat cushion angle of the current seat assembly and new vehicle seats. The agency does not agree with Ms. Bidez and Public Citizen that the seat assembly should be representative of seats in 9-year-old vehicles. Such a rearward-looking approach ensures the obsolescence of the standard, since seats in the vehicle fleet are already in the process of being replaced by the seats of more modern design.

UMTRI expressed concern that tests of child restraints on a seat assembly with a seat cushion at the proposed 15 degree angle to horizontal generally resulted in decreased head excursion values of about two inches and increased chest accelerations by an average of 4 g. UMTRI suggested reducing the allowable head excursion limit in Standard No. 213 by two inches to compensate for the change. JPMA disagreed with UMTRI's comment that the head excursion limit should be changed, stating its belief that there is no difference in safety since the reference point from which head excursion is measured is unchanged. JPMA further stated that—

> the fact that the increased angle allows the child's head to travel a longer distance in the real world will permit the manufacturers to utilize that additional movement to manage some of the crash energy without making other, perhaps less desirable, changes to other restraint parameters. For example, the harness system could include measures and/or devices to add energy absorption similar to vehicle retractor torsional load limiters, which were implemented with air bags as a means to reduce chest compression. Such devices require that a small amount of additional head excursion be permitted in the real world to achieve a longer ride-down and take advantage of the vehicle's 'crumple zone.' * * *

The agency does not agree that testing on the new seat assembly will result in across-the-board reductions in dummy head excursions as compared to head excursions of dummies tested on the current assembly. It is not evident from the agency's test data that use of the revised test seat assembly will have a positive or negative effect on measured head excursion. Table 4, supra, provides test results comparing head excursion measurements in a total of 10 tests using the revised test seat assembly and using the existing test seat assembly (compliance test results). These tests were conducted using (1) the 9-month-old dummy in two different forward-facing convertible restraints, (2) the 3-year-old dummy in two forward-facing convertible restraints and two forward-facing hybrid booster restraints, and (3) the 6-year-old dummy in two backless boosters and in two high back belt-positioning boosters. In three of four tests conducted using forward-facing convertible child restraints, a decrease in head excursion was observed in tests using the revised test seat assembly. However, in tests conducted on the revised seat assembly using forward-facing hybrid boosters, backless and high back belt-positioning booster seats, a marginal increase in head excursion was observed.

While differences of up to +32.4 percent and −24.6 percent were measured in tests using the revised and existing test seat assemblies, there was no distinctive trend across dummy or child restraint types. Thus, the agency cannot conclude that the new seat assembly necessarily results in a less rigorous test of a child restraint's ability to limit head excursion as compared to the existing seat assembly. Further, all measured head excursions on the existing and revised test seat assemblies in NHTSA's program were well within the established 813 mm limit prescribed in FMVSS No. 213. Thus, the agency does not believe that there has been a showing of a safety need to reduce the head excursion limit to take account of the effect of testing on the new test assembly.

In response to JPMA's comment about increased head excursion benefiting overall child restraint performance due to increased ''ride down'' of crash forces, the agency agrees that generally speaking, increased ride down can help reduce head, neck and chest accelerations. However, increased ride down obviously must not come at the cost of increased risk of head impacts due to excessive head excursions in a crash. Thus, the agency does not concur with any implication that head excursions beyond what is permitted by Standard No. 213 is acceptable. The agency is concerned that child restraints that might meet the head excursion requirements of the standard when tested on the new test seat assembly might allow excessive head excursion when used in actual vehicles whose seat cushions are more like the current seat assembly. The agency asks the public for help in monitoring this situation and providing information of a real world problem should one occur. If there are unreasonable excessive head excursions due to child restraints being used on vehicle seats that are flatter than the revised seat assembly, reducing the head excursion limit of the standard will be considered by the agency.

Amending the seat back angle by increasing it from 15° off vertical to 22° was widely supported. Several commenters viewed these changes as aligning the bench seat more with the ECE Regulation 44 seat assembly bench, which has a seat back angle of 20 ± 1°. In response to commenters and in further consideration of the agency's efforts to harmonize its standards where possible, the agency amends the seat back angle by increasing it to 20 ± 1° to make it consistent with the test seat assembly of ECE Regulation 44. The agency believes that the difference between 22° and 20 ± 1° is negligible and should have no significant effect on child restraint performance.

ii. Belt Systems On The Standard Seat Assembly. The commenters generally agreed with the proposals for amending the seat belts on the test seat assembly. Almost all of the commenters supported increasing the spacing between the anchors of the lap belt from 222 millimeters (mm) to 392 mm in the center seating position and from 356 mm to 472 mm in the outboard seating positions. JPMA stated that it does not object to the proposal, but noted that the potential effect in side impact testing is unknown. Ms. Bidez suggested that the anchors should be set not at an averaged

spacing but at the maximum anchorage spacing ''now allowed'' for vehicle manufacturers in any seat position.

This final rule adopts the proposals, except the spacing between the anchors of the lap belt in the center seating position will be 400 mm, rather than 392 mm as proposed. The agency believes that the 8 mm difference between 400 and 392 mm is negligible, yet the 400 mm specification will make the spacing identical to that of the test seat assembly of ECE Regulation 44, so it is adopted. The lap belt anchorage spacing in the outboard seating position is revised to 472 mm, as proposed. (The ECE regulation specifies a spacing of 400 mm for both lap only tests and lap/shoulder tests. The agency cannot conclude that the difference between 472 mm and 400 mm is insignificant, so the agency is not adopting the ECE specification.) In response to Ms. Bidez, the Federal motor vehicle safety standards specify a minimum spacing for the anchorages, not a maximum. As to setting the anchorages at the maximum spacing that the agency has measured in its test program, the agency declines this suggestion. The agency does not have sufficient information to form the basis for a conclusion that a safety need exists to set the anchorages at the widest spacing observed on a vehicle seat. Further, setting the anchorages at the maximum spacing was not proposed in the NPRM or evaluated in the agency's test program at PAX River.

A few commenters expressed some concerns about certain aspects of the test seat assembly's seat belts that were not addressed by the NPRM. GM, the Alliance, and ARCCA, Incorporated (ARCCA), stated that the seat belt lower anchors for both the center and outboard seating configurations do not represent typical anchorage locations found on new vehicles. As stated by the Alliance, ''The lap belt anchorages are too far back and too low and the lower anchors for the outboard seat are too high to represent a typical rear seat.'' GM and the Alliance also believed that the current two-piece lap and shoulder belt should be replaced with a three-point continuous loop shoulder/lap belt with a simulated retractor. Ford suggested that, to improve reproducibility of test results, the standard should specify a ''reasonably tight'' tolerance of 8% ± 1% elongation at 10,000 N for the belt webbing used on the standard test bench.

The agency did not pursue revising the fore-and-aft and vertical placement of the seat belt anchorages in response to the TREAD Act. This was due in part to the short deadlines of the TREAD Act. In addition, information from a 1994 test program indicated an absence of a need to change those anchorage locations. In 1994, the agency explored locating lap and shoulder belt anchorages on the standard seat assembly in a test program supporting rulemaking amending FMVSS No. 213 to facilitate the production of belt-positioning booster seats. The agency found that the fore-aft and vertical placement of the lap belt had a negligible effect on the performance of the child restraints evaluated in the program. 59 FR 37167, 37171; July 21, 1994. Nonetheless, in that rulemaking the agency placed the inboard anchor to reflect the location of the average condition identified by the research. The agency believes that those fore-aft and vertical locations are still sufficiently representative of current vehicles so as to provide a true and thorough evaluation of a child restraint's performance in a crash.

Given agency resources and rulemaking priorities, NHTSA does not anticipate exploring in the near future whether the fore-aft and vertical placement of the lap belt anchorages should be changed, or whether the current two-piece lap and shoulder belt should be replaced with a three-point continuous loop lap/shoulder belt with a simulated retractor. Our assessment of the safety need for such a rulemaking could change, if new information arises that indicates that these issues should be explored.

In response to the issue raised by Ford, the elongation of the standard belt webbing used in FMVSS No. 213's compliance test was not discussed in the NPRM. It should be noted that specifying elongation of the webbing was addressed by NHTSA in the July 21, 1994 final rule on belt-positioning boosters (59 FR at 37171). Under current FMVSS No. 213 test procedures, NHTSA tests child restraint systems using webbing that is typical of that installed in vehicles. NHTSA obtains webbing material from seat belt suppliers. These suppliers also furnish vehicle manufacturers with the webbing used in motor vehicles. This aspect of the compliance test increases the likelihood that the belts used to attach child restraints to the standard seat assembly are those that will actually be used by consumers to attach the restraints to their vehicle seats.

The belt webbing is required by FMVSS No. 209 (S4.2(c)) to meet elongation requirements. Ford believed that the elongation allowed by that standard is too varied (''from zero to twenty percent for a lap belt, * * * up to 30 percent for the pelvic portion of a lap/shoulder belt, and * * * up to 40 percent for the upper torso portion of a lap/shoulder belt. Such a large permitted variation in choice of belt webbing elongation could markedly affect FMVSS 213 dynamic test results.'') Ford did not provide data substantiating that differences in test results were obtained that were attributed to the use of webbing with different elongation characteristics. The agency also cannot conclude that testing with webbing with a ''tight tolerance'' of 8 percent, as Ford suggested, is preferable over testing with webbing with a larger tolerance, *e.g.*, closer to the 30 or 40 percent limit. Given agency resources and priorities, the agency can not conclude that a need exists to initiate rulemaking on this aspect of FMVSS No. 213 in the near future.

iii. Fixed Seat Back. Commenters did not see eye-to-eye on the proposal to change the seat back to represent a fixed vehicle seat. Graco, TraumaLink, the Alliance, Safekids, Evenflo, JPMA and Xportation supported the proposal. JPMA stated that a fixed seat back replicates today's motor vehicle seat back and harmonizes with the test bench setups for ECE, Canadian and Australian regulations. Xportation said that it did not believe that motion of seat backs in vans is significant to the performance of child restraints. On the other hand, General Motors agreed with the proposal that a fixed seat back would be more representative of the rear seat of today's passenger cars, but expressed concern that a fixed back would not be representative of free-standing seats in vans and other multipurpose passenger vehicles. GM believed that it was unclear how fixing the seat back would affect child restraint system performance and suggested that NHTSA should study the issue. Advocates and Ms. Bidez expressed concern that changing to a rigid seat back may result in a less rigorous test condition, even though, the commenter believed, ''many children will be seated in seats with flexible seat backs.'' ARCCA believed that the configuration that results in the more severe test of a child restraint should be selected.

In an effort to assure that the proposed fixed seatback configuration does not pose a less stringent test condition for dynamic tests of child restraints than the existing flexible seatback, NHTSA conducted a series of rigid versus flexible seatback tests at the agency's Vehicle Research and Test Center (VRTC) on September 23–27, 2002. The proposed seatback and seat base angles were used.

Six pairs of tests using rigid and flexible seatbacks were conducted using

the CRABI–12-month, and the Hybrid III 3- and 6-year-old dummies in rear- and forward-facing seat configurations, all with lap or lap and shoulder belt attachments (a top tether was not used). Charts providing plots of the normalized injury criteria measurements from these tests for HIC, chest acceleration and head and knee excursions are provided in the document titled, ''Comparison of Flexible and Rigid Seat Backs—FMVSS No. 213 Test Assembly,'' which has been placed in the docket.

The CRABI 12-month-old dummy was tested in a rear-facing infant-only child restraint with both the rigid and the flexible seat backs. Charts A and B of the aforementioned document provide plots of the normalized injury criteria measurements from these tests for HIC and chest acceleration. There are no established head and knee excursion limits for rear-facing child restraints.

The Hybrid III 3-year-old dummy was tested in three forward-facing child restraints—a 5-point harness, an overhead shield, and a shield-type booster with the shield in place—using both the rigid and flexible seat backs as in the tests with the CRABI dummy. Charts C through K provide plots of the normalized injury criteria measurements from these tests for HIC, chest acceleration, head and knee excursion.

Similar tests were conducted using the Hybrid III 6-year-old dummy in both a backless belt-positioning booster and in a high-back belt-positioning booster seat. The plots of the normalized injury criteria measurements are provided in Charts L through Q of the document.

In each of the tested configurations (*e.g.*, 3-year-old dummy in an overhead shield convertible restraint), only one set of rigid versus flexible comparison tests was run. As such, the data used to evaluate the effects of the seat back are limited at best. The data were inconclusive as to whether a rigid seat back represents a less vigorous test. Review of the data indicates that, in some cases, the move to a rigid seat back resulted in a reduction in measured dummy response (lower HIC and chest g's for the 3-year-old dummy in overhead shield convertible). However, other cases show increases in dummy response when the rigid seat back is used (higher HIC for 3-year-old dummy in 5-point harness convertible, shield booster; also for 6-year-old dummy in backless belt-positioning booster). Importantly, NHTSA notes that where differences in performance were noted for a particular injury criteria in a tested configuration, those differences were typically very small. Furthermore, in nearly each instance, results for both the rigid and the flexible configurations were within a 20 percent compliance margin indicating a level of performance that is well within the established limits.

Based on the above data, NHTSA concludes that any differences seen between testing conducted with a rigid versus a flexible seat back would be minimal, and therefore, a move to a rigid seat back would not represent a less stringent test for child restraints. Further, the agency notes that there are more passenger cars (with rigid seat backs) than vans and multipurpose vehicles (with more flexible seat backs) in the existing vehicle fleet. As such, the move to a rigid seat back would more closely represent the existing vehicles on the road. The rigid seat back, on balance, will not be a less stringent requirement, and that it will allow child restraint performance optimization more representative of the vehicle fleet. In addition, a rigid seat back further harmonizes the standard's test seat assembly with ECE Regulation 44, which specifies a rigid seat back in testing child restraints to that standard. For the above reasons, NHTSA is adopting the rigid seat back as proposed in the NPRM.

Figure 1A of FMVSS No. 213 is revised to reflect the above changes, as is the drawing package of the seat assembly that is incorporated by reference into the standard. (This final rule makes a technical amendment to 49 CFR 571.5 to provide information on obtaining copies of the drawing package).

iv. Future Work. The agency tentatively decided in the NPRM that certain features of the bench seat need not be changed because they either reflected the design of production seats or are different but the difference was deemed not to have an effect on child restraint performance in dynamic testing.

Seat Cushion Length: NHTSA found that the current FMVSS No. 213 seat assembly has a seat pan length that is about 50 mm longer than the average seat pan length observed in today's vehicle fleet. The agency did not believe that the difference was significant. Commenters Consumers Union, Ms. Bidez, SafetyBeltSafe and ARCCA believed that the agency should consider shortening the length of the seat cushion to reflect a more demanding test condition. Ford commented that the current seat cushion is about the same length as a typical rear seat cushion, but suggested that the support for the seat cushion be extended to more realistically support the front edge of the cushion.

NHTSA continues to believe that the length of the seat cushion of the standard seat assembly need not be changed, as it closely reflects production seats and because there is no information indicating that the difference in seat cushion length may affect child restraint performance on the seat. In addition, in view of the time constraints of the TREAD Act, NHTSA did not assess seat cushion support. However, the agency does not believe that seat support is critical. While some existing passenger cars will likely have a seat cushion that is supported more fully toward the leading edge of the cushion, vans and SUVs with bench-type seats that are removable or foldable, or individual seats such as ''Captains Chairs'' typically found in the second row of seating positions, will likely have much less support toward the leading edge of the seat cushion than in passenger cars. The agency does not anticipate undertaking efforts to evaluate which of these conditions would provide a more stringent test.

Test Bench Floor: Graco and Ford indicated support for the addition of a floor onto the test bench for testing or rating [7] child restraints. NHTSA does not believe that the standard seat assembly needs a floor because child restraints must meet the requirements of FMVSS No. 213 when attached to the seat assembly by use of the seat belts and LATCH system, without use of supplemental floor braces or other attachments. The commenters also suggest that an agency consumer information program rating the performance of child restraints should utilize all features with which the restraint is equipped, including those that are optional, *i.e.*, that are not necessary for the restraint to meet Standard No. 213. The agency will consider the suggestion when developing its upcoming consumer information pilot programs relating to child restraint performance.

Seat Cushion Stiffness: The question of the stiffness of the seat cushion attracted most of the comments relating to features of the seat assembly that the NPRM did not propose to change. The NPRM stated that the agency was interested in increasing the stiffness of the cushion, but was uncertain what differences, if any, could be seen in

[7] Section 14(g) of the TREAD Act directed NHTSA to establish a child restraint safety ratings program. The agency has established an ease of use ratings program and will be conducting pilot programs on possible ratings programs geared toward rating child restraint performance in sled tests and vehicle performance in frontal vehicle crash tests. 67 FR 67491 (November 5, 2002)(Docket 02–10053).

dynamic testing. Comments were requested on what the stiffness should be (67 FR at 21812).

Several commenters believed that the stiffness of the seat cushion has a strong effect on child restraint performance. Consumers Union (CU) commented that it believed that cushion stiffness plays a major role in child restraint installation and suggested that further tests and analysis were needed. UMTRI expressed concern that the foam of the present test seat assembly is softer than many seats in the current fleet: ''Instead of representing a worst-case scenario, the response of the soft foam and its tendency to bottom-out on to the unrealistically stiff plywood backing can lead to misleading results that can reduce the level of child passenger safety.'' Ms. Bidez believed that cushion stiffness has a critical influence on child restraint performance relative to head excursion. These commenters did not provide supporting data.

Some commenters were uncertain whether performance would be affected. JPMA stated that it conducted a small group of tests to evaluate the effect of foam in the tests, but the results ''yielded more questions than it answered.'' Without elaborating on its statement, JPMA provided data from a test program it conducted on foam that was 4 inches thick with a 25 percent compression/deflection resistance of 49.5 lb.[8] The effect on the performance of test dummies in various types of child restraints was varied. JPMA stated that it did not believe that there is yet enough information to evaluate what the foam firmness and density should be, or how child restraint performance would be affected by changing the foam. In its own comment, Graco also expressed that it was unsure of how performance would be affected and suggested that testing and research be completed before changing the foam.

Commenters had different views as to how the seat cushion foam should be changed. JPMA expressed cautious support for changing the foam to resemble more closely the foam thickness and compression of rear seats in real-world automobiles. UMTRI suggested that the agency characterize the overall seat stiffness of several modern vehicles and select a foam stiffness that matches a mean response. Ford stated that current rear seats are typically thinner and firmer than the test bench seat cushion. Ms. Bidez believed that the test cushion must reflect the softer seats of the majority of used vehicles on the road today. ARCCA believed that the seat cushion in Standard No. 213 may be too thick to match the vehicle seats, thereby allowing more deflection before becoming stiffer. The commenter suggested that the standard ''should err on the side of a softer cushion which will likely result in increased occupant excursion * * *.''

After reviewing the comments and considering the agency's research needs and limited resources, NHTSA has decided not to endeavor at this time to change the stiffness of the standard seat assembly's seat cushion foam. As discussed in the NPRM, NHTSA is aware of data that indicate that the stiffness of the seat assembly cushion might not have a marked effect on child restraint performance. The agency conducted a study in 1988 comparing the stiffness characteristics of the seat assembly cushion with the characteristics of then current seats. 67 FR at 21812. Most vehicle seats were stiffer than the FMVSS No. 213 seat assembly. Sled tests were performed in the study to compare the dummy responses of the standard's seat cushion, a representative seat cushion that was softer, and a stiff cushion. The agency concluded that dummy response differences were not sufficiently large or consistent to warrant specifying a different cushion than that used in the current test seat assembly. Because possibly revising this parameter of the seat assembly would require further research, utilizing scarce agency resources, for disproportionate safety benefits, the agency will not pursue changing seat cushion stiffness for the time being.

Harmonize With Transport Canada: Several commenters concurred with the NPRM that the proposed changes to the test seat assembly would advance harmonization with ECE Regulation 44 in that the seat cushion and seat back angles would be similar, as would the lateral spacing of the seat belt anchors and the rigidity of the seat back. However, the Alliance, General Motors and Evenflo noted that the test bench would differ from that used by Transport Canada in testing child restraints to the Canadian child restraint standard. These commenters urged NHTSA to work with Transport Canada to ensure that the test benches are harmonized.

NHTSA regularly coordinates its vehicle safety plans and programs with Transport Canada and the agencies work closely on regulatory initiatives concerning child restraint safety. Harmonizing the countries' requirements to the extent consistent with the safety needs of each country is a goal shared by both entities. Specifically with respect to the TREAD Act, NHTSA has discussed each of the revisions with Transport Canada. Transport Canada is aware of the changes, and the agencies will continue efforts to harmonize regulations to the extent possible.

b. Crash Pulse

The comments received on this aspect of the NPRM focused generally on the issues of the sled pulse shape (widening of the corridor) and severity.[9]

1. On Widening the Corridor

As for widening the corridor of the sled pulse from 80 milliseconds (ms) to approximately 90 ms in duration, all but few of the commenters responding to this issue supported the change. Many agreed with the agency that the change would allow more laboratories to run the compliance test ''without decreasing the effectiveness of the testing'' (quoting UMTRI). SafetyBeltSafe (SBS) also agreed with NHTSA's assessment, explained in the preamble to the NPRM, that the pulse would enable tests to be conducted closer to 30 mph.

The JPMA and Graco did not support revising the corridor. JPMA stated that widening the corridor necessarily makes the standard more stringent, because child restraint manufacturers will have to design products that can comply at the new extremes of the compliance corridor. The commenter stated that difficulties experienced by test labs in fitting their pulses within the existing corridor ''should be addressed by insisting that the test labs figure out how to meet the existing test corridor.''

[8] The foam in the current seat assembly is thicker and softer than the foam tested by JPMA. The foam in the current seat assembly is 6 inches thick. Two pieces of foam (one 2 inches and one 4 inches) may be used to achieve the required dimension. To be suitable for compliance testing, foam inserts must compress 25 percent under the following load limits: (1) 45–55 pounds for the 2-inch thick foam, and (2) 21–27 pounds for the 4-inch thick foam.

[9] Ford was concerned that the proposed pulse only specified sled movement during the first 90 ms, but limited dummy responses for 300 ms. Ford stated: ''Braking of a Hyge sled can have a substantial effect on dummy kinematics and readings during rebound. Hyge sled tests are generally considered to be unrealistic during the rebound phase because of sled braking. If the agency believes that it is essential to limit dummy measurements during rebound, and the agency plans to use a Hyge-type sled for audit testing, sled accelerations between 90 and 300 ms should be limited to specify an objective test pulse.'' The agency does not agree that sled braking has caused objectivity problems in the past. The FMVSS No. 208 sled test (see Figure 6 of that standard) specifies a sled corridor only to 130 ms, but at least 300 ms of data is collected in measuring injury criteria. There have not been any problems with the effect of the braking of Hyge sleds on dummy kinematics and readings during rebound. Accordingly, the agency is not specifying a pulse corridor between 90 and 300 ms.

JPMA and Graco believed that a wider test corridor will necessarily lead to more lab-to-lab variability during certification and compliance testing, which, the commenters stated, increases the compliance burden on manufacturers. JPMA stated that the agency did not provide data on the effect of the different crash pulse with the new bench seat, and believed that the agency must assess the effect of a wider sled pulse corridor on child restraint compliance.

The agency responds by concurring that the revision to the pulse could affect the manufacture of child restraints. Widening the test corridor from 80 ms to approximately 90 ms in duration does enable NHTSA to test child restraints closer to 30 mph than the present. To the extent that the 30 mph tests are more stringent than tests conducted in the past at slightly lower speeds, that result is a desired outcome of the amendment. Widening the corridor improves the effectiveness of the test. Child restraint manufacturers will have to certify that their child restraints meet the requirements of FMVSS No. 213 when tested using the test pulse, possibly at a higher velocity. They may have to conduct some testing to ensure that the restraints can be certified to the requirements when tested in the more effective manner using this pulse. The agency acknowledged in the NPRM the likely need for manufacturers to retest their restraints because of the new seat assembly and, by implication, due to the changes to the crash pulse (67 FR at 21829). However, the agency believed then and continues to do so now that it is unlikely that child restraints must be redesigned because of the change in the assembly and pulse.[10] Restraints are generally manufactured with enough of a compliance margin that will allow them to meet the requirements of the standard when tested at a slightly higher velocity.

To illustrate, NHTSA examined some of the work that was performed in support of the development of the child restraint ratings program required under Section 14(g) of the TREAD Act. As part of this effort, the agency examined the margin by which existing child restraints meet the injury limits currently specified in FMVSS No. 213. In model year 2000, the agency tested 50 upright, forward-facing child restraints in accordance under the agency's FMVSS No. 213 compliance test program. Twenty-four (24) seats were tested without a top tether, and 26 seats were tested with a top tether. We secured all seats with only a lap belt (no lower anchorages or shoulder belts). Currently, to pass the FMVSS No. 213 compliance test, a child restraint must achieve dummy injury numbers of a HIC less than 1,000 and a resultant chest acceleration of less than 60 G's. As shown below in Figure 1, regardless of whether we equipped the child restraints with a top tether, all child restraints achieved dummy injury readings below the maximum allowable values. Figures 2 and 3 illustrate the margin of compliance for HIC and chest acceleration, respectively. The margin of compliance is one minus the measured injury reading divided by the injury assessment reference value (IARV) times 100. Higher percentages are better, having less probability of injury. Regarding the HIC, all model year 2000 child restraints tested easily fall within the limits specified by the FMVSS No. 213 compliance tests. Most had a compliance margin of more than 50%. Although the margin is not as large for chest acceleration, all tested child restraints passed this compliance requirement as well.

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[10] Note that the agency is not specifying a ''new'' crash pulse. Rather, the final rule puts a corridor specification around the existing pulse which allows the agency to conduct compliance tests at velocities closer to 30 mph.

Figure 1

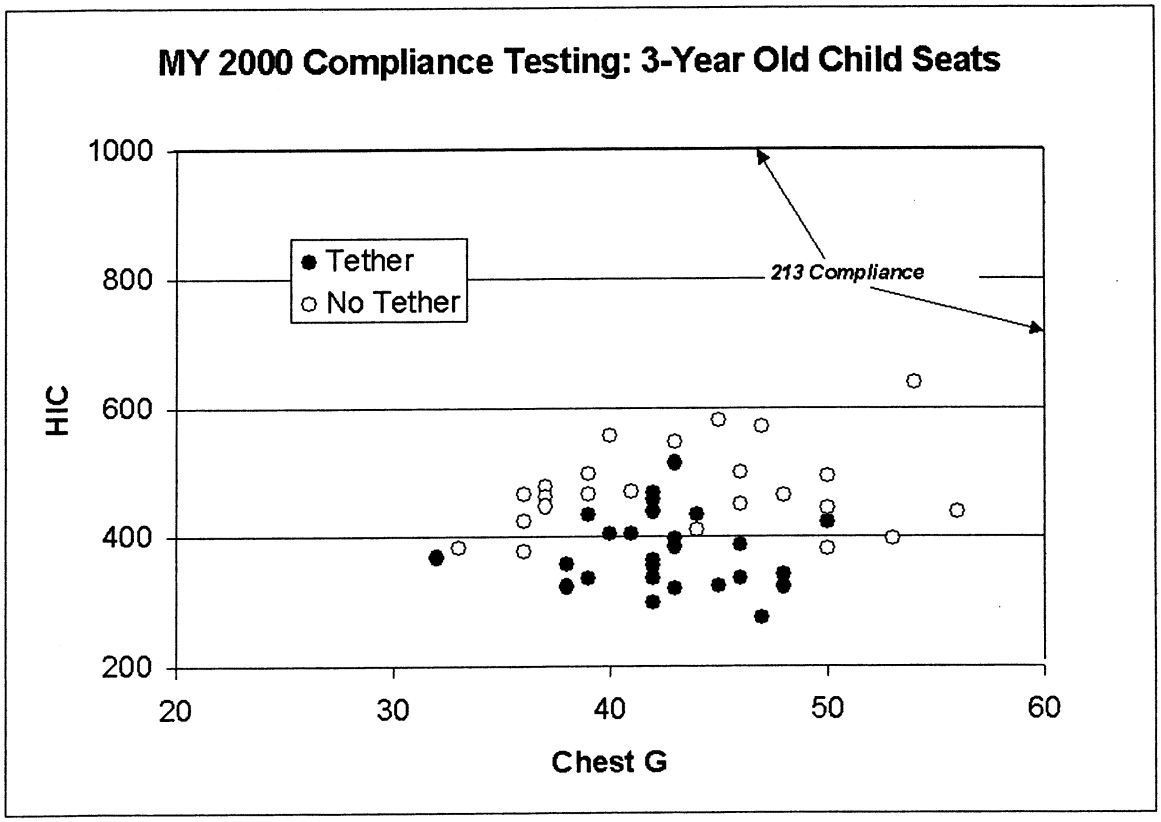

MY 2000 Compliance Testing: 3-Year Old Child Seats
1000
800
600
400
200
HIC
Tether
No Tether
213 Compliance
20
30
40
50
60
Chest G

Figure 2: HIC Compliance Margins

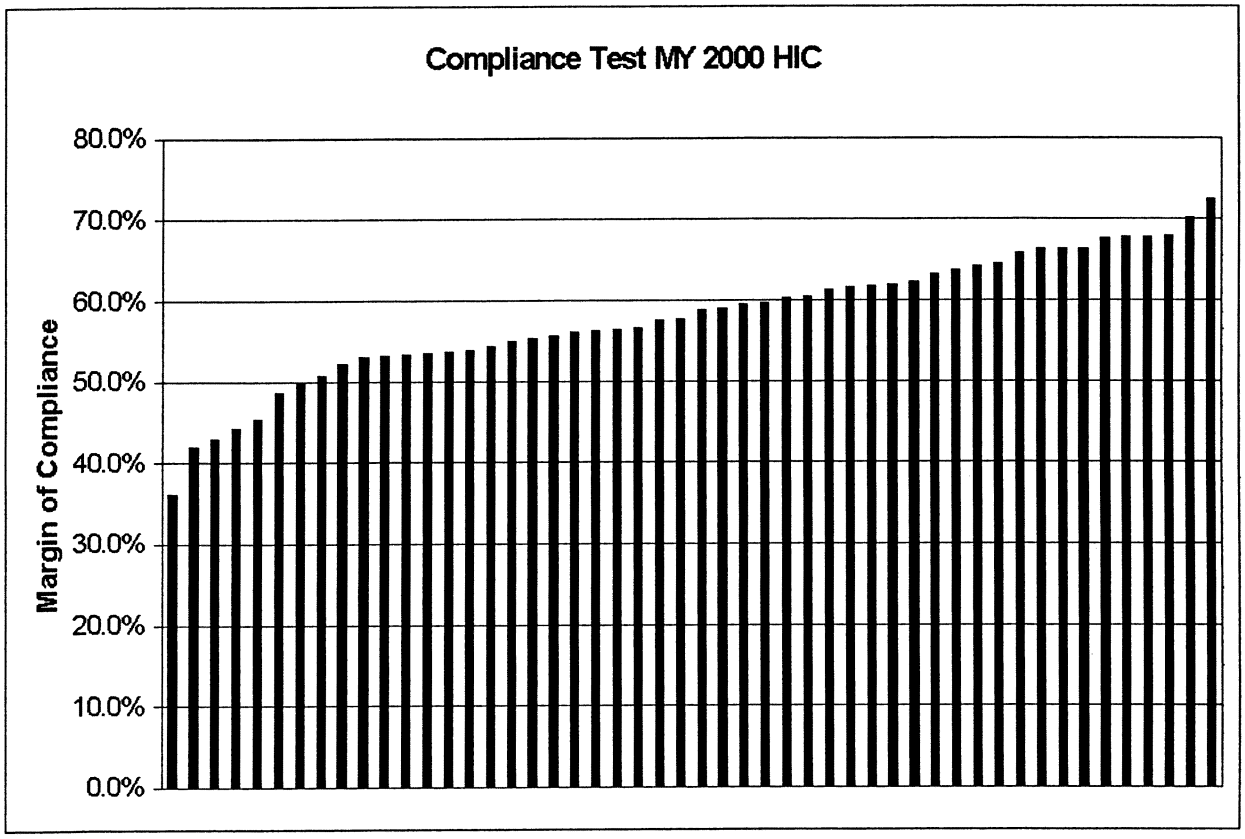
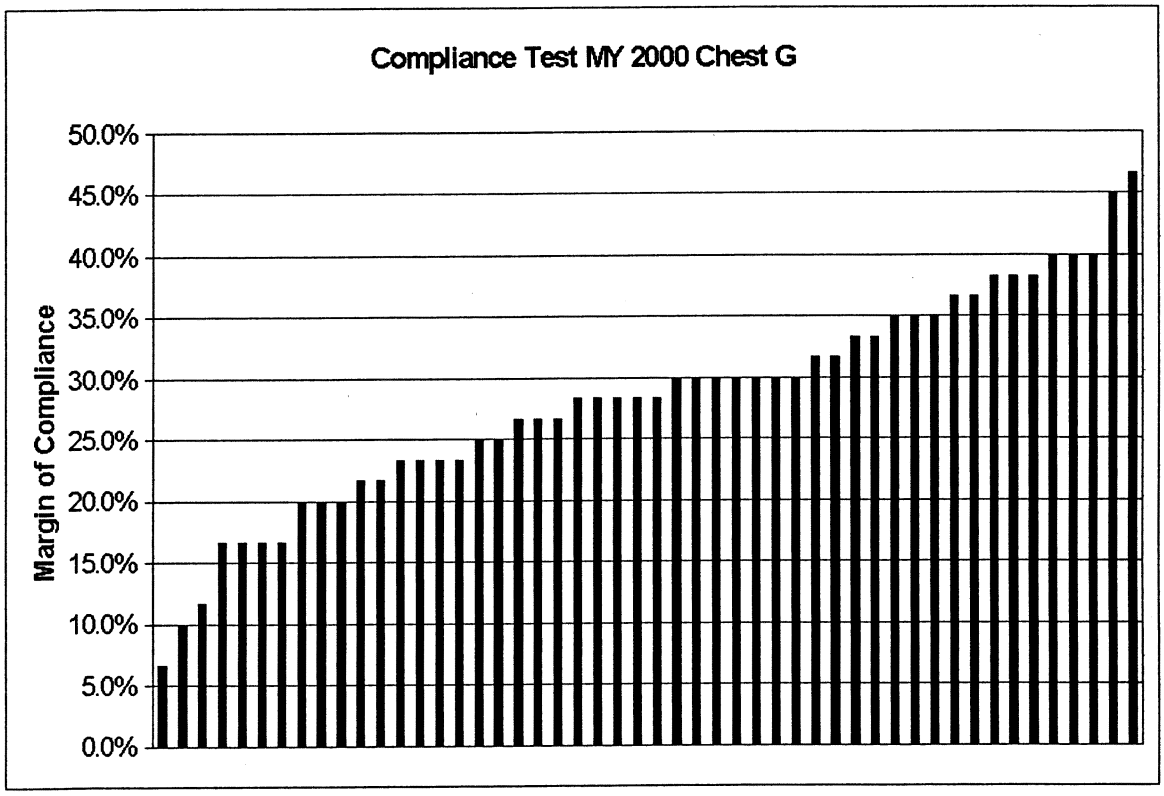


Figure 3: Chest G Compliance Margins



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FMVSS. No. 213 also has a requirement for head and knee excursions. Head excursion is limited to 720 mm (28 in) when a top tether is used, and 813 mm (32 in) without use of a top tether. Knee excursion is limited to 915 mm (36 in). Figures 4 and 5 below illustrate the margin of compliance for head excursion and knee excursion, respectively. Head and knee excursion limits are compliance limits imposed to reduce the chances of a child striking the vehicle interior or submarining (sliding under the belt feet first) in an automotive crash. Head and knee excursions are much closer to the compliance limits than HIC and chest acceleration. This may reflect attention to occupant protection, since increases in distance traveled by the occupant reduces the forces experienced by the occupant.

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Figure 4: Head Excursion

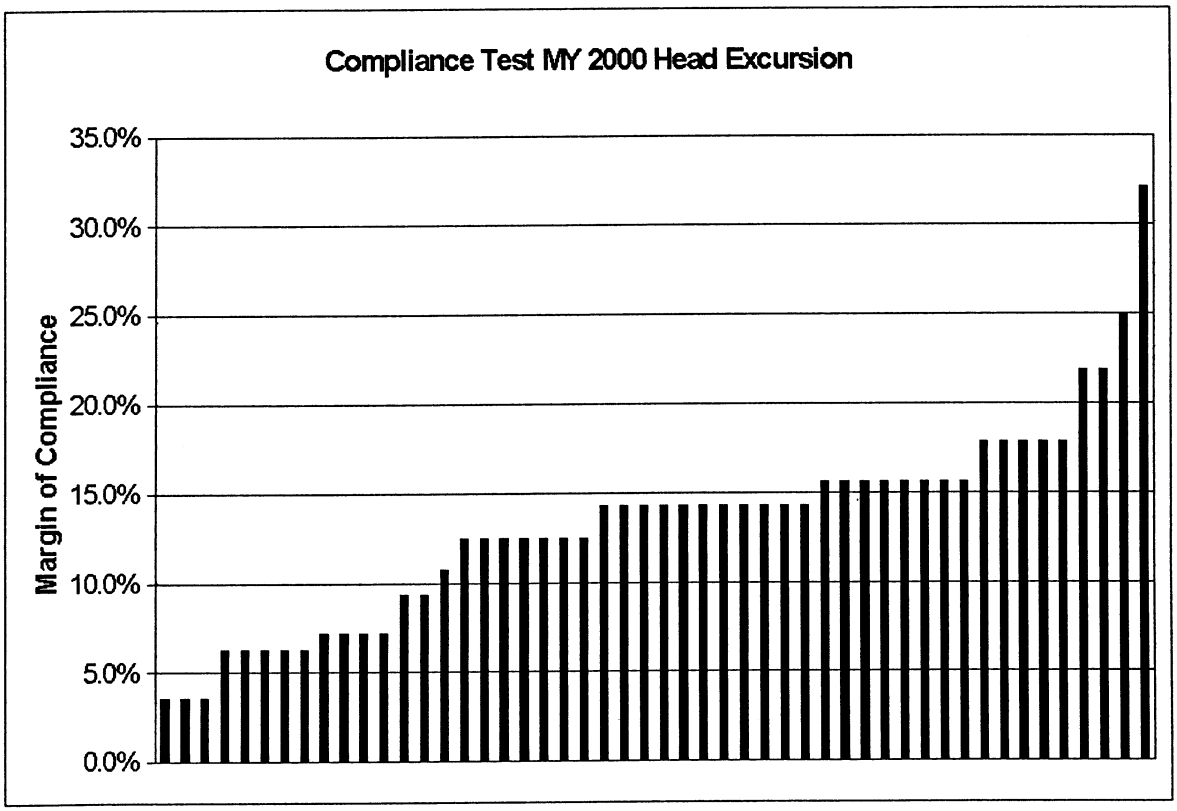
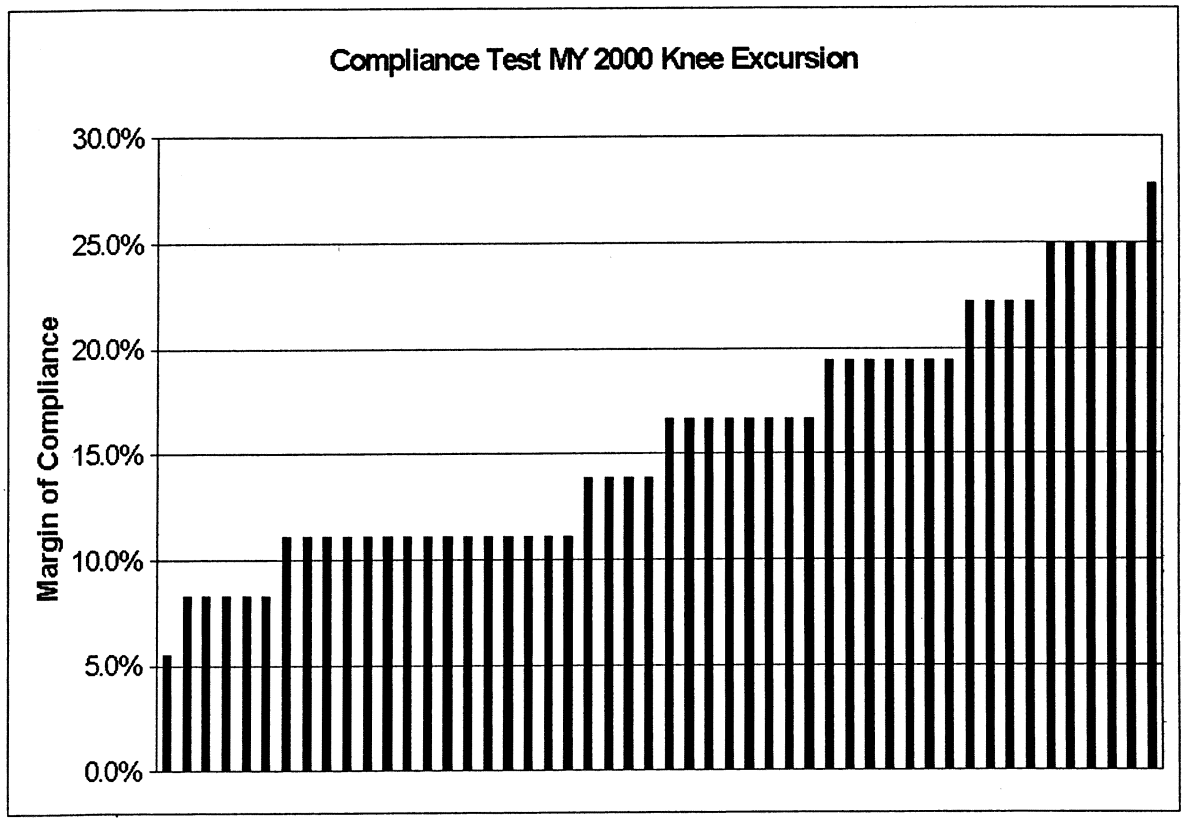


Figure 5: Knee Excursion



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During the development of the child restraint ratings program, the agency also conducted dynamic testing of a number of child restraints both at 30 and 35 mph to examine what differences, if any, resulted from the increase in the velocity at which the test was conducted. To attain the higher speed, a sled pulse with a similar shape and duration length as that of the FMVSS No. 213 pulse was used, except that the change-of-velocity was elevated from 30 mph (48km/h) to 35 mph (56km/h). All of the child restraints tested produced dummy injury measurements well below the FMVSS No. 208 criteria of 570 HIC and 55g chest acceleration (Hybrid III 3-year-old dummies were used in the tests). Although the injury assessment values were slightly greater in the 35 MPH (56 km/h) sled tests than in 30 mph (48 km/h) sled test, eight of the nine child seats tested rated within the 5 star range, and one fell just marginally below in the 4 star range. This data, in conjunction with the information provided above regarding the compliance margin achieved by existing child restraints, demonstrates that a nominal increase in the test velocity resulting from the crash pulse corridor established as part of this final rule will not necessitate a redesign of existing child restraint designs to meet the injury criteria limits established in the standard.

The agency also does not believe that unusual or unacceptable variability will be introduced into the test results simply because more test labs will be involved in conducting child restraint tests. Any lab-to-lab variability resulting from a properly conducted test will be insignificant, in part because each laboratory must ensure that the pulse it uses in the FMVSS No. 213 sled test falls within the corridor specified in the standard. In addition, it is the responsibility of manufacturers to design and manufacture child restraints to meet the requirements of the standard, taking into account whatever variability occurs from seat-to-seat manufacturing differences and from lab-to-lab testing differences. It should also be noted that child restraint manufacturers are responsible for ensuring that their restraints meet the requirements of the standard when tested by NHTSA in its compliance test. Manufacturers testing their products to the most demanding requirements under the most demanding test conditions increase the likelihood that their products will meet the requirements when tested by NHTSA under the same or less severe conditions. In the same manner, prudent testing by the manufacturer accounts for routine lab-to-lab variability that may occur when testing child restraints. Manufacturers must design and produce products that will pass the compliance test regardless of the laboratory conducting the test.

2. Increase Pulse Severity

ARCCA opposed the NPRM based on concerns that the proposed changes to the crash pulse would ''lower, rather than raise, the bar for child restraints.'' The commenter believed that the Standard No. 213 pulse is actually less severe than all of the 30 mph barrier test pulses from actual vehicles, and that the standard's pulse severity should be increased. The commenter suggested that the standard specify that the dynamic test will be conducted at velocities of not less than 30 mph. ''This will ensure that manufacturers do not take advantage of the wider corridor to conduct testing that is less severe than what is currently required by FMVSS 213.'' ARCCA also stated that the standard ''should contain a minimum acceptable peak acceleration level that is more than the 19 G's or [sic] the

proposed corridor in the NPRM.'' ARCCA stated:

> This minimum acceleration level should be high enough to ensure that a child restraint will offer acceptable performance and be capable of remaining structurally intact. Testing performed by one auto manufacturer in a minivan demonstrated that various child restraints structurally failed in 30 mile per hour sled testing using the vehicle's barrier crash pulse. By setting a high minimum peak acceleration, confidence can be gained in the ability of a child seat to remain structurally intact and protect a child no matter in what vehicle it is installed.

ARCCA suggested that the agency specify in Standard No. 213 that the test pulse must fall within a specific corridor and must have a velocity of at least 30 mph and a peak acceleration of at least some predetermined value. ARCCA believed that that acceleration value should be based on the values obtained from barrier crash tests and be greater than the majority of all FMVSS No. 208 tests reported. ARCCA was also concerned about how the values presented in Table 4 of the NPRM were calculated, especially the peak g values. The commenter believed that the values in the NPRM were erroneously based on ''average pulses'' *i.e.* point-by-point averaging of the pulse data to form a single curve for a class of vehicles. ARCCA stated that the problem with this method is that when pulses with peaks at different times are combined, the resulting peak is less than either of the pulses averaged. ''This is due to the fact that the crash pulses are out of phase. This is similar to the principle used in noise cancellation devices, when two waves are superimposed the magnitude of the resulting pulse is less.''

The agency does not agree with ARCCA that the standard's pulse is deficient and should be increased. The pulse is representative of a severe crash and subjects child restraints to ''worst case'' testing in a sufficient manner. The severity of a crash pulse is determined through a combination of three factors: the acceleration onset rate, the peak acceleration, and the time duration of the pulse. The data presented in the PAX report are based on FMVSS No. 208 rigid barrier testing at 30 mph impact speed (approximately 32 mph total change in velocity, ΔV) and New Car Assessment Program (NCAP) rigid barrier testing at 35 mph (approximately 37 mph ΔV).

The FMVSS No. 213 pulse was very similar to the pulses generated by sport utility vehicles (SUVs), trucks and small school buses in an FMVSS No. 208 (32 mph ΔV) crash test. NHTSA believes that the pulse should be severe enough to be adequately representative of these vehicles since child restraints are regularly and increasingly used in these types of vehicles. That is, the stringency of the pulse is justified to better ensure that each child restraint will not have structural degradation in a crash and will limit forces to the child's head, neck and torso to tolerable levels, no matter the vehicle the child is in.

ARCCA was correct that the agency had averaged the pulses for the three classes of vehicles (SUVs, trucks and a small school bus) to develop a composite pulse for each vehicle class, and that the composite pulses had peak acceleration levels that are typically lower than the highest peak accelerations measured in the individual tests. However, the averaged pulses allowed the agency to examine general trends with respect to the crash parameters that determine the performance of vehicles in a crash. As such, they are representative of the pulses of vehicles in which child restraints are likely to be used and provide a reasonable foundation upon which the standard's pulse can be based. Further, the agency is unaware of the testing to which ARCCA referred that allegedly demonstrated ''that various child restraints structurally failed in 30 mile per hour sled testing using the vehicle's barrier crash pulse.'' To the contrary, child restraints have proven very effective in real world crashes and have performed well in the agency's studies of child restraint performance in vehicles tested in NCAP 35-mph frontal crashes.

ARCCA suggested that the standard specify that the dynamic test will be conducted at velocities of not less than 30 mph. This specification is unnecessary, since the standard currently requires the dynamic tests to be frontal barrier impact simulations ''at a velocity change of 48 km/h [30 mph] with the acceleration of the test platform entirely within the curve shown in Figure 2 * * *.'' Thus, the agency already conducts the dynamic test at velocities as close as possible to 30 mph without exceeding 30 mph or causing the pulse to fall outside of the curve of Figure 2 of the standard.

ARCCA believed that the velocity of the sled test should be increased from 30 mph to 33 mph to replicate the change in velocity typically seen in a 208 barrier test. ''For the 213 pulse to be near the 30 mph barrier test the velocity, acceleration and duration would all have to be increased.'' The commenter also believed that, since ''well-restrained adult occupants are capable of surviving crashes comparable to a 35 mph barrier crash where the change in velocity is closer to 40 mph,'' tests of child restraints should be performed at the levels specified by the agency in testing vehicles in the New Car Assessment Program.

In contrast, all other commenters except ARCCA commenting on this issue did not want to increase the severity of the crash pulse. SafetyBeltSafe (SBS) believed that the velocity change should not be raised to 33 mph because ''the current test is already reflective of the top few percent of crashes.'' SBS stated that increasing the velocity ''will not significantly improve child restraint performance in the real world but will surely make the products more expensive.'' Graco stated that if the pulse were increased to 33 mph, it would expect a large number of child restraints needing to be redesigned with ''minimal benefit to child passenger safety.'' UMTRI stated that the change in velocity for the test should remain at 30 mph, stating that it conducted a recent analysis of National Automotive Sampling System (NASS) data from 1995–2000 which showed that a 30 mph change in velocity is more severe than approximately 98 percent of the frontal impact crashes nationwide. UMTRI further noted that since the NASS database only includes tow-away crashes, ''this is a conservative estimate of the percentage of frontal impacts that are less severe than 30 mph.'' UMTRI was concerned that increasing the velocity of the test is not likely to increase safety, but will increase consumer cost of child restraints and may lead to child restraint designs that could make the restraints less effective or more easily misused at lower severity crashes, ''which occur much more frequently.'' The Insurance Institute for Highway Safety (IIHS) stated that its review of NASS cases showed that child restraints designed to pass the current 30 mph sled test are providing very good protection to children in frontal crashes. IIHS also stated, ''There was no indication, based on an analysis of injuries, crash description, and photos in these 10 frontal crashes that designing child restraints to withstand higher crash forces could have prevented or mitigated any of the serious or fatal injuries.''

NHTSA concurs with these comments that the standard's crash pulse adequately meets a safety need. Increasing the severity could necessitate the redesign of many child restraints and could increase costs of the restraints to manufacturers, without a proportionate safety benefit. Thus, the agency concludes that the pulse should not be made more severe at this time.

3. Decrease Pulse Severity

While there was almost unanimous agreement among commenters that the crash pulse should not be increased, commenters expressed opposing opinions on whether the severity of the test pulse should be decreased. The crash pulse is more severe than most other pulses, but is similar to crash pulses of large sport utility vehicles and light trucks (passenger vehicles that are becoming more and more popular for use as family vehicles) and very similar to the crash pulse of small school buses. The agency determined in the NPRM that the crash pulse should maintain its level of stringency so as to replicate vehicle crashes involving vehicles that had relatively severe crash pulses. Some commenters disagreed, believing that the crash pulse should be reduced in severity because the most frequent crashes involving children in child restraints are those with lower crash pulse severities than the test pulse, while others agreed that a relatively severe, ''worst case'' scenario should be replicated.

In support of reducing the severity of the crash pulse, the Alliance of Automobile Manufacturers (Alliance) stated that the current sled pulse represents—

> an extremely rare ''worst case'' [(*e.g.*, a stiff vehicle hitting a full-width non-deformable wall at high speed)]. As a result the addition of the new dummies/injury criteria coupled with this unrepresentative test pulse may create significantly unintended consequences such as reduced availability and increased costs of compliant restraints as well as the addition of features that may make them more cumbersome and less user friendly. All of which will reduce their use in the real world.

The Alliance stated that an attachment it submitted with its comment contains an analysis comparing the severity (acceleration pulses) of full frontal barrier crashes with vehicle-to-vehicle crash tests. ''In this analysis a 30 mph full frontal barrier test is found equivalent to a 41 mph vehicle-to-vehicle crash. A reduced speed of 22 mph for full frontal rigid barrier test is found to represent vehicle-to-vehicle crashes with 50%–100% overlap, with each vehicle traveling at 30 mph.''

Along the same lines, General Motors (GM) believed that the crash pulse should represent the most frequent collision event. The commenter urged research to define the real world collision speeds and deceleration pulses at which the majority of the harm to children occurs. GM believed that increasing the pulse duration and widening the corridor increases the pulse severity somewhat, and coupling this increase with the use of the new test dummies and injury criteria ''could make compliance more difficult.'' GM suggested that NHTSA consider using the FMVSS No. 208 generic sled pulse if the final rule adopts the Hybrid III test dummies and injury measures proposed in the NPRM.

The Children's Hospital of Philadelphia (TraumaLink) supported altering the pulse to be more representative of the passenger car environment to ''make it more relevant to a larger proportion of the real-world crash-involved population.'' The commenter stated that out of the 59,968 children studied in TraumaLink's Partners for Child Passenger Safety study, only 24.1 percent of children were riding in SUV's and light trucks.

In contrast, in support of the agency's decision not to reduce the severity of the crash pulse, Advocates for Highway and Auto Safety (Advocates) believed that although cars remain more numerous in the vehicle fleet, use of an LTV crash pulse is representative of real-world crash experience given that increasing numbers of LTVs have entered the fleet and are frequently used as passenger and family vehicles. The commenter also discussed why it believed the crash pulse should replicate the ''worst case'' scenario over the ''most frequent'' or ''average'' crash:

> Although Advocates has urged the agency to update its test procedures in certain respects to ensure that they are representative of the modern vehicle fleet, this does not mean that critical test procedures should mirror the attributes or test the performance of only the ''average'' vehicle. While test procedures should be representative of the vehicle fleet in many respects, not all tests or test procedures should be based on the most common or average vehicle in the fleet. To ensure safety protection for all vehicle occupants, critical aspects of test procedures should replicate more stringent conditions than would be experienced in the average vehicle. This is especially true when only one test and a single set of test conditions are used as the basis for compliance. Thus, although there are still more cars than LTVs on U.S. highways, and even though more children are injured while riding in cars than are injured while riding in LTVs, the FMVSS 213 sled test should replicate the faster acceleration onset rate and higher peak acceleration exerted in an SUV crash pulse. Of the two, the LTV crash pulse presents the more stringent test condition. Using the LTV-like crash pulse ensures that children exposed to such a severe force, as well as children exposed to less severe conditions in cars, will be afforded protection. The reverse, however, is not true. If FMVSS 213 adopted a car-like sled test crash pulse, children in cars may be protected but that same degree of safety would not necessarily be provided to children in LTVs with ''stiffer'' frames that transfer more of the crash generated energy to the occupants. As a result, Advocates concurs in the agency's judgment that the existing FMVSS 213 crash pulse be retained.

After reviewing all the comments on this issue, NHTSA has decided to retain the current severity of the pulse and not reduce it. The agency concurs with Advocates that to ensure safety protection for as many child occupants as possible, ''critical aspects of test procedures should replicate more stringent conditions than would be experienced in the average vehicle,'' and that, given that child restraints are used with a wide range of vehicle types and are involved in crashes of varying degrees of severity, such a critical aspect is the sled pulse. Accordingly, the agency declines to replicate the crash conditions of the most frequent collision event.

GM suggested that NHTSA consider using the FMVSS No. 208 generic sled pulse if this final rule adopts the Hybrid III test dummies and injury measures proposed in the NPRM. As discussed later in this preamble, this final rule adopts the Hybrid III test dummies but does not adopt the majority of the injury measures proposed in the NPRM. Nonetheless, the agency makes the following observations about the suggestion to use the FMVSS No. 208 generic sled pulse. The generic sled pulse is less severe than the FMVSS No. 213 pulse. As shown in the following overlay of the existing FMVSS No. 213 pulse with the FMVSS No. 208 generic sled pulse, the former has a greater onset rate, higher peak acceleration and shorter time duration. Further, the FMVSS No. 208 sled pulse, with a peak acceleration of about 17 g's, is less stringent than most 30 mph passenger vehicle crashes. Because the FMVSS No. 208 sled pulse is less severe than the FMVSS No. 213 pulse, this final rule declines the suggestion to adopt it.

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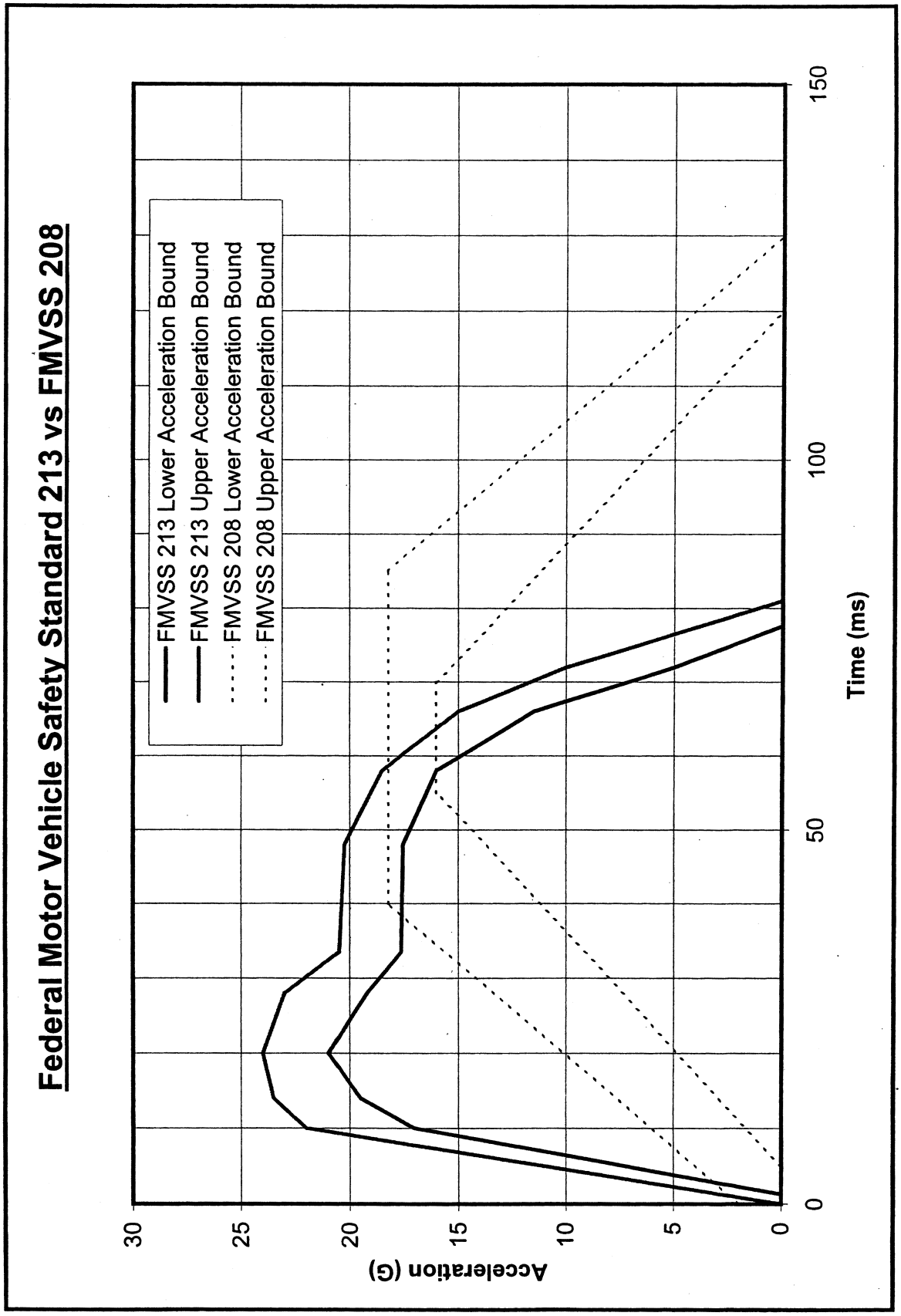

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c. New Dummies

1. Post-NPRM Test Program

As part of the test program conducted for NHTSA at the Patuxent River (PAX) test center, PAX conducted a series of dynamic sled tests to evaluate identical child restraints on the revised test seat assembly using both the Hybrid II and the Hybrid III 3- and 6-year-old dummies. All of these tests were conducted with the restraints attached to the test seat assembly with the lap belt only, as would be done in a compliance test. Similar comparison tests were conducted with the Hybrid II 9-month-old and the CRABI 12-month-old dummy, but as the 9-month-old dummy is uninstrumented, little comparative information was gleaned from these tests. Accordingly, the data from the latter tests are not provided.

i. Tests With The 3-Year-Old Dummies. The following Table 6 illustrates the injury criteria measurements for the test series using the Hybrid II and Hybrid III 3-year-old dummies:

TABLE 6.—TESTS WITH THE HYBRID II AND HYBRID III 3-YEAR-OLDS

Child restraint	Dummy	$HIC_{unlimited}$		Chest acceleration		Head excursion		Knee excursion	
		Value	Change	Value	Change	Value	Change	Value	Change
Cosco Touriva	Hybrid II	702.8		40.4		19.6		26.4	
	Hybrid III	446.8	−256	37.6	−2.8	15.5	−4.1	26.4	0
Century Accel	Hybrid II	626.5		26.8		19.5		26.8	
	Hybrid III	355.3	−271.3	36.1	+9.3	19.9	+0.4	25.2	−1.6
Century Breverra	Hybrid II	669.7		29.2		22.5		27.4	
	Hybrid III	536.8	−132.9	50.1	+20.9	21.3	−1.2	29.1	+1.7
Cosco HB Booster	Hybrid II	446.4		41.6		22.5		26	
	Hybrid III	704.9	+258.5	41.6	0	13.4	−9.1	22.4	−3.6

The Cosco Touriva and the Century Accel are both forward-facing convertible child restraints, and the Century Breverra and the Cosco High Back Booster are forward-facing hybrid boosters. All were tested with the dummy in the restraint's internal harness system.

The results from this series of testing appear to be mixed. Three of four tests showed a marked decrease in measured HIC values when testing with the Hybrid III dummy as compared to the Hybrid II dummy, while the fourth test in the series resulted in a significant increase (446.4 to 704.9) in HIC values. Similar results are seen when looking at chest acceleration and head and knee excursions. The varied results can be attributable in part to the very limited sample size of child restraints tested. No repeatability tests were performed. All injury numbers were well within the current limits prescribed in FMVSS No. 213.

ii. Tests With The 6-Year-Old Dummies. A similar series of tests was conducted with the Hybrid II and Hybrid III 6-year-old dummies in both backless and high back belt-positioning booster seats on the revised test seat assembly. As was the case in tests with the 3-year-old dummies, the test results for the 6-year-old dummies show considerable fluctuation and no clear trends.

The following Table 7 outlines the results of these tests:

TABLE 7.—TESTS WITH THE HYBRID II AND HYBRID III 6-YEAR-OLDS

Child restraint	Dummy	HIC		Chest acceleration		Head excursion		Knee excursion	
		Value	Change	Value	Change	Value	Change	Value	Change
Cosco Gr. Explorer	Hybrid II	267.1		49.2		14.3		24	
Evenflo Right Fit	Hybrid III	357.6	+90.5	37.8	−11.4	11.7	−2.6	19.6	−4.4
Cosco Gr. Explorer	Hybrid II	328.2		38.6		18		25.7	
Evenflo Right Fit	Hybrid III	276.2	−52	36	−2.6	19.1	+1.1	21	−4.7
Century Breverra	Hybrid II	209.4		35.1		19.7		19.7	
	Hybrid III	415.7	+206.3	41.4	+6.3	20	+0.3	11.7	−8.0
Cosco HB Booster	Hybrid II	380.7		42.4		17.6		27.6	
	Hybrid III	756.1	+375.4	38.3	−4.1	18.4	+0.8	24	−3.2

The original test matrix called for testing each restraint with both the Hybrid II and the Hybrid III 6-year-olds to facilitate a direct comparison between the two dummies, as was done for the other dummies. However, during the conduct of the sled tests at PAX, the Cosco Grand Explorer was instead inadvertently tested twice with the Hybrid II 6-year-old, and the Evenflo Right Fit was tested twice with the Hybrid III 6-year-old.

NHTSA acknowledges that this makes a direct comparison between the two dummies in the same restraint impossible. However, unlike rear-facing infant seats and forward-facing toddler seats, there is very little difference in design characteristics between the two backless booster seats in question that would influence the dynamic response of the dummies in a sled test. As such, NHTSA has included the data for information.

Further, it is noted that VRTC conducted a study comparing the performance between the Hybrid II and the Hybrid III child dummy families in support of the NPRM for this final rule. (*See* Docket NHTSA–2002–11707–1; report dated April 12, 2002.) The report concluded in part that sled test results generally show fairly consistent dummy performance with the Hybrid II and Hybrid III child dummies.

2. Commenters Generally Supportive

Commenters generally supported using the CRABI 12-month-old and the Hybrid III 3-year-old dummies in Standard No. 213 compliance tests, in place of the TNO 9-month and the

Hybrid II 3-year-old dummies now used by the agency. There was support for the use of the Hybrid III 6-year-old dummy in compliance tests, with the exception of a few commenters (discussed below). There was general concern about the need for and capabilities of the weighted Hybrid III 6-year-old dummy.

i. Hybrid III 6-Year-Old Dummy. Several commenters expressed concern about the biofidelity of the unweighted Hybrid III (HIII) 6-year-old dummy's neck and hips and the suitability of the dummy for use in testing child restraints. TraumaLink stated that, based on a sled test program it conducted at a test lab, they had ''significant concerns'' regarding the performance of the dummy. ''The tests revealed extremely large neck elongation unlikely to be seen in real children in real crashes and resulted in high calculated injury values. These results suggest a pattern of injuries that we do not see in our real world experience.''

SafetyBeltSafe referred to the tests performed by TraumaLink to conclude that ''We do not now believe that the HIII 6-year-old dummy is an appropriate test device to simulate a restrained child'' because of ''unrealistic stretching and bending of this dummy's neck while tightly restrained by a lap-shoulder belt in a booster. The result was that the dummy's face directly contacted the chest, generating an unrealistic and unacceptably high HIC.'' SafetyBeltSafe also stated that test data from NHTSA's Vehicle Research and Test Center indicated that tests with the dummy generated ''[head] excursion increases of from 2.1 to 4.5 inches in a booster with lap-shoulder belt. The likely reason for this is that the neck is not a true Hybrid III type neck, as it lacks the metal disks needed to limit its bending.'' The commenter was also concerned about the dummy's ''permanently flexed hips, which, unlike the new 10-year-old design, do not allow a slouched position and may inhibit submarining in non-optimal booster designs.''

Ford Motor Company likewise stated that the Hybrid III dummies are much more likely to experience head-to-knee contacts than Hybrid II dummies, because of the more flexible ribs and neck of the HIII dummies. Further, Ford said that a 1984 study (Culver *et al.*) showed that adult HIII dummy HIC readings were about twice those recorded in dummy head to cadaver knee impacts. Further, Ford stated that because the HIII 6-year-old dummy does not have the metal plates that segment and limit bending of the necks of the HIII adult dummies, the HIII 6-year-old dummy may be more likely to experience head-to-leg contacts than ''the three-year-old.'' Ford asked in its comment how the agency would treat head acceleration spikes that could be caused by head-to-knee contacts. The commenter also suggested that load cells be used on the ASIS of the pelvis of the 6-year-old dummy to evaluate the tendency to submarine under the lap belt during testing of booster seats, because, Ford stated without elaborating, the current limit on knee excursion is not an effective way to limit submarining in tests of belt-positioning boosters.

NHTSA disagrees with the commenters that the HIII 6-year-old dummy should not be used in FMVSS No. 213 testing. The neck of the HIII 6-year-old is currently performing within the specifications established by the Hybrid III Dummy Family Task Force of the Society of Automotive Engineers (SAE). The agency is not aware of specific test information and/or data substantiating the claims of the commenters that the dummy is an unsuitable test device for FMVSS No. 213 testing.

When the dummy was incorporated into the regulation on anthropomorphic test devices, 49 CFR part 572, the agency made the following determinations (65 FR 2059) about the dummy:

> Based on NHTSA's use of the H-III6C 6-year-old dummy in calibration tests and in frontal impact tests involving restraints such as air bags and belts, we have concluded that this dummy is suitable for both research and compliance safety assessments. The dummy is not only considerably more biofidelic than its predecessor, the part 572 subpart I 6-year-old dummy, but it also has considerably more extensive instrumentation to measure impact responses such as forces, accelerations, moments, and deflections in conducting tests to evaluate vehicle occupant protection systems.

The agency continues to believe that the performance of child restraint systems will be more thoroughly and precisely assessed by use of the HIII dummy because of the dummy's enhanced biofidelity and extensive instrumentation. With regard to concerns about the dummy's neck, it should be noted that the Hybrid II dummy currently in use also does not have the metal disks. Since the Hybrid III is more biomechanically based, we continue to believe that it provides a more humanlike response than the Hybrid II version of the dummy.

Sled tests have shown the HIII 6-year-old to be a suitable replacement for the existing HII 6-year-old in FMVSS No. 213 compliance tests. None of the sled testing conducted with the HIII 6-year-old dummy at VRTC or PAX in support of the TREAD Act has indicated that head-to-chest or head-to-knee impacts is an issue. Such impacts are not typical.[11] NHTSA believes that if head-to-knee contact occurs, there are likely design concerns with respect to the particular child restraint that should be addressed to eliminate such contact. We also believe it would be very difficult, if not impossible, to establish an objective means to determine if, and if so to what extent, head-to-knee contact influenced HIC measurement in FMVSS No. 213 compliance testing. Consequently, head acceleration spikes caused by head-to-knee contacts will be included in the HIC computation. Further, the agency continues to believe that the HIII dummy is needed to better assess the injury mechanisms to children.

The agency is not entirely convinced that neck elongation is not occurring to children in real crashes. We believe it possible that neck injury may sometimes not be diagnosed even though it occurs. Since a child's neck is not fully developed, detection of injuries is more difficult and injuries could manifest in later years. Also, for fatal injuries, there is often a reluctance to conduct autopsies in deference to family sensitivity. Consequently, the cause of death may be listed as massive head injury, while injury to the neck may have also occurred.

The agency is continuing to conduct research to establish better neck injury response and injury criteria for children. Research may show the presence of neck injury and a possible need for a neck injury criterion in FMVSS No. 213. If that occurs, a test dummy incorporated into the standard that offers improved biofidelity and neck instrumentation would prove useful. Because we believe that the current neck on the HIII 6-year-old dummy provides improved biofidelity over the current dummy and is suitable for compliance purposes, this final rule adopts the dummy into FMVSS No. 213 as proposed.

ii. Weighted 6-Year-Old Dummy. A majority of commenters raised concerns with the biofidelity of the weighted 6-year-old-dummy, which is intended to model a 50th percentile 8-year-old child. IIHS and NTSB commented on the importance of height in measuring

[11] The agency is aware of only one instance in which there was significant head-to-knee contact in an FMVSS No. 213 test environment using a Hybrid III dummy. In this case, a 6-year-old dummy was tested in a backless belt-positioning booster. In the test, the shoulder portion of the belt system slipped off the dummy's shoulder. It is unclear what caused this to happen.

seat belt fit and injury criteria, particularly head excursion. Both determined that the weighted dummy failed to accurately represent the height of booster occupants. NTSB stated that the addition of weight to the dummy's spine and pelvis was not representative of weight distribution in an actual child. Ford expressed concern that the weighting of the 6-year-old dummy could result in inaccurate output of the injury criteria. Ford expected the weighted dummy to show abnormally high chest deflection and abnormally low chest acceleration, and higher head excursion. Ford was also concerned that the low relative mass of the lower extremities could reduce knee excursion compared to a more biofidelic dummy. Ford stated that adding mass to the spine and lengthening the lumbar spine might result in the weighted dummy not submarining under conditions that would cause a more biofidelic dummy to submarine. Public Citizen, Graco, and the Alliance commented that the weighted dummy would not perform the same as the 10-year-old dummy which NHTSA has been developing and which was referenced in Public Law 107–318 (Dec. 4, 2002; 116 Stat. 2772)(''Anton's Law'').[12]

IIHS, ACTS, Public Citizen, the Alliance, and GM stated that the lack of biofidelity should preclude the use of the weighted dummy. Many commenters urged the agency to develop the 10-year-old dummy as an alternative. Public Citizen urged the agency to move ahead with regulations in anticipation of the 10-year-old dummy's future availability. NTSB suggested using the European 10-year-old dummy (P-series) as an interim measure. While acknowledging the existence of problems with the P-series, NTSB stated that European dummy would better represent height and seat belt fit.

While raising concerns with biofidelity, a number of commenters agreed that, if necessary, the weighted 6-year-old dummy could be used in a limited capacity to test the structural integrity of child restraints until such time as the Hybrid III 10-year-old dummy became available. Evenflo also supported using the weighted dummy to measure head excursion.

The agency agrees that the Hybrid III 10-year-old dummy, envisioned by Anton's Law, represents the long-term solution to the issue of testing booster seats certified for higher weights. Development of the Hybrid III 10-year-old dummy is proceeding as quickly as possible, but this dummy is not currently ready for use in compliance tests. The agency is currently testing the Hybrid III 10-year-old dummy to determine its suitability for FMVSS No. 213 compliance testing. A notice proposing to incorporate this dummy into Part 572 for use in compliance testing is expected to be published in early 2004.

Despite limited results showing a general correlation between the testing performance of the weighted 6-year-old dummy and the Hybrid III 6-year-old dummy, the agency is persuaded by the comments that the weighted dummy should not be used for testing with full instrumentation. The weighted dummy would not perform the same as the 10-year-old dummy in development and it may not accurately represent an 8-year-old child. IIHS stated that the weighted dummy is too short to represent the tallest occupants for whom boosters are recommended, noting that ''[s]itting height is an important factor in testing booster seats because a poorly designed booster may permit too much head excursion for taller occupants. Weight is, at most, a secondary issue for the restraints because the vehicle belts, which are not subject to testing under this standard, restrain the inertia of booster seat occupants.''

While the 0.7-inch increase in sitting height achieved through the addition of weights to the Hybrid III 6-year-old dummy is comparable to that of a 50th percentile 8-year-old child, the overall weight and height, and consequently the weight distribution, are not. The 50th percentile 8-year-old child is 50.5 inches tall, as compared to the 50th percentile 6-year-old child which is 45.5 inches tall. The weight added to the 6-year-old dummy is not distributed as it would normally be on a 50th percentile 8-year-old, making injury measurements suspect.

The agency agrees that the kinematics of the weighted 6-year-old dummy may not be representative of the older child that it attempts to model and it could potentially interact with the belt system differently than a dummy developed to represent an 8-year-old child. Therefore, the weighted dummy will be used only as a means of ballast to evaluate the structural integrity of the tested child restraint. While the weighted dummy will not be instrumented to determine compliance, it will be instrumented to collect data for use in research.

Anton's Law[13] directs the agency to initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 lb. Through use of the weighted 6-year-old dummy, the structural integrity of a CRS recommended for children between 50 and 65 lb can be tested. NHTSA recommends children to be placed in booster seats until they are 8-years old, or 57 inches tall. The weight of a 50th percentile 8-year-old male is approximately 57 lb. The weight of a 50th percentile 8-year, 9 month-old male is approximately 62 lb. Use of the 62 lb weighted dummy as ballast ensures that booster seats certified up to 65 lb will not structurally fail in a crash.

While several commenters suggested using alternative dummies as an interim measure, none of the suggested alternatives are appropriate even for use as ballast. NTSB recommended using the European P-series 10-year-old dummy in a limited capacity to provide a better means of evaluating proper seat belt fit and to enhance efforts to enact booster seat laws in the states. NHTSA is not confident in the ability of the P-series dummy to uniformly load the restraint system in a manner necessary for the evaluation of the booster seat, even structurally. The P-series dummy is designed with too many degrees of freedom, and its interaction with a restraint system would be inconsistent.

AAP suggested using the Hybrid III 5th percentile female to test child restraints to allow regulation up to 80 lb in advance of the availability of the Hybrid III 10-year-old dummy. The weight of the Hybrid III 5th percentile female dummy is 108 lb, 28 lb heavier than the maximum weight of a child that the child restraint would be certified for in compliance testing. The heavier weight of the 5th percentile female dummy would not offer an accurate representation of an 8-year-old or even 10-year-old child.

3. Specific Issues Relating to the Use of the New Dummies in Standard No. 213

i. Seat Back Height Requirement. S5.2.1.1 specifies that each child

[12] On December 4, 2002, Congress enacted Public Law 107–318 (Anton's Law) ''to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.'' Section 4 of Public Law 107–318 directed that—

(a) Not later than 24 months after the date of the enactment of this Act, the Secretary shall develop and evaluate an anthropomorphic test device that simulates a 10-year old child for use in testing child restraints used in passenger motor vehicles.

(b) Within 1 year following the development and evaluation carried out under subsection (a), the Secretary shall initiate a rulemaking proceeding for the adoption of an anthropomorphic test device as developed under subsection (a).

Other provisions relating to child restraint performance were also included in the statute.

[13] Section 3 of Public Law 107–318 directs the Secretary of Transportation to consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 50 pounds.

restraint system shall provide head restraint by means of a continuous seat back. Subsection (a) of S5.2.1.1 specifies that for child restraints recommended for use by children weighing less than 20 lb, the height of the seat back must be not less than 18 inches. If a restraint were recommended for children weighing 20 to 40 lb, the seat back height must be not less than 20 inches.

Some rear-facing infant car seat/carriers, which are designed with a handle for toting the infant outside of the vehicle, are recommended for use with infants weighing only up to 20 lb. Under current S5.2.1.1, these restraints (recommended for children up to 20 lb) must have a seat back of a height of not less than 18 inches. This final rule amends S5.2.1.1 to require these restraints to have a seat back height of not less than 20 inches.

The agency proposed to use the CRABI dummy in place of the 9-month-old dummy in all tests in which the latter dummy is used, including tests of rear-facing infant car seat/carriers. Thus, it was proposed that the CRABI (at 22 lb) would be used to test car seat/carriers. Comments were requested on the appropriateness of using the CRABI dummy to test infant car seat/carriers recommended for children up to 20 lb, when the 22-lb dummy is heavier than the children recommended for the restraints. Comments were requested on whether all infant car seat/carriers have back supports that are high enough to support the CRABI.

No commenter opposed the use of the CRABI in place of the 9-month old dummy, but some issues were raised about possible effects of using the dummy to test infant seats. Graco suggested that S5.2.1.1 could be deleted, for lack of a safety need, if Standard No. 213 were amended to specify use of the CRABI dummy to assess the ability of a rear-facing restraint to limit the rearward excursion of the dummy in Standard No. 213's dynamic test (S5.1.3.2).[14] Evenflo stated that several infant-only restraints do not have backs high enough to support the CRABI 12-month-old dummy. The commenter suggested that replacement of the 9-month-old dummy by the CRABI in 4 years would help minimize the financial impact to child restraint manufacturers.

In response to Graco, NHTSA agrees that S5.2.1.1 and S5.1.3.2 both provide protection to a rear-facing child in a frontal impact by limiting occupant excursion outside of the confines of the restraint system. However, the agency is unable to conclude that the two requirements serve the same safety need for rear-facing restraints. S5.2.1.1 specifies seat back height and width requirements and also limits how far rearward the test dummy's head may rotate during dynamic testing. These requirements may provide protection in dynamic conditions other than that replicated by the Standard No. 213 sled test. A child restraint might be able to meet S5.1.3.2 with a seat back that is lower or narrower than that specified by S5.2.1.1. Deleting S5.2.1.1's requirements for rear-facing restraints could reduce some of the current protections afforded by child restraints. Thus, the agency declines to delete S5.2.1.1.

At the same time, however, the agency has concluded that with the incorporation of the CRABI dummy into the standard, amendments to S5.2.1.1 are in order. Information indicates that infants should be positioned rear-facing until at least 12-months old, until such time their neck and muscular structure are developed to more adequately support their head. If rear-facing infant seats were recommended for use with an infant until the infant weighs 22 lb, there is a greater likelihood that parents will keep their infants in the rear-facing restraint until the infant reaches or is closer to reaching 12 months of age than if the restraint were only recommended for infants up to 20 lb. (The agency believes that many infants are positioned forward-facing in a toddler restraint after being transitioned out of a rear-facing car seat/carrier, and that many of these infants are not developmentally ready to be forward-facing in the vehicle.)

The agency is amending S5.2.1.1(a) to encourage the production of rear-facing infant car seat/carriers that are recommended for use by infants up to 12 months in age. The agency is amending the table in S5.2.1.1(a) such that infant car seat/carriers must have a minimum seat back height of 20 inches.[15] The effect of this is to require all rear-facing infant restraints to be large enough for an average 12-month-old. As a practical matter, this is not a drastic change. Seventy-five percent of the infant-only seats that have been evaluated in the agency's ease-of-use ratings program were certified for children weighing up to 22 lb and thus already are manufactured with 20-inch seat backs.

This final rule does not require manufacturers to recommend on the labels accompanying infant restraints that the restraints are recommended for infants up to 22 lb, but provides the incentive for them to do so. Because the 22-lb CRABI will be the test instrument used in compliance tests of the infant seats, and because under S5.2.1.1(a) the infant seats must have a minimum seat back of 20 inches, the agency believes that manufacturers will certify most if not all infant restraints to 22 lb.

The agency is providing for a 2-year leadtime for this change. Evenflo stated that several models of infant-only restraints do not have backs high enough to support the CRABI 12-month-old dummy and will thus have to be redesigned. Evenflo suggested that replacement of the 9-month-old dummy by the CRABI in 4 years would help minimize the financial impact to child restraint manufacturers. JPMA suggested a 3 year leadtime. NHTSA declines to provide such long leadtimes suggested by Evenflo and JPMA because there could be safety benefits associated with keeping more infants rear-facing until they are at least 12-months old, which could result from the change to the CRABI and to S5.2.1.1 of Standard No. 213. The short deadlines of the TREAD Act also indicate Congress's interest in having the standard be upgraded as quickly as possible. The 2-year leadtime NHTSA is providing balances the safety benefits with the need for some child restraint manufacturers to modify some of their seats.

ii. Padding Requirement. The agency asked for comment on deleting S5.2.3, which specifies a padding requirement for child restraints used by children weighing less than 22 lb. The agency had specified the requirement (whose thickness and static compression specifications are compliance-tested statically) because there was no instrumented infant test dummy available at the time (1979) the requirement was adopted. The agency's goal was to establish dynamic test requirements for infant restraints, so that the total energy absorption capability of the padding and underlying structure could be measured. (44 FR 72131, 72135). Graco and Xportation supported deleting S5.2.3. Since today's final rule incorporates use of the instrumented CRABI 12-month-old dummy for use in testing restraints recommended for children under 22 lb, we are deleting S5.2.3, as proposed.

[14] Under S7.1(c) of Standard No. 213, child restraints recommended for use by children weighing 22 to 27 lb are tested with the 3-year-old (33 lb) dummy. Graco suggested that a weighted CRABI 12-month-old or an 18-month-old dummy be used instead of the 3-year-old dummy. Given the agency's resources and the safety issues before the agency, NHTSA will not be undertaking rulemaking at this time on the weighted CRABI or on an 18-month-old dummy.

[15] More specifically, the section is amended to specify that restraints certified for children weighing less than 40 lb must have a minimum seat back height of 20 inches.

4. Leadtime

The agency proposed in the NPRM that manufacturers be provided two years of leadtime, after publication of a final rule, before specifying the use of the CRABI and Hybrid III dummies in compliance tests. The NPRM proposed using the weighted 6-year-old dummy in compliance tests 180 days after publication of a final rule. JPMA supported the addition of the new dummies to the standard, provided that the agency gives ''a phase in of at least three years from the issuance of the final rule * * * to avoid costly recertification requirements for existing seats, and to avoid the possible elimination of some current seats from the marketplace.'' JPMA stated that because of dimensional differences between the proposed CRABI 12-month-old and the 9-month-old dummy currently used to test infant-only child restraints, the commenter believed that the use of the CRABI dummy will likely result in the elimination of current infant-only child restraints. JPMA stated that ''millions of dollars of tooling and development testing will be rendered worthless'' by incorporating the new dummies and that ''[m]anufacturers should be given a longer lead time before having to endure the several financial consequences of these changes.'' [16] Evenflo commented that the agency ''must recognize that the use of the new dummies will have a significant affect [sic] on manufacturers' test costs, which will ultimately be reflected in the price of child restraints.''

The agency is providing for a 2-year leadtime for the changeover to the new dummies. As explained above, the agency believes there are safety benefits associated with keeping more infants rear-facing until they are at least 12-months old, which could result from the change to the CRABI and to S5.2.1.1 of Standard No. 213. At the same time, the two year leadtime is provided to lessen the cost impacts of the rule on manufacturers' testing costs (retesting current child restraints on the new seat assembly using the new dummies, and at test speeds closer to 30 mph) and possible retooling costs.

NHTSA believes there also are safety benefits to testing the structural integrity of child restraints recommended for children weighing from 50 to 65 lb. However, an effective date short of approximately two years is not provided for use of the weighted dummy because the rulemaking incorporating the dummy into 49 CFR part 572 is not yet completed. The NPRM was published May 7, 2003; 68 FR 24417. The rulemaking should be completed with sufficient time to allow manufacturers to certify their restraints to Standard No. 213 by the two-year compliance date.

d. Application of the Standard

Most commenters supported increasing the weight limit in the definition of ''child restraint system'' above the current 50 lb. The only commenter opposed to any increase was the Automotive Coalition for Traffic Safety, because of concern with the weighted 6-year-old dummy. Of those supporting an increase, a majority supported increasing the weight to 65 lb based on the use of the weighted 6-year-old dummy, with future amendments increasing the weight to 80 lb upon the introduction of the 10-year-old dummy. Advocates stated that it would support increasing the limit to 65 lb upon showing that the weighted 6-year-old dummy (62 lb) is sufficient to assess child restraint use with children weighing up to 65 lb. Graco suggested that the agency should defer increasing the limit to the time the 10-year-old dummy is available.

Several commenters did not support an intermediate level of 65 lb and preferred amending the standard now to specify the application to restraints recommended for children up to 80 lb. Ms. Bidez supported incorporating the 10-year-old dummy in its current form and amending the weight limit to reflect the 80 lb weight of the 10-year-old dummy. AAP recommended using the 5th percentile female to allow regulation up to 80 lb in advance of the 10-year-old dummy. E-Z-On believed that the limit should be extended to 80 lb, and that costs to vehicle and child restraint manufacturers to provide stronger anchorages and hardware would be minimal.

The agency agrees with commenters in that the weight limit in the definition of ''child restraint system'' should be increased above 50 lb. While the weighted 6-year-old dummy injury measurement reliability may not be sufficient for compliance testing, the dummy is suitable for testing the structural integrity of child restraints up to 65 lb. Use of the weighted dummy provides an interim weight limit in advance of the Hybrid III 10-year-old dummy. The agency is confident in the ability of the 62-lb-weighted dummy to test restraints certified up to 65 lb. There will be only a 3-lb difference between the weighted dummy and the maximum certification weight. The Hybrid II 3 year-old, weighing 33 lb, has proven efficient at testing child restraint systems certified with a maximum weight of 40 lb.

However, the weighted 6-year-old dummy is not sufficient to assess the dynamic performance of a child restraint in restraining an 80-lb child, and as stated above, use of an alternative dummy to allow increasing the limit to 80 lb is not appropriate. The agency is not confident in the ability of the European P-series 10-year-old dummy to uniformly load the restraint, and the Hybrid III 5th percentile female is 35 percent heavier than the suggested maximum weight of 80 lb.

For the aforementioned reasons, NHTSA is increasing the reference to the weight limit in the definition of ''child restraint system'' from 50 lb to 65 lb. This amendment, effective in 180 days, affects primarily manufacturers of child restraints recommended for older children, *i.e.*, booster seat and harness manufacturers. The agency does not anticipate that manufacturers will have to redesign their restraints to certify compliance using the weighted 6-year-old dummy. However, the rulemaking to incorporate the weighted 6-year-old dummy into part 572 is not complete, so the agency is specifying that compliance testing with the weighted dummy will not begin for two years. Manufacturers are permitted the option of voluntarily using the weighted dummy prior to the mandatory compliance date.

Several comments were submitted on whether manufacturers should be prohibited from recommending their seats for children of weights higher than the heaviest dummy used to test the restraint. Consumer Union stated that the agency should limit manufacturers' ability to advertise child restraint weight maximums only to the weight of the heaviest dummy used for its certification testing. Alternatively , Consumer Union stated that the agency should develop dummies that are at the maximum weight advertised for the restraint, or require the addition of ballast weights to existing test dummies.

In contrast, TraumaLink believed that manufacturers should be permitted to recommend child restraints at weights above that of the heaviest dummy used to test the restraint. TraumaLink stated that there was no field data to indicate a problem with convertible restraints (typically recommended for children up to 40 lb) which have been tested with a 33 lb dummy (the Hybrid II 3-year-old). Limiting the regulation based on the heaviest dummy, TraumaLink continued, would place artificial limits on the protections afforded children. Similarly, AAP opposed limiting a

[16] The commenter supported the proposal in the NPRM of allowing manufacturers the option of using the new dummies before the mandatory compliance date of the standard.

manufacturer's ability to recommend a child restraint for a weight above that of the heaviest dummy used to test the restraint. AAP stated that such a restriction could mislead parents into thinking that children should use seat belts once the child is heavier than 62 lb, when in fact, most children do not fit seat belts until a much heavier weight.

In a rulemaking amending FMVSS No. 213 to incorporate several test dummies into the standard (61 FR 30827; June 18, 1996), NHTSA responded to Consumer's Union (CU) belief, expressed during that rulemaking, that restraints (*e.g.*, convertible child seats) should not be permitted to be recommended for children weighing more than the largest test dummy used to test the restraint (*e.g.*, 33 lb). The agency determined that such an approach was unnecessarily restrictive, given that there has been no showing that the wider array of dummies incorporated into Standard No. 213 by that rulemaking were insufficient surrogates for the children for whom the restraints are recommended. The agency also believed that CU's suggestion could have unintended safety consequences, because it would have the effect of forcing young children out of child restraints specifically designed for them (typically 20 to 40 lb) and into restraints that may not be appropriate for their size, *i.e.*, booster seats for a 3-year-old or the vehicle's belt systems. The agency believed that while it might be hypothetically possible that a restraint that passed FMVSS No. 213 when tested with a dummy could fail when restraining a child weighing slightly more than the dummy, on balance, the possibility of such a failure is outweighed by the safety risk of forcing children into restraints that might not adequately restrain them.

NHTSA reaffirms the conclusions reached in that rulemaking and concurs with the views of TraumaLink and AAP that information on tests with current test dummies does not indicate a need to restrict recommending child restraints for children weighing more than the test dummies used to test the restraint. As to CU's suggestion for developing dummies that reach the maximum weight recommended for a restraint or requiring the addition of ballast weights to existing dummies, this suggestion is beyond the scope of the present rulemaking.

e. Injury Criteria

1. Post-NPRM Testing

i. JPMA. In its comment to the NPRM, JPMA stated that it had conducted a series of 80 sled tests at Veridian Engineering in response to the proposal, to try to understand how the proposed dummies performed compared to the dummies currently in use. The tests also evaluated the proposed changes to the standard bench seat, as well as the proposed injury criteria. JPMA described its test plan as including all test modes for all of the proposed dummies with representative samples of all types of child restraint/harness combinations and installation methods, including lap belt only, lap/shoulder belt, and LATCH. JPMA acknowledged that: ''While a total of 80 tests were conducted, this series only begins to explore the results of the proposed changes and does not allow analysis of the net effect of each change, nor does it provide enough history to define the potential variability in test results which could occur. Much more testing is required to define the new effect of each change and the potential variation which can have a significant impact on design and ability to define compliance margins.''

ii. NHTSA Series I and II. PAX conducted a series of dynamic sled tests for NHTSA to evaluate the performance of various child restraints on the revised test seat assembly. The tests used the CRABI and Hybrid III 3- and 6-year-old dummies to evaluate whether these dummies could meet the proposed scaled HIC, chest injury limits and Nij measures. Time and resource considerations limited the testing to 5-point harness rear-facing infant seats, convertible safety seats, and belt-positioning seats. Restraints were evaluated while installed using a lap belt, a lap/shoulder belt, and the LATCH system. HIC measurements were obtained, but testing problems arose with respect to the neck injury and chest deflection data. Because of these problems, NHTSA conducted a second series of dynamic sled tests at VRTC to replicate the tests performed at PAX with the 3- and 6-year-old dummies. These tests were conducted using the same type of child restraints.

iii. Results of JPMA and NHTSA Series I and II. The charts provided in a docket submission titled ''Comparison of PAX/VRTC and JPMA Sled Tests'' summarizes the results of the testing performed by both NHTSA and by JPMA. For HIC and chest acceleration, results are presented for both the proposed scaled injury limits and for the same tests using the existing injury criteria limits stated in FMVSS No. 213. Because chest deflection and Nij limits are not currently specified in FMVSS No. 213, the only charts provided are for the proposed criteria limits.

NHTSA testing performed at PAX and VRTC, described in the NPRM, resulted in dummy responses that were generally within the injury limits proposed in the NPRM, with the exception of Nij. (While acceptable Nij readings were found in tests using the Hybrid III 3-year-old dummy, there were widespread failures in both rear- and forward-facing tests using the CRABI 12-month old dummy and each of four tests with the Hybrid III 6-year-old dummy.) However, the test results presented by JPMA were quite different. JPMA's testing, using the revised test seat assembly and new dummies as NHTSA tested, but across a wider variety of child restraint types, showed very mixed results. In many instances, the measured injury parameters either exceeded or marginally passed the scaled injury limits proposed in the NPRM. Further, there were many JPMA tests that resulted in either failing or marginal results when using the existing injury criteria. This raised questions regarding the combined effect of the changes to the test seat assembly, incorporation of the new dummies, and use of the scaled injury criteria limits together.

iv. NHTSA Series III. In an effort to determine if the use of varying restraint types in the JPMA testing (as opposed to NHTSA's use of 5-point harness restraints only) could be identified as the predominant factor in explaining the disparity between the JPMA and NHTSA test results, NHTSA conducted a third series of sled tests. These tests were performed at VRTC, and attempted to closely parallel the testing performed by JPMA. In addition to a number of additional 5-point harness restraints, NHTSA also tested forward-facing convertible overhead shield child restraints, and shield-type boosters both with and without the shield.

A total of 20 additional tests were conducted in this third series of sled tests. The results of this series of sled tests more closely paralleled those found in the JPMA tests, in that a wider range of failing and marginal test results were seen as compared to the predominately passing results seen in the PAX test series. The testing of 5-point harness restraints at PAX resulted in injury values that were predominately within the established or proposed limits (with the exception of Nij). However, the VRTC Series III tests showed a wider variation in both marginal and failing responses that appear to be a result of the restraint type

that was tested, even though all restraint types meet the current FMVSS No. 213 requirements and appear to be equally effective based upon field studies. Not all VRTC results were similar to those of JPMA, however, as the HIC15 results for the CRABI dummy were typically better in the VRTC tests than in the JPMA tests. Overall, the VRTC follow-on tests did confirm the wider range of test results found in the JPMA testing. The follow-on testing results can be found in the docket.

2. Comments and Conclusions

i. Head Injury Criterion (HIC). The agency received widely divergent comments on the proposal to limit measurement of HIC to 15 milliseconds and to use the injury criteria of Standard No. 208 that were scaled for children. The Alliance, UMTRI and SafetyBeltSafe supported the use of a 15 ms limit on the head injury criterion (HIC) limit as a more realistic way to assess head and brain injury, with the lower HIC values proposed for each dummy. In contrast, Advocates stated that it was ''reluctant to change the duration of HIC measurement from 36 ms to 15 ms without more definitive evidence that this change would not inhibit accurate HIC measurements associated with non-contact head injuries.'' Advocates suggested that NHTSA should scale the injury assessment reference values for children even if the agency decides not to shorten the HIC measurement duration, to ''take into account the different anatomy of children.'' Ford stated that, while the purpose of the 15 ms limit on the HIC calculation interval is to try to differentiate between HICs caused by hard head contacts and non-contact HICs due to head whipping, the 15 ms HIC measurement should not be used to differentiate between non-contact and ''chance contact'' of the dummy's head with the dummy's knees.

JPMA stated that it was willing to consider supporting a 15 ms limit (HIC_{15}), if the agency can undertake research to assure that there will not be unintended consequences from countermeasures needed to meet HIC_{15}. However, JPMA did not support the other proposed new injury criteria, including the scaled HIC values. The commenter stated that the tests of child restraints it conducted with the proposed CRABI and Hybrid III dummies produced injury reference values that exceeded the proposed limits, which the commenter said is a concern given the high level of effectiveness of current child restraints. The commenter suggested that it might be more feasible to use the FMVSS No. 208 criteria in FMVSS No. 213 if the agency were to specify a ''more realistic crash pulse for FMVSS No. 213, such as the one contained in the FMVSS No. 208 sled test.'' Graco questioned why the scaled HIC values would be applied to in-position child restraint testing if they were derived from out-of-position occupant airbag testing. Graco believed that the values might not be ''applicable to child restraint testing with a 213-style pulse.'' The commenter stated that it saw minimal benefit to child passenger safety from using the proposed injury criteria. It was concerned that some seats that have historically performed well in the real world and in compliance testing would fail the new criteria.

Response: This final rule retains the existing FMVSS No. 213 HIC threshold of 1000 for the CRABI 12-month-old and Hybrid III 3- and 6-year-old dummies.

Since the TREAD Act directed NHTSA to consider adopting the scaled injury criteria adopted by the May 2000 final rule on advanced air bags, NHTSA proposed that the HIC limits of 390_{15}, 570_{15} and 700_{15} be incorporated into FMVSS No. 213 for tests with the CRABI 12-month-, and Hybrid III 3- and 6-year-old dummies, respectively. However, NHTSA believed that it should take a cautious approach in modifying the head injury tolerance level set by the HIC requirement. The agency requested comments on issues related to the proposed injury criteria, such as on what risk levels are acceptable, what factors should be considered in selecting performance limits and whether the same limits as in FMVSS No. 208 should be established for the child restraint standard. The agency noted that the two standards address different sources of potential harm to children. The injury criteria for children in FMVSS No. 208 are intended to minimize the risk from a deploying air bag (ensuring that the air bag deploys in a manner much less likely to cause serious or fatal injury to out-of-position occupants). The injury criteria in FMVSS No. 213 are intended to limit the severity of forces imposed on a child during a crash. Child restraints meeting these criteria have worked effectively to maintain high levels of performance in crashes. Because the injury criteria of the standards are intended to minimize risks from different injury sources, the agency stated that it might be reasonable to have non-identical criteria.

In this final rule, NHTSA has decided against incorporating the scaled injury limits used in FMVSS No. 208 because the data obtained from the JPMA and NHTSA (series III) test programs indicate that current child restraints generally do not meet the proposed limits. There are several reasons why this was a concern for the agency. First and foremost, child restraints are currently highly effective in reducing the likelihood of death and/or serious injury in motor vehicle crashes. The agency was unable to identify a safety problem that the scaled injury limits of FMVSS No. 208 would remedy.

Second, it is unknown what modifications to child restraints would be necessary for the restraints to meet the proposed injury limits. Commenters did not provide information on how child restraints that failed to meet the proposed Nij and other limits could be modified to meet the criteria. Assuming that the restraints could be redesigned to meet the proposed injury limits, there would likely be costs associated with the redesign which would result in increases in the price of the restraints. As noted above in section IV of this preamble, the agency considers the consumer acceptance of cost increases to child restraints (an already highly-effective item of safety equipment) in determining the net safety effects of changes to the child restraint standard. In balancing the effects of meeting the scaled injury criteria against the possible impacts on the price of restraints, the agency determined that the net effect on safety could be negative in this instance because of the minimal benefits of such a change, weighed against the delayed replacement of old restraints by current owners or non-purchase by non-owners. For these reasons, in accordance with the TREAD Act, we have considered whether to apply scaled injury criteria performance levels developed for FMVSS No. 208 to child restraints and have determined it would not be prudent to do so.

NHTSA is adopting HIC_{36} with a limit of 1000 for all tests with the Hybrid III and CRABI dummies. This final rule does not adopt the 15 ms window that was proposed in the NPRM. This is because the shorter time interval would likely substantially reduce the values calculated for the HIC in compliance tests. Further, as discussed later in this section, NHTSA is not incorporating a neck injury criterion into FMVSS No. 213. A 36 ms time interval to measure HIC allows the HIC measurement in FMVSS No. 213 to capture risk of neck injury indirectly. Given that the agency is declining to adopt a neck injury criterion at this time, the longer measurement window associated with HIC_{36}, as opposed to HIC_{15}, will provide reasonable assurances that a child's neck will not be subjected to excessive forces in a crash. The 36 ms time

interval to measure HIC is consistent with the injury threshold used in FMVSS No. 208 for the Hybrid III 50th percentile dummy prior to the incorporation of scaled injury limits and Nij for advanced air bags.

Limiting the duration over which HIC is calculated to a maximum of 36 ms, while limiting HIC to 1000, assures that the acceleration level of the child's head will not exceed 60 g's for any period greater than 36 ms. The 60 g acceleration limit was set as a reasonable head injury threshold by the originators of the ''Wayne State Tolerance Curve'', which was used in the development of the HIC calculation.

The change to a 36 millisecond time measurement for HIC will not necessarily result in lower HIC values in compliance testing because of the changeover in this rulemaking to the new dummy family. NHTSA compared the differences between using the HIC_{36} criterion in testing with the Hybrid III dummy family and using the existing criterion, $HIC_{unlimited}$, in testing with the Hybrid II family. The following tables outline the results of comparison tests performed on identical child restraints, using the FMVSS No. 213 proposed (Table 8) and existing seat assemblies (Table 9), with both Hybrid III and Hybrid II 3-year-old dummies.

TABLE 8.—COMPARISON TESTS OF 3-YEAR-OLD HYBRID III AND HYBRID II DUMMIES ON PROPOSED SEAT ASSEMBLY

[Hybrid III HIC_{36} vs Hybrid II $HIC_{Unlimited}$ 3-Year-Old Child Dummy (Tested Using with The NPRM Proposed Seat Assembly)]

	Hybrid III* HIC_{36}	Hybrid III $HIC_{Unlimited}$	Trend
Cosco Touriva Convertible, Lap Belt, No Tether	~434	703	Hybird III HIC_{36} *Less than* Hybrid II $HIC_{Unlimited}$.
Century Accel Convertible, Lap Belt, No Tether	~344	627	Hybird III HIC_{36} *Less than* Hybrid II $HIC_{Unlimited}$.
Century Breverra Hybrid, Lap Belt, No Tether	~521	670	Hybird III HIC_{36} *Less than* Hybrid II $HIC_{Unlimited}$.
Cosco HB Booster Hybrid, Lap Belt, No Tether	~684	446	Hybird III HIC_{36} *Greater than* Hybrid II $HIC_{Unlimited}$.

* HIC_{36} were not calculated, the relationship HIC_{36} = 0.97
* $HIC_{Unlimited}$ was used to approximate HIC_{36}.

TABLE 9.—COMPARISON TESTS OF 3-YEAR-OLD HYBRID III AND HYBRID II DUMMIES ON EXISTING SEAT ASSEMBLY

[Hybrid III HIC_{36} vs Hybrid II $HIC_{Unlimited}$ 3-Year-Old Child Dummy (Tested Using Existing FMVSS No. 213 Seat Assembly)]

	Hybrid III HIC_{36}	Hybrid II $HIC_{Unlimited}$	Trend
FF Convertible, Lap Belt	671	385	
FF Convertible, Lap Belt	.....	479	
FF Convertible, Lap Belt	.....	424	
Average	671	429	Hybird III HIC_{36} *Greater than* Hybrid II $HIC_{Unlimited}$.
FF Convertible, Lap and Tether	303	387	
FF Convertible, Lap and Tether	362	396	
Average	333	392	Hybird III HIC_{36} *Less than* Hybrid II $HIC_{Unlimited}$.
FF Convertible, LATCH	292	281	
FF Convertible, LATCH	518	336	
Average	408	309	Hybird III HIC_{36} *Greater than* Hybrid II $HIC_{Unlimited}$.
FF Hybrid, Lap and Tether	452	392	
FF Hybrid, Lap and Tether	439	501	
Average	446	447	=

In some of the tests Hybrid III HIC_{36} results were higher, and in other tests the HII $HIC_{Unlimited}$ results were higher. On the other hand, in a limited number of tests with the 6-year-old dummies, the Hybrid III HIC_{36} numbers were higher. All in all, the agency determined that the data are inconclusive as to any differences in how the Hybrid II and Hybrid III dummies measure HIC. In any event, the agency's tests of child restraints has not found any difference between $HIC_{Unlimited}$ and HIC_{36} in terms of compliance passage rates. Thus, the agency has concluded that the impact on child restraint performance relating to the change to HIC_{36} will be insignificant.

ii. Chest Injury Criteria. Some commenters supported while others opposed the proposals to adopt a new chest deflection criterion and to adopt the chest acceleration limits that were scaled for children and incorporated into FMVSS No. 208. The Alliance supported the proposals. Ms. Bidez supported the proposed chest deflection criteria, stating that ''although no significant reports of chest injury in children have yet occurred, prudence and systems engineering dictates [sic] that excessive chest deflection be monitored to prevent the introduction of ''new'' injury mechanisms in the quest to prevent other injury mechanisms with improved restraint design.''

JPMA opposed the proposed chest injury criteria for the reasons explained in the preceding section. TraumaLink also opposed incorporation of the proposed chest deflection and reduced chest acceleration limits, because according to data it has collected in its study, ''These types of injuries do not occur in children in [child restraint systems].'' TraumaLink further stated: ''We are concerned about the tradeoff between including these more restrictive thoracic criteria and reducing the overall protection of the head through increased head excursions and accelerations.'' These concerns were echoed by UMTRI, which stated that the relationship between the chest deceleration and deflection limits and field injuries under the type of loading simulated in FMVSS No. 213 are not well established. ''Introducing these injury criteria now [including neck injury] could lead to counterproductive child restraint designs because many restraints that perform well in the field, particularly booster seats, are likely to exceed the new injury tolerance measures.''

SafetyBeltSafe also opposed the proposed chest injury criteria. It expressed concern that the new seat bench assembly has an added slope to

the seat cushion that results in a ''harder stop as the restraint bottom[s] out against the plywood platform.'' The commenter was concerned that, if the chest acceleration limit were reduced, child restraints that are already close to the current limit could fail the test with no change in how they actually perform in the field. ''To counteract this possibility [of failing the test], a manufacturer could soften the system, allowing more head excursion (due again to the geometry change), to keep the chest acceleration in check. This would obviously be counterproductive to child safety.'' In addition, SafetyBeltSafe believed that the proposed chest deflection limit ''does not relate to any evident injury among restrained child passengers'' and thus would not advance child safety. JPMA, UMTRI and SafetyBeltSafe suggested that the agency collect data on chest deflection to establish a database that could be used to evaluate these measures more in the future.

Ford stated that in its sled tests of booster seats using the Hybrid III six-year-old dummy and the FMVSS No. 213 sled pulse, none of the tested boosters could be certified as meeting the proposed limits. ''Boosters that showed good shoulder belt fit routinely measured chest acceleration at or near the 60 g limit and chest deflection very near the 40 mm limit. Dummy chest values were sometimes below the compliance limit, but were seldom far enough below the limit to provide a reasonable compliance margin.'' The commenter believed that boosters do improve child safety when used properly, and that ''if dynamic testing of boosters is continued, the test procedure needs a major overhaul to effectively differentiate between acceptable and unacceptable designs.''

Response: This final rule does not adopt the proposed chest injury criteria relating to acceleration and deflection. A safety need for adopting the proposal has not been established. NHTSA is persuaded by the commenters that there are not sufficient data that demonstrate that children have been seriously injured due to excessive chest acceleration or deflection in current restraint designs. Historically, the majority of child injuries are to the head as opposed to the chest. The agency is concerned about possible negative effects of adopting the proposed chest injury criteria on increased head excursion, as noted by SafetyBeltSafe. Further, not enough is known about the countermeasures that could be employed to meet the proposed criteria. If child restraint manufacturers were to redesign their restraints to meet such requirements, the agency is concerned about the possibility of those revised designs compromising other aspects of the occupant's injury protection.

The data presented by JPMA, and to a lesser degree, the follow-on tests conducted at VRTC, show difficulty for current restraints to meet the scaled chest criteria, and also show problems for certain restraint types to meet the existing requirements with the revised test seat assembly and new dummies. Redesigning the restraints to meet the requirements, assuming such redesign is practicable, would involve a cost increase to manufacturers, which would be passed on to consumers. The agency does not believe that the cost increase is justified in this instance, and is concerned about the possible effect the cost increase could have on the purchase and use of child restraints. For the aforementioned reasons, we conclude that it is not in the interest of safety to adopt the chest injury criteria developed for FMVSS No. 208 into FMVSS No. 213.

iii. Neck. Virtually all parties commenting directly on this aspect of the proposal opposed the modified Nij neck criterion (modified from the criterion in FMVSS No. 208 in that the limits on axial force were excluded). The Alliance stated that it believes that serious neck injuries in child restraints are most likely caused by excessive upper neck tension, and not by exceeding the proposed Nij criterion. The commenter thus suggested the agency should specify neck tension and compression limits, as follows, when testing with the CRABI 12-month-, the HIII three-year- and the HIII six-year-old dummies, respectively: 780, 1430 and 1890 N for peak tension; and 960, 1380 and 1820 N for peak compression. The Alliance further stated, however, that applying these limits while maintaining the current sled pulse is likely to make compliance with the requirements impossible or possible only with substantial cost increases. The commenter suggested that NHTSA modify the crash pulse ''to make it more representative of the current crash environment'' instead of eliminating neck tension. Ms. Bidez stated that ''Nij does not appear to predict cervical distraction injuries in children * * *.'' The commenter suggested that ''the duration of the axial distraction load as influenced by the presence or absence of adequate torso restraint appears to be a more valid predictor of (spinal cord injury without radiographic abnormality) SCIWORA injuries among children in the absence of head contact.''

JPMA, SafetyBeltSafe, UMTRI, TraumaLink and others did not support adopting the proposed Nij criterion at this time. SafetyBeltSafe believed that neither Nij as proposed nor Nij with a limit on tension should be used as a compliance criterion unless these are proven to be useful predictors of child neck injury. UMTRI believed that Nij should not be incorporated at this time because the relationship between the criterion and real-world injuries ''under the type of loading simulated by FMVSS 213 are [sic] not well established.'' The Insurance Institute for Highway Safety (IIHS) was concerned that studies of real-world crashes indicate that neck injuries due to inertial forces appear to be rare, yet, the commenter stated, it is not clear how child restraints could be better designed to lower neck injury measures. Ford stated that, in its sled tests of booster seats, ''Upper neck tensions and extension moments above the FMVSS 208 criteria were also routinely measured. Every test exceeded at least one of the Nij limits.''

TraumaLink was concerned about the state of knowledge about pediatric neck injury and suggested that not enough was known to proceed at this time. The commenter stated that data on the biomechanical response of the pediatric neck to trauma are severely limited and as a result, the neck of current child dummies may not be representative of the real child. The commenter also believed that efforts to include pediatric neck tolerance levels in regulatory efforts are scientifically premature. TraumaLink further stated:

> More research is needed to understand the movement of the child's neck in traumatic events and the likelihood for injury before enacting regulatory standards, but our results indicate that this work is of paramount importance. We believe that this research may reveal the importance of neck tension and suggest that exclusion of limits on peak tension in the test procedure is not appropriate. Therefore, we feel that the neck injury measures should be calculated but not used in the pass/fail criteria in the FMVSS 213 test to build the fund of knowledge needed to further refine the injury measure.

Similarly, commenters JPMA, SafetyBeltSafe, UMTRI and the IIHS suggested that more research is needed on neck injury among restrained children. Some of these suggested that NHTSA measure neck force and moment parameters during compliance tests to become familiar with the range of results.

Response: The agency has decided not to incorporate Nij into FMVSS No. 213 compliance tests at this time. Both NHTSA and JPMA testing has clearly demonstrated that existing child

restraints that have historically performed very well in the field cannot meet the proposed neck injury limits in the majority of test cases. Neither NHTSA nor child restraint manufacturers have identified any countermeasures that could be incorporated into existing designs that would promote compliance with the proposed requirements. Further, NHTSA agrees that there is a lack of injury data to demonstrate a need to incorporate neck injury criteria at this time. As discussed in the section regarding head injury criterion, the adoption of a 36 ms measurement window for HIC, as opposed to the 15 ms window that was presented in the NPRM, will also serve as surrogate of sorts for a neck injury criterion to ensure that children continue to be well protected.

NHTSA does not believe that enough is known regarding neck injury for children at this time. As the agency is not proposing the incorporation of Nij in this final rule, NHTSA likewise does not feel that it is appropriate at this time to specify neck tension limits or any other neck criterion. These are areas where the agency could perform additional research in the coming years, as warranted by a safety need and the demands on the agency's resources.

In accordance with the TREAD Act, NHTSA has considered adopting the neck injury criteria developed for FMVSS No. 208 into FMVSS No. 213. For the aforementioned reasons, we conclude that incorporating the criteria into Standard No. 213 is not warranted at this time.

f. Leadtime

The TREAD Act required NHTSA to complete this rulemaking by November 1, 2002. With that date in mind, the agency made the following conclusions about the dates on which compliance with the requirements will become mandatory.

a. NHTSA believes that manufacturers could begin certifying their child restraints based on testing done on the new seat assembly and pulse in approximately 2 years (*i.e.*, the effective date for the change will be August 1, 2005). NPRM proposed a 2-year leadtime, which Graco supported. While the agency does not expect the changes to the seat assembly to have a major effect on the results of compliance tests, restraint manufacturers will likely have to conduct testing to confirm compliance of their restraints. This will be a financial impact on the manufacturers that could be spread out over a 2-year time period. The agency does not anticipate any lives saved or injuries avoided from the amendment.

b. This final rule provides for about a 2-year effective date for the requirement to use the new CRABI and Hybrid III dummies in compliance tests (the effective date for the change will be August 1, 2005). The agency does not expect that the changes to the dummies will have a significant effect on the results of compliance tests, with the exception of some infant-only car seat/carriers. However, restraint manufacturers will likely have to conduct testing to confirm compliance of their restraints. This will be a financial impact on the manufacturers that could be spread out over a 2-year time period. Some infant-only restraints do not have backs high enough to support the CRABI 12-month-old dummy and will thus have to be redesigned.

The agency cannot estimate any lives saved or injuries avoided from the amendment. There could be safety benefits associated with keeping more infants rear-facing until they are at least 12-months old, which could result from the change to the CRABI and to having infant car seat/carriers be designed with higher back support structures.

c. As for using the weighted 6-year-old dummy to test restraints (typically booster seats) recommended for children with masses of over 22.7 kg (weights over 50 lb), this rule specifies a 2-year leadtime for the requirement (the effective date for the change will be August 1, 2005). We do not anticipate that manufacturers will have to redesign their booster seats or safety harnesses to certify compliance using the dummy. However, the rulemaking to incorporate the weighted 6-year-old dummy into part 572 is not complete, so the effective date is provided to account for the completion of that rulemaking. (The part 572 NPRM was published May 7, 2003; 68 FR 24417.)

d. Manufacturers are permitted the option of voluntarily using the new sled assembly and pulse and the new test dummies prior to the date (August 1, 2005) on which they would be required to do so. **Note,** however, that this final rule also specifies that a manufacturer's selection of a compliance option (*e.g.*, to use the new dummies prior to the mandatory compliance date) must be made prior to, or at the time of the compliance test and that the selection is irrevocable for that child restraint. This provision is needed for NHTSA to efficiently carry out its enforcement responsibilities. The agency wants to avoid the situation of a manufacturer confronted with an apparent noncompliance (based on a compliance test) with the option it has selected responding to that noncompliance by maintaining that its products comply with a different option for which the agency has not conducted a compliance test. To ensure that the agency will not be asked to conduct multiple compliance tests, first for one compliance option, then for another, this rule requires manufacturers to select the option by the time it certifies the child restraint system and prohibits them from thereafter selecting a different option for the restraint.

IX. Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has considered the impacts of this final rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. While the NPRM was reviewed under the Executive Order, this document was not reviewed because it is considerably narrower than the NPRM and has minimal costs. This document was treated as ''not significant'' under the Department of Transportation's regulatory policies and procedures.

The estimated costs for this final rule are discussed in NHTSA's final regulatory evaluation (FRE) for this final rule.[17] There is a one-time cost of $1.68 million for manufacturers to purchase the new test dummies and $1.39 to $3.44 million to certify existing child restraints to the new dummies and test requirements. The annual long-term costs are estimated to be $31,200 to test new models of booster seats (including built-in restraints) with a weighted 6-year-old dummy. We believe that use of the new dummies, in itself, would not necessitate redesign of child restraints. The new dummies perform similarly to the ones presently used in compliance testing.

The agency does not believe that updating the seat assembly and revising the crash pulse will affect dummy performance to an extent that benefits would accrue from such changes, nor will benefits be gained by the change to the dummies. There could be safety benefits associated with keeping more

[17] NHTSA's final regulatory evaluation (FRE) discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The FRE is available in the docket for this rule and may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, ''Viewing Docket Submissions.'' The FRE will be listed in the docket summary.

infants rear-facing until they are at least 12-months old, which could result from the change to the CRABI and to having infant car seat/carriers be designed with higher back support structures. However, the agency cannot quantify any lives saved or injuries avoided from the amendment.

b. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. NHTSA estimates there to be about 13 manufacturers of child restraints, four or five of which could be small businesses.

This rule will not generally increase the testing that NHTSA conducts of child restraints, except that booster seats, harnesses and other types of child restraints that could be recommended for children weighing over 50 lb will be tested with the weighted 6-year-old dummy, in addition to the dummies presently used to assess the performance of the restraint (generally these are the 3-year-old and the unweighted 6-year-old dummies). Thus, the certification responsibilities of manufacturers will not generally be affected. The agency does not believe this final rule will impose a significant economic impact on small entities, because these businesses currently must certify their products to the dynamic test of Standard No. 213. That is, the products of these manufacturers already are subject to dynamic testing using child test dummies. The effect of this final rule on most child restraints is to subject them to testing with new dummies in place of existing ones, and/or an additional dummy. Testing child restraints on a new seat assembly is not expected to significantly affect the performance of the restraints.

c. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with 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.

We have analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

d. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year ($100 million adjusted annually for inflation, with base year of 1995). (Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million.) This final rule will not result in costs of $109 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 of the UMRA.

e. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

f. Executive Order 12778 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

g. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act.

h. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. The agency searched for, but did not find, voluntary consensus standards for use at this time.

i. Viewing Docket Submissions

You may read the comments received by Docket Management at Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590 (telephone 202–366–9324). You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2002–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires, Incorporation by Reference.

PART 571—[AMENDED]

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.5 is amended by renumbering the current paragraph (b)(10) as (b)(11) and adding a new paragraph (b)(10), to read as follows:

§ 571.5 Matter incorporated by reference

* * * * *

(10) *Child Restraint Systems Seat Assembly Drawing Package.* Copies may be obtained by contacting: Leet-Melbrook, 18810 Woodfield Road, Gaithersburg, MD, 20879, telephone (301) 670–0090.

* * * * *

■ 3. Section 571.213 is amended by:

■ a. Revising the definition of ''child restraint system'' in S4;

■ b. Adding S5(d);

■ c. Revising the introductory text of S5.1.2;

■ d. Adding S5.1.2.1 and S5.1.2.2;

■ e. Revising the table to S5.2.1.1(a);

■ f. Revising the introductory text of S5.2.1.2,

■ g. Revising S5.2.3.1 and S5.9(a);

■ h. Revising S6.1.1(a)(1), S6.1.1(b)(1) and S6.1.1(d), and the introductory text of S6.2.3;

■ i. Revising S7, and S9.1(c);

■ j. Adding S9.1(d), S9.1(e) and S9.1(f);

■ k. Revising S9.3, S10.2.1(b)(2), S10.2.1(c)(1)(i) introductory text, and S10.2.1(c)(2);

■ l. Revising Figure 1A; and,

■ m. Adding Figure 2A.

The revised and added text and figures read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S4. *Definitions.*

Child restraint system means any device, except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 30 kilograms (kg) or less.

* * * * *

S5. *Requirements.*

* * * * *

(d) Each child restraint tested with a part 572 subpart N dummy that is weighted to weigh 28.2 kg need not meet S5.1.2 and S5.1.3.

* * * * *

S5.1.2 *Injury criteria.* When tested in accordance with S6.1 and with the test dummies specified in S7, each child restraint system manufactured before August 1, 2005, that, in accordance with S5.5.2, is recommended for use by children whose mass is more than 10 kg shall—

* * * * *

S5.1.2.1 When tested in accordance with S6.1 and with the test dummies specified in S7, each child restraint system manufactured on or after August 1, 2005 shall'

(a) Limit the resultant acceleration at the location of the accelerometer mounted in the test dummy head such that, for any two points in time, t1 and t2, during the event which are separated by not more than a 36 millisecond time interval and where t1 is less than t2, the maximum calculated head injury criterion (HIC36) shall not exceed 1,000, determined using the resultant head acceleration at the center of gravity of the dummy head, ar, expressed as a multiple of g (the acceleration of gravity), calculated using the expression:

$$HIC = \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a\,dt \right]^{2.5} (t_2 - t_1)$$

(b) The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S5.1.2.2 At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraint systems manufactured before August 1, 2005 may be tested to the requirements of S5 while using the test dummies specified in S7.1.2 of this standard according to the criteria for selecting test dummies specified in that paragraph. That paragraph specifies the dummies used to test child restraint systems manufactured on or after August 1, 2005. If a manufacturer selects the dummies specified in S7.1.2 to test its product, the injury criteria specified by S5.1.2.1 of this standard must be met. Child restraints manufactured on or after August 1, 2005 must be tested using the test dummies specified in S7.1.2.

* * * * *

S5.2 *Force distribution.*

* * * * *

S5.2.1.1 * * *

(a) * * *

TABLE TO S5.2.1.1(A)

Weight [1]	Height [2] (mm)
Not more than 18 kg	500
More than 18 kg	560

[1] When a child restraint system is recommended under S5.5 for use by children of the above weights.

[2] The height of the portion of the system seat back providing head restraint shall not be less than the above.

* * * * *

S5.2.1.2 The applicability of the requirements of S5.2.1.1 to a front-facing child restraint, and the conformance of any child restraint other than a car bed to those requirements, is determined using the largest of the test dummies specified in S7 for use in testing that restraint, provided that the 6-year-old dummy described in subpart I or subpart N of part 572 of this title is not used to determine the applicability of or compliance with S5.2.1.1. A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side

of the dummy's head is below a horizontal plane tangent to the top of—

* * * * *

S5.2.3.1 Each child restraint system other than a child harness, manufactured before August 1, 2005, that is recommended under S5.5.2 for a child whose mass is less than 10 kg and that is not tested with the Part 572 Subpart R dummy, shall comply with S5.2.3.

S5.9 Attachment to child restraint anchorage system.

(a) Each add-on child restraint anchorage system manufactured on or after September 1, 2002, other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 (§ 571.213) and depicted in Drawing Package SAS–100–1000 with Addendum A: Seat Base Weldment (consisting of drawings and a bill of materials), dated October 23, 1998, or in Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003,'' (consisting of drawings and a bill of materials) dated June 3, 2003 (incorporated by reference; *see* § 571.5). The components must be attached by use of a tool, such as a screwdriver. In the case of rear-facing child restraints with detachable bases, only the base is required to have the components.

* * * * *

S6.1.1 *Test conditions.*

(a) *Test devices.*

(1) Add-on child restraints.

(ii) The test device for add-on restraint systems manufactured before August 1, 2005 is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 with Addendum A: Seat Base Weldment (consisting of drawings and a bill of materials), dated October 23, 1998 (incorporated by reference in § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

(ii) The test device for add-on restraint systems manufactured on or after August 1, 2005 is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is depicted in Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003,'' (consisting of drawings and a bill of materials) dated June 3, 2003 (incorporated by reference; *see* § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

* * * * *

(b) * * *

(1) Test Configuration I, are at a velocity change of 48 km/h with the acceleration of the test platform entirely within the curve shown in Figure 2 (for child restraints manufactured before August 1, 2005) or in Figure 2A (for child restraints manufactured on or after August 1, 2005), or for the specific vehicle test with the deceleration produced in a 48 km/h frontal barrier crash.

* * * * *

(d)(1) When using the test dummies specified in 49 CFR Part 572, subparts C, I, J, or K, performance tests under S6.1 are conducted at any ambient temperature from 19° C to 26° C and at any relative humidity from 10 percent to 70 percent.

(2) When using the test dummies specified in 49 CFR Part 572, subparts N, P or R, performance tests under S6.1 are conducted at any ambient temperature from 20.6° C to 22.2° C and at any relative humidity from 10 percent to 70 percent.

* * * * *

S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply the following force: 50 N for a system tested with a newborn dummy; 90 N for a system tested with a 9-month-old dummy; 90 N for a system tested with a 12-month-old dummy; 200 N for a system tested with a 3-year-old dummy; or 270 N for a system tested with a 6-year-old dummy; or 350 N for a system tested with a weighted 6-year-old dummy. The force is applied in the manner illustrated in Figure 4 and as follows:

* * * * *

S7 *Test dummies.* (Subparts referenced in this section are of part 572 of this chapter.) S7.1 *Dummy selection.* Select any dummy specified in S7.1.1, S7.1.2 or S7.1.3, as appropriate, for testing systems for use by children of the height and mass for which the system is recommended in accordance with S5.5. A child restraint that meets the criteria in two or more of the following paragraphs in S7 may be tested with any of the test dummies specified in those paragraphs.

S7.1.1 Child restraints that are manufactured before August 1, 2005, are subject to the following provisions:

(a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass of not greater than 5 kg, or by children in a specified height range that includes any children whose height is not greater than 650 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 5 but not greater than 10 kg, or by children in a specified height range that includes any children whose height is greater than 650 mm but not greater than 850 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 9-month-old test dummy conforming to part 572 subpart J.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg but not greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2, provided, however, that the 9-month-old dummy is not used to test a booster seat.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a 6-year-old child dummy conforming to part 572 subpart I.

(e) A child restraint that is manufactured on or after August 1, 2005, and that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a part 572 subpart N dummy that is weighted to weigh 28.2 kg.

S7.1.2 Child restraints that are manufactured on or after August 1,

2005, are subject to the following provisions.

(a) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass of not greater than 5 kg, or by children in a specified height range that includes any children whose height is not greater than 650 mm, is tested with a newborn test dummy conforming to part 572 subpart K.

(b) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 5 but not greater than 10 kg, or by children in a specified height range that includes any children whose height is greater than 650 mm but not greater than 850 mm, is tested with a newborn test dummy conforming to part 572 subpart K, and a 12-month-old test dummy conforming to part 572 subpart R.

(c) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg but not greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 12-month-old test dummy conforming to part 572 subpart R, and a 3-year-old test dummy conforming to part 572 subpart P and S7.2, provided, however, that the 12-month-old dummy is not used to test a booster seat.

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a 6-year-old child dummy conforming to part 572 subpart N.

(e) A child restraint that is manufactured on or August 1, 2005, that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 22.7 kg or by children in a specified height range that includes any children whose height is greater than 1100 mm is tested with a part 572 subpart N dummy that is weighted to weigh 28.2 kg.

S7.1.3 *Voluntary use of alternative dummies.* At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), child restraint systems manufactured before August 1, 2005 may be tested to the requirements of S5 while using the test dummies specified in S7.1.2 according to the criteria for selecting test dummies specified in that paragraph. Child restraints manufactured on or after August 1, 2005, must be tested using the test dummies specified in S7.1.2.

* * * * *

S9.1 *Type of clothing.*

* * * * *

(c) *12-month-old dummy (49 CFR Part 572, Subpart R).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subparts R, is clothed in a cotton-polyester based tight fitting sweat shirt with long sleeves and ankle long pants whose combined weight is not more than 0.25 kg.

(d) *Hybrid II three-year-old and Hybrid II six-year-old dummies (49 CFR part 572, subparts C and I).* When used in testing under this standard, the dummies specified in 49 CFR part 572, subparts C and I, are clothed in thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 4 long-sleeved shirt (3-year-old dummy) or a size 5 long-sleeved shirt (6-year-old dummy) having a mass of 0.090 kg, a size 4 pair of long pants having a mass of 0.090 kg, and cut off just far enough above the knee to allow the knee target to be visible, and size 7M sneakers (3-year-old dummy) or size 12½M sneakers (6-year-old dummy) with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

(e) *Hybrid III 3-year-old dummy (49 CFR Part 572, Subpart P).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart P, is clothed in thermal knit, waffle-weave polyester and cotton underwear or equivalent, a size 4 long-sleeved shirt (3-year-old dummy) or a size 5 long-sleeved shirt (6-year-old dummy) having a mass of 0.090 kg, a size 4 pair of long pants having a mass of 0.090 kg, and cut off just far enough above the knee to allow the knee target to be visible, and size 7M sneakers with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

(f) *Hybrid III 6-year-old dummy (49 CFR Part 572, Subpart N) and Hybrid III weighted 6-year-old dummy.* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart N, weighted and unweighted, is clothed in a light-weight cotton stretch short-sleeve shirt and above-the-knee pants, and size 12½ M sneakers with rubber toe caps, uppers of dacron and cotton or nylon and a total mass of 0.453 kg.

* * * * *

S9.3 *Preparing dummies.* (Subparts referenced in this section are of Part 572 of this chapter.)

S9.3.1 When using the test dummies conforming to Part 572 Subpart C, I, J, or K, prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 19° C to 25.5° C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

S9.3.2 When using the test dummies conforming to Part 572 Subparts N (weighted and unweighted), P, or R, prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 20.6° C to 22.2° C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

* * * * *

S10.2.1 * * *

(b) * * *

(2) When testing rear-facing child restraint systems, place the newborn, 9-month-old or 12-month-old dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, tape it against the front of the seat back surface of the system by means of a single thickness of 6 mm-wide paper masking tape placed across the center of the dummy's face.

(c)(1)(i) When testing forward-facing child restraint systems, extend the arms of the 9-month-old or 12-month-old test dummy as far as possible in the upward vertical direction. Extend the legs of the 9-month-old or 12-month-old test dummy as far as possible in the forward horizontal direction, with the dummy

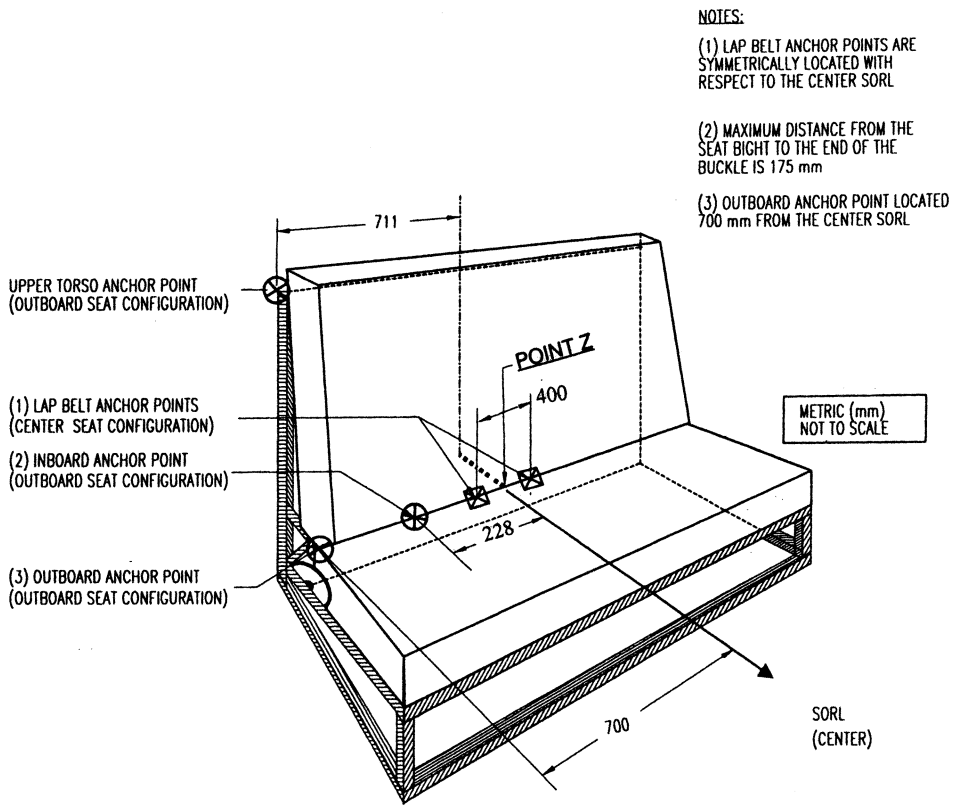
feet perpendicular to the centerline of the lower legs. Using a flat square surface with an area of 2,580 square mm, apply a force of 178 N, perpendicular to:

* * * * *

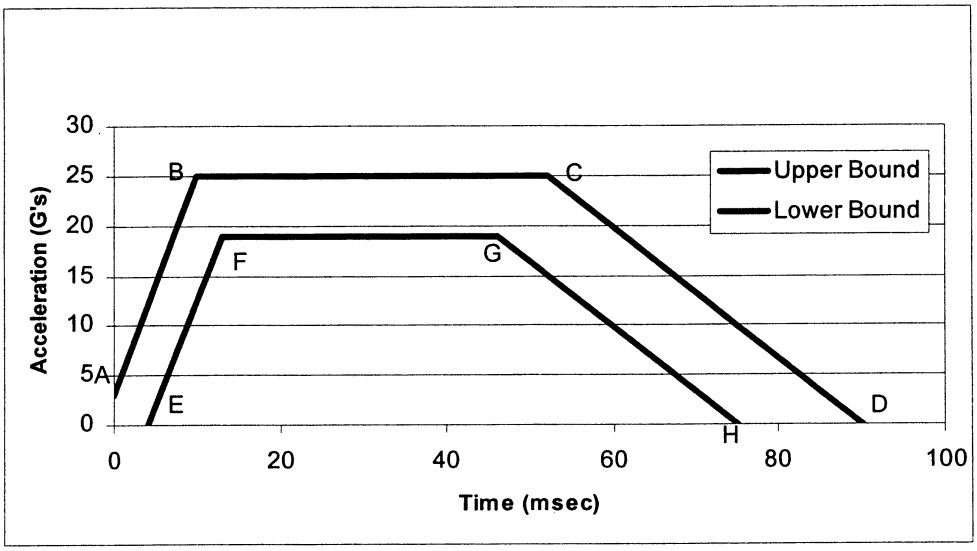
(2) When testing rear-facing child restraint systems, extend the dummy's arms vertically upwards and then rotate each arm downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

* * * * *

BILLING CODE 4910–59–P



SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINT LOCATIONS ON THE STANDARD SEAT ASSEMBLY
Figure 1A



Upper Bound			Lower Bound		
Point	**Time**	**Acceleration**	**Point**	**Time**	**Acceleration**
A	0	3	**E**	4	0
B	10	25	**F**	13	19
C	52	25	**G**	46	19
D	90	0	**H**	75	0

Figure 2A

Issued on: June 4, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–14425 Filed 6–23–03; 8:45 am]

BILLING CODE 4910–59–C

Federal Register

Tuesday,
June 24, 2003

Part III

Department of Housing and Urban Development

24 CFR Part 1000

Minimum Funding Under the Indian Housing Block Grant Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4825–I–01]

RIN 2577–AC43

Minimum Funding Under the Indian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises the current regulation to extend the period for which an Indian tribe, after its first year of funding, may receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) formula. The minimum funding provision in the regulation for returning tribes expired on September 30, 2002. This interim rule authorizes the extension of the minimum funding provision under the need component through Fiscal Year 2003 to avoid hardship to the affected tribes.

DATES: *Effective Date:* July 24, 2003.

Comment Due Date: August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–0001; telephone (202) 401–7914 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

HUD issued regulations at 24 CFR part 1000 to implement certain provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*). Specifically, pursuant to section 302 of NAHASDA (25 U.S.C. 4152), a formula was established to allocate funding for block grants among Indian tribes. In accordance with section 302, the formula was based on enumerated factors that reflected the need of the Indian tribes. The formula, as required by section 106 of NAHASDA, was developed through negotiated rulemaking. The final rule published on March 12, 1998 (63 FR 12349), provided, at 24 CFR 1000.328, for the minimum funding amount a tribe could receive under the need component of the formula. Section 1000.328 also provided that the minimum funding would not ''extend beyond Federal Fiscal Year 2002.'' A further provision in § 1000.328 specified that ''[T]he need for § 1000.328 will be reviewed in accordance with § 1000.306.''

As indicated above, § 1000.328 contains a sunset provision with respect to the minimum funding amount, that is, funding would not ''extend beyond Federal Fiscal Year 2002.'' Section 1000.306 (referenced in § 1000.328) provides for a review within five years of the promulgation of the rule to determine the need for the subsidy. It is clear, therefore, that the regulation when adopted intended that the IHBG formula would be reviewed before expiration of the minimum funding provision.

The negotiated rulemaking committee that will review the formula met on April 29, 2003. Resolving the issue of minimum funding by the negotiated rulemaking committee, however, may not be reached for several months. Consequently, because the minimum funding provision has expired and some time may elapse before the resolution of this issue by the negotiated rulemaking committee, if no action is taken now to extend the minimum funding provision, small tribes especially would be affected by the lapse in the funding provision.

This Interim Rule

This interim rule extends to Federal Fiscal Year 2003 the provision in § 1000.328 with respect to the minimum funding amount for returning tribes under the need component of the IHBG. The provision with respect to the minimum grant amount, *i.e.*, $50,000, a tribe may receive in its first year of funding remains unchanged in this rule. That provision, unlike the minimum funding amount for returning tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning tribes may receive.

The Department believes that enlarging the time to Federal Fiscal Year 2003 for returning tribes to receive the minimum grant amount would avoid unnecessary hardship to many tribes. Additionally, adoption of this rule allows more time for the negotiated rulemaking committee to meet to review the IHBG formula, including the issue of minimum funding. In the interim, the affected tribes will not suffer a financial loss because of the expiration of the provision in the current regulation.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.''

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The rule will allow a minimum amount of funding to continue to Indian tribes without a significant lapse in time during which the tribes would be foreclosed from receiving funds entirely or would receive a harmful reduction. The funding meets a critical need of many tribes, which will go unmet during the time that it otherwise would take to publish a rule for effect. The Department is still, however, soliciting public comment on this rule. Any comments received on this rule will be considered in adopting the final rule.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–

1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding of no significant impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although HUD has determined that this interim rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.328 to read as follows:

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. An Indian tribe's IHP shall contain a certification of the need for the $50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2003, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. The need for this section will be reviewed in accordance with § 1000.306.

Dated: May 30, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–15817 Filed 6–23–03; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Tuesday,
June 24, 2003

Part IV

Department of Housing and Urban Development

24 CFR Parts 902, 903 and 985
Deregulation for Small Public Housing Agencies; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 902, 903 and 985

[Docket No. FR–4753–F–02]

RIN 2577–AC34

Deregulation for Small Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule simplifies and streamlines HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (1937 Act). Consistent with HUD's basic regulatory responsibilities, the final rule further streamlines the PHA Annual Plan requirements for certain small PHAs and deregulates the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP). These changes will alleviate administrative burden and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. The final rule follows publication of an August 14, 2002, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–0001; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2002 (67 FR 53276), HUD published a proposed rule for public comment to simplify and streamline its regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). The proposed rule would further streamline the PHA Annual Plan requirements for certain small PHAs. The proposed rule also would deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with HUD's basic regulatory responsibilities. The proposed changes were designed to alleviate administrative burden and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. In addition to the changes that solely concern small PHAs, the proposed rule would also streamline HUD's review of the Annual Plans submitted by all PHAs (large and small). The preamble to the August 14, 2002, proposed rule provides additional details regarding the proposed deregulatory changes to HUD's regulations.

II. This Final Rule; Significant Changes to the August 14, 2002, Proposed Rule

This final rule follows publication of the August 14, 2002, proposed rule and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the August 14, 2002, proposed rule are as follows:

Additional streamlined Annual Plan components. The final rule provides that, in addition to information regarding capital improvements and the civil rights certification, the streamlined Annual Plans submitted by small PHAs must also address any PHA initiatives concerning site-based waiting lists (see § 903.7(b)(2)), any homeownership programs administered under section 8(y) of the 1937 Act (see § 903.7(k)(1), and any project-based voucher assistance (as provided in section II.D. of HUD's January 16, 2001, **Federal Register** notice regarding revisions to the PHA Project-Based Assistance Program (66 FR 3605 at 3608, middle column) and section III.C. of PIH Notice 2001–4 issued on January 19, 2001), if applicable. This information concerns discretionary PHA programs and policies that are required, either by regulation or statute, to be addressed in the PHA Plan, and for which no alternative method exists for obtaining prior HUD approval.

SEMAP exemption for non-audit PHAs. The proposed rule would have exempted small PHAs not subject to the requirements of the Single Audit Act from review under SEMAP. The final rule no longer exempts these small PHAs from SEMAP review. Small, non-audit PHAs will continue to be subject to SEMAP assessment and scoring, in accordance with the current SEMAP regulations.

Timing of biennial PHAS and SEMAP assessments. The final rule continues to provide for biennial PHAS and SEMAP assessments for small PHAs. To facilitate compliance with biennial assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under PHAS or SEMAP for that fiscal year.

III. Discussion of the Public Comments Received on the August 14, 2002, Proposed Rule

The public comment period on the August 14, 2002, proposed rule closed on September 13, 2002. HUD received twenty-one public comments on the proposed rule. Comments were received from PHAs, two of the major national organizations representing PHAs, and low-income housing advocates, and service providers. The majority of the commenters supported the rule and applauded HUD's efforts to provide regulatory relief for small PHAs. Several commenters, however, had reservations about certain elements of the rule and suggested changes for addressing these concerns. In many cases, the commenters recommended additional deregulatory changes not contained in the proposed rule.

The summary of comments that follows presents the major issues and questions raised by the public commenters on the August 14, 2002, proposed rule. The underlined headings present the issue or question and are followed by a brief description of the commenter's reasoning. The discussion of the public comments is organized as follows:

Section IV of this preamble discusses the general public comments on the proposed rule.

Section V of the preamble discusses the public comments regarding the proposed changes to the PHA Annual Plan requirements.

Section VI of the preamble discusses the public comments regarding the proposed changes to the PHAS.

Section VII of the preamble discusses the public comments regarding the proposed changes to SEMAP.

IV. Discussion of General Public Comments on the Proposed Rule

Comment: Support for proposed rule. The majority of the public commenters supported the proposed rule, applauding HUD's efforts to reduce the regulatory burden imposed on small PHAs. The commenters wrote that the proposed rule is a ''firm step in the right direction'' and ''offers a foundation to

provide necessary relief for small agencies,'' but ''still not pose a risk to the Department, residents or the taxpaying public.''

HUD response. HUD appreciates the support expressed by the commenters. The final rule will alleviate the administrative burden imposed on small PHAs, while still requiring basic accountability. These deregulatory changes will better enable small PHAs to focus on their primary mission of providing housing assistance to low-income families.

Comment: Deregulation of procurement and contracting procedures is also required. One commenter wrote that many small PHAs have difficulty complying with the multiple regulatory and paperwork requirements related to the procurement process and requested that HUD also undertake efforts to streamline and simplify these requirements. The commenter noted that many contractors in the locality of a small PHA are frequently small businesses themselves. The commenter wrote that these small businesses are also ill-equipped to deal with the procurement requirements and, therefore, not inclined to contract with small PHAs. In particular, the commenter wrote that two changes would make it more attractive for these small businesses to contract with small PHAs: (1) raising the dollar value threshold that triggers Davis-Bacon wage rates from $2,000 to $10,000; and (2) relaxing the Section 3 low-income hiring requirements. The commenter noted that these are both sensitive issues and would probably require statutory changes, but urged that HUD at least consider these points to alleviate procurement problems for small PHAs and lower the costs for businesses that wish to deal with them.

HUD response. As the commenter notes, the requested changes involve issues that will require further consideration and may require statutory changes in order to be implemented. Further, the procurement and contracting issues highlighted by the commenter are not regulatory in nature and, therefore, outside the scope of this rulemaking. Accordingly, the final rule does not adopt the recommendations made by the commenter.

Comment: HUD should exercise its statutory authority to provide small PHAs with greater flexibility in the management of the public housing Capital and Operating Funds. One commenter noted that section 9(g)(2) of the 1937 Act authorizes small PHAs to use amounts allocated from these funds for eligible capital and operating costs, ''regardless of the fund from which the amounts were allocated.'' The commenter wrote that, contrary to this statutory flexibility, the current HUD regulations require that small PHAs submit a Capital Fund plan for using allocations from the Capital Fund solely for capital activities. The commenter wrote that implementing section 9(g) would greatly benefit small PHAs by providing relief from the administrative burden of separately tracking allocations from the two public housing funds.

HUD response. HUD has not adopted the recommendations made by the commenter. The suggested regulatory changes were not included as part of the August 14, 2002, proposed rule. Since the changes suggested by the commenter are outside the scope of the proposed rule, HUD has not revised the rule in response to this comment.

Comment: High performing PHAs that do not participate in the Operating Fund should be granted the ability to use operating funds, operating reserves, and funds in excess of operating reserves for development and modernization. One commenter submitted this recommendation. The commenter wrote that these PHAs create their own excess revenues that, due to current HUD regulatory requirements, are locked into reserves. The commenter wrote that the suggested deregulatory changes would allow these PHAs to perform their housing operations, and provide additional improvements and additional affordable housing, without imposing any added burden on HUD. The commenter agrees with current regulations providing that any additional units or developments built with these funds are not eligible for future subsidy under the Operating Fund.

HUD response. HUD has not revised the rule in response to this comment. The amendment recommended by the commenter is outside the scope of this final rule, which is concerned with deregulatory changes designed to assist small PHAs.

Comment: HUD needs to provide small PHAs with additional assistance regarding the use and implementation of automated systems. One commenter recommended that HUD develop outreach and technical assistance specifically for small PHAs with regard to automated systems, and that HUD improve its communication overall with small PHAs regarding its plans for information technology. The commenter wrote that small PHAs do not possess the best hardware or software for connecting with HUD's systems. The commenter wrote that an early-warning system of several months for changes and new products, coupled with appropriate technical assistance, would help small PHAs prepare and assimilate to HUD's requirements.

HUD response. The proposed rule has not been revised to reflect the commenter's suggestion. The issue of technical assistance is not regulatory in nature and, therefore, outside the scope of this final rule. However, HUD currently provides, and will continue to provide, technical assistance to PHAs.

Comment: Further review and streamlining of data collection requirements is required. Two commenters wrote that HUD should reevaluate the type and amount of information that small PHAs are required to collect and report to HUD. The commenters wrote that HUD should then assess whether there are duplicative or excessively burdensome requirements that should be eliminated. For example, one of the commenters wrote that the reporting requirements under the PHAS Management Assessment Sub-System (MASS) and the Financial Assessment Sub-System (FASS) are administratively burdensome and need to be simplified. The commenter also wrote that several of the MASS reporting requirements, such as the dates units became vacant, are already available through the electronic PIH Information Center (PIC), and are, therefore, duplicative.

HUD response. HUD has not revised the proposed rule in response to this public comment. In response to the commenter's statement concerning duplicative data, HUD notes that MASS and PIC are concerned with different types of information. To use the example of vacancy rate data raised by the commenter, MASS collects and measures information regarding a PHA's performance in leasing vacant units, while PIC collects information on the number of vacant units a PHA has on an annual basis. However, HUD will review the PHAS data collection requirements and determine whether any can be streamlined or consolidated as part of future changes to the PHAS.

Comment: HUD should monitor PHAs to determine whether the deregulatory changes will have an impact on the number of units that a PHA operates. One commenter cautioned that the rule might have the unintended negative consequence of causing PHAs to reduce the availability of public housing or vouchers in their jurisdictions, in order to have the benefit of the regulatory relief.

HUD response. HUD does not anticipate that PHAs will violate their mission by intentionally reducing the number of families they serve in order to benefit from regulatory relief. As

stated above in this preamble, the goal of the final rule is to better enable small PHAs to focus on their core mission of providing housing assistance to poor families. HUD will monitor the impact of the final rule on PHAs and will revise the rule as necessary to ensure that the deregulatory changes do not conflict with the provision of decent, safe, and sanitary housing to families in need.

Comment: Streamlining changes should be extended to large PHAs and high-performing PHAs. One commenter suggested that the deregulatory benefits of the proposed rule should be provided to all PHAs, large and small alike. The commenter wrote that ''all PHAs, regardless of being small or large, would be better able to serve their clients without the administrative burdens defined in the proposed rule.'' Another commenter suggested that the streamlining changes should be extended to high-performing PHAs and to PHAs that do not participate in the Operating Fund program. The commenter wrote that these PHAs have displayed the ability to operate in an effective manner without extensive HUD regulation and monitoring. The commenter wrote that PHAs that function with positive revenues and do not take operating subsidy from HUD should be regulated differently than those receiving allocations from the Operating Fund.

HUD response. HUD has not revised the proposed rule to incorporate these suggestions. HUD is aware that large PHAs may also benefit from deregulation and will examine whether there are actions that can be taken to alleviate the regulatory burdens currently imposed on these PHAs.

Comment: Small PHAs with less than 250 units should be completely exempt from Annual Plan and assessment requirements. Two commenters made this suggestion. The commenters wrote that the time and energy spent to comply with these requirements impedes PHAs in providing services to their clients.

HUD response. HUD has not adopted the suggestion made by the commenter. While the provisions of the 1937 Act establishing the PHAS and the PHA Plan process provide HUD with the flexibility to establish streamlined requirements for small PHAs, they do not authorize the exemption of small PHAs from these requirements altogether.

V. Discussion of the Public Comments on the Proposed Changes to the PHA Annual Plan

A. Comments Regarding Definition of Small PHA

Comment: Applicability of streamlining changes should be clarified. Three commenters requested greater clarity on how the streamlining changes to the PHA Plan will apply to PHAs that manage both public housing and voucher programs. The commenters wrote that the proposed rule appears to streamline the Annual Plan process only for small PHAs with less than 250 public housing units (regardless of the number of voucher units they operate). However, the preamble discussion of the Annual Plan refers to Public and Indian Housing (PIH) Notice 2000–43 (issued on September 18, 2000), which defines small PHA to mean PHAs that operate 250 or fewer units of public housing and 250 or fewer voucher units. One of the commenters asked whether a PHA with less than 250 public housing units, but more than 250 voucher units, would qualify for the new streamlined Annual Plan procedures.

HUD response. The streamlined Annual Plan requirements apply to PHAs with less than 250 public housing units, irrespective of the number of voucher units administered by the PHA.

Comment: Suggested changes to definition of a small PHA. Three commenters suggested a revised definition of a small PHA. One commenter wrote that the final rule should define a small PHA as one with less than 100 public housing and voucher units combined. The commenter wrote that this definition is consistent with the definition contained in legislation pending in Congress. Another commenter wrote that the final rule should define a small PHA as one with fewer than 100 public housing units.

Yet another commenter wrote that the final rule should revise the definition of a small PHA to include only PHAs with less than 250 assisted units, including both public housing and voucher units. This commenter wrote that the proposed rule would create the anomalous result that a PHA with 250 public housing units, but potentially thousands of voucher units, would be considered ''small'' and have fewer planning and reporting requirements than a PHA with 260 public housing units and no voucher units at all. In addition, the commenter noted that the proposed rule would treat all PHAs that only administer vouchers the same, regardless of the size of their voucher programs. The commenter wrote that its suggested change would be the fairest and easiest to understand, and would treat similar PHAs in a similar manner.

Two other commenters, however, urged HUD to ensure that the final rule includes the same definition of small PHA as the proposed rule. One of the commenters endorsed the proposed definition, writing that it will enable PHAs to ''focus on the delivery of quality services and being responsive to their community, rather than worrying about filing reports with HUD.''

HUD response. After careful consideration of all of the suggestions offered by the commenters, HUD has decided not to revise the definition of a small PHA for purposes of the streamlined Annual Plan requirements. The final rule continues to define a small PHA as one with less than 250 public housing units. The number of voucher units administered by the PHA is not taken into consideration for purposes of the definition. This definition of a small PHA is consistent with section 5A(k) of the 1937 Act, which authorizes the establishment of streamlined Annual Plan requirements.

B. Comments Regarding Resident and Public Participation in the PHA Plan Process

Comment: Existing Resident Council should be allowed to substitute for the Resident Advisory Board. One commenter wrote that, given the difficulties faced by small PHAs in finding residents interested in serving on a Resident Advisory Board (RAB), another way to lessen the administrative burden on these small PHAs would be to allow an existing PHA Resident Council to substitute for the RAB.

HUD response. HUD has not revised the proposed rule in response to this comment. The PHA Plan regulations at § 903.13(b) already provide that if a jurisdiction-wide Resident Council that complies with HUD's tenant participation regulations in 24 CFR part 964 exists, the PHA shall appoint the Resident Council or the Council's representatives to the RAB. Further, as provided in PIH Notice 2000–36 (issued on August 21, 2000), if a PHA has made every effort, but has still been unsuccessful in finding residents to serve on a RAB, the PHA may appoint all its residents as the RAB. Should this occur, the PHA must provide adequate notice to the residents that all residents are appointed to the RAB. The PHA must ensure that a RAB consisting of all the residents is provided the same opportunity to comment on the PHA Plans, and the PHA must consider these resident comments when drafting the

final Plan in the same manner as for any other RAB. A copy of PIH Notice 2000–36 may be downloaded from HUD's Client Information and Policy Systems (HUDCLIPS) Web site at *http://www.hudclips.org.*

Comment: Small PHAs should not be required to use a resident survey. One commenter wrote that the resident survey is an unnecessary administrative requirement for small PHAs. The commenter wrote that the low response rate does not justify its use. Further, the high degree of interaction between the staff of a small PHA and the residents allows for a greater sense of resident satisfaction than any survey can provide.

HUD response. HUD has not adopted this comment. The information available to HUD indicates that small PHAs have a high response rate for their resident surveys. HUD agrees that residents of small PHAs are more easily able to interact with PHA staff than residents of larger PHAs. However, HUD also continues to believe that resident surveys provide a valuable additional resource for small PHAs in evaluating and responding to the needs of their residents.

Comment: Small PHAs should be required to make reasonable and appropriate efforts to ensure participation by the RAB and the public in the streamlined PHA Plan process. Three commenters made this suggestion. The commenters also suggested that the final rule require that a small PHA consider the comments provided by the RAB in the development of its Plan submission, and that the PHA provide documentation of having done so, as required under the current PHA Plan regulations.

HUD response. HUD has not revised the proposed rule in response to this comment. This final rule (as did the August 14, 2002, proposed rule) continues to ensure the participation of residents in the streamlined Annual Plan process. Specifically, the final rule requires that small PHAs submitting a streamlined Plan must provide the RAB with an opportunity to review and comment on proposed changes to the PHA's policies and programs. Further, the PHA is required to make the revised policies and programs available for public review and inspection, which will allow the public to confirm RAB participation in the streamlined Plan process.

Comment: PHAs should be required to make certain basic information available to the public, regardless of Plan streamlining. One commenter wrote that, irrespective of streamlining, PHAs should be required to annually provide certain basic information to the RAB, tenants, PHA board members, and the public. For public housing, this information would consist of the total number of units, the number of vacant units, the expected unit turnover rate during the upcoming year, and the average time it takes to rent a vacated unit. For vouchers, the information would consist of the total number of voucher units (adjusted baseline), the number and percentage of ''leased-up'' units, the expected turnover rate for the coming year, whether the PHA has received a letter from HUD warning that the PHA may lose voucher units if it does not increase its voucher utilization rate, and the voucher utilization rate that the PHA must achieve in order to qualify for additional vouchers. In addition to this information, the commenter suggested that PHAs also be required to make their PHAS and SEMAP scores available to the public (both the overall score and the scores on each indicator), along with an explanation of any plans on how the PHA intends to improve its scores.

HUD response. HUD has not adopted this comment. The information requested by the commenter is either available via the Internet or through direct request to the PHA or HUD. For example, members of the public may obtain information regarding PHA operations and resident characteristics via the Internet by accessing *http://www.hud.gov/offices/pih* and clicking on the ''Online Systems'' link. The reports entitled ''Housing Authority Profiles'' and ''Form 50058—Resident Characteristics Report'' provide information on, among other things, the total number of public and low-rent housing units, the number of occupied public housing units, and the number of housing choice vouchers operated by the PHA, as well as on the income, tenant payment amounts, family status, and age of residents. Further, each PHA is able to access its PHAS score through HUD's Internet homepage at *http://www.hud.gov/reac.* In the near future, HUD also intends to post PHA SEMAP scores, overall PHAS grades, and PHAS/SEMAP indicator grades and designations on its Web site. For other information regarding program utilization, interested persons can submit a written inquiry to their PHA or to HUD. Accordingly, since the requested information is already readily available to the public, there is no need to revise this rule to adopt the commenter's suggestion.

C. Comments Regarding Civil Rights Requirements

Comment: The civil rights certification should be submitted under penalty of perjury. One commenter suggested that the Annual Plan regulations be revised to provide that the Executive Director of the PHA sign the required civil rights certification under penalty of perjury. The commenter also recommended that designees of the PHA governing board and the Resident Advisory Board be required to also sign the certification.

HUD response. HUD has not adopted this comment. PHAs that fail to comply with nondiscrimination and fair housing requirements are already subject to sanction under the applicable civil rights statute and implementing HUD regulations.

Comment: A PHA should not be eligible to submit a streamlined Annual Plan if it does not meet the civil rights ''threshold requirements'' contained in HUD's Super Notice of Funding Availability (SuperNOFA). One commenter made this recommendation.

HUD response. HUD has not adopted the suggestion made by the commenter. The civil rights review conducted for a PHA submitting an Annual Plan should not be comparable to the civil rights threshold review conducted for SuperNOFA applicants. The SuperNOFA threshold criteria are applied to potential grantees applying for limited funding and are used to distinguish between more competitive and less competitive applicants. HUD has determined that only those SuperNOFA applicants who are in full compliance with certain civil rights requirements and do not have unresolved civil rights charges of various kinds should be eligible to compete for discretionary HUD funding. The submission of an Annual Plan, however, is a statutory requirement and does not affect the amount of HUD subsidy for which the PHA is eligible. All PHAs (large and small) are required to conduct their housing programs in accordance with applicable civil rights and nondiscrimination requirements and are required to certify that they will comply with these requirements.

Comment: The PHA Plan template should be revised to ask whether the PHA maintains data indicating the level of participation in the PHA's programs by members of different racial and ethnic minority groups. One commenter made this suggestion. The commenter suggested that the PHA be asked to also state whether the PHA makes this data available to program participants and other interested parties, maintains and makes available similar data regarding the level of participation by persons with disabilities, and whether the PHA has determined if there is a need for services in languages other than English.

HUD response. HUD already collects the data requested by the commenter through its form HUD–50058. Specifically, PHAs are required to provide information regarding the participation in their public housing and voucher programs by members of different racial and ethnic groups, as well as by persons with disabilities. This information is summarized in the Resident Characteristics Report Module of PIC, which HUD makes available to the public.

D. Other Comments Regarding Annual Plan

Comment: HUD should exempt small PHAs from the requirement of submitting their Annual Plans to HUD. One commenter suggested that a small PHA be permitted to simply certify that the public (including residents) has reviewed its Annual Plan and that the PHA provided adequate notice for public review and comment.

HUD response. HUD does not have the statutory authority to adopt the recommendation made by the commenter. The submission of the PHA Plans is a statutory requirement mandated by section 5A of the 1937 Act.

Comment: All PHAs that administer voucher programs should be required to report annually at least on the Annual Plan components included in the streamlined Plan for ''voucher only'' PHAs. One commenter wrote that small PHAs with 0–249 public housing units, but that also operate some vouchers, should be required to report on the PHA Plan components that HUD has considered to be important to voucher programs. The commenter wrote that it is particularly important that PHAs obligated to operate Family Self-Sufficiency programs for voucher families be held to the current reporting and planning requirements of § 903.7(l). The commenter wrote that if HUD exempts small PHAs from some of the reporting requirements that now apply to voucher-only PHAs, all of the components of the current streamlined voucher-only Plan should have to be included in the more complete 5-year Plan. Another commenter wrote that small PHAs that administer a voucher program should at least be required to submit on an annual basis the civil rights certification (required under § 903.7(o)) and the statement of the PHA's rent determination policy (required under § 903.7(d)).

HUD response. HUD has not revised the rule in response to this comment. Section 5A(k) of the 1937 Act authorizes HUD to establish streamlined PHA Plan requirements for PHAs with less than 250 public housing units, irrespective of the number of vouchers administered by the PHA. Accordingly, HUD does not believe that small PHAs that also administer tenant-based voucher assistance should be subject to more extensive reporting requirements than other small PHAs. The imposition of these additional requirements would be inconsistent with the statutory language of section 5A and frustrate the purpose of this rule to alleviate the administrative burden imposed on PHAs. The information supplied by small PHAs in their streamlined Annual and 5-Year Plans will supplement other data available to the public and to HUD regarding the PHA's performance, programs, and management.

Comment: Capital improvement data should not be required until actual funding amount is provided. One commenter made this suggestion. The commenter wrote that all PHAs, large and small, spend time and money to prepare an accurate five-year budget, which forms part of the PHA Plan submission. However, because these budgets may be due to HUD before the actual amount of capital funding is determined (depending on the start of the PHA's fiscal year), the PHA may be required to prepare a completely revised budget once the funding amount is known.

HUD response. The commenter's suggestion would require changes in the timing and processing of PHA Plan submissions that HUD is not prepared to make at this time. Accordingly, HUD has not revised the rule in response to this comment.

Comment: The PHA Plan requirements are already streamlined for small PHAs, and further streamlining is not necessary. One commenter made this recommendation.

HUD response. HUD does not agree with the commenter. The additional streamlining changes to the PHA Plan requirements made by this final rule will reduce administrative burden, eliminate duplicative reporting requirements, and better enable small PHAs to focus on their core mission of providing affordable housing to poor families. Therefore, HUD has not revised the rule in response to this comment.

Comment: Rather than merely providing a list of the Annual Plan policies it has revised, a small PHA submitting a streamlined Plan should be required to affirmatively state that it has not revised each relevant Plan component, or explain the changes it has made to any of the components, since submission of the PHA's last Plan. One commenter made this suggestion. The commenter wrote that such a change to the rule would ensure that policy changes that have been made are not inadvertently overlooked and not reported.

HUD response. HUD has not adopted the suggestion made by the commenter. The final rule contains sufficient safeguards to ensure that the PHA's governing board, HUD, residents, and the public are made aware of policy changes made by the PHA. Specifically, the PHA must provide the RAB with the opportunity to review and comment on the policy changes prior to implementation by the PHA. Further, the PHA must provide assurance that the changes were duly approved by the PHA board of directors (or similar governing body) and must make the revised policies available for public review and inspection.

Comment: A PHA should not be permitted to submit only a certification with respect to its policies on demolition and disposition that the PHA has revised since submission of its last Annual Plan. One of the commenters wrote that demolition and disposition are of such great public importance that they should be addressed on an annual basis by PHAs. The commenter suggested that, at a minimum, small PHAs should be required to certify, under penalty of perjury by the Executive Director and the Chairperson of the PHA Board, that the PHA will not dispose of or demolish any public housing units during the year. Another commenter wrote that the 1937 Act requires HUD to review PHA policies concerning demolition and disposition. The commenter wrote that for this HUD review to have any meaning, each small PHA should be required to affirmatively state that it has not changed its policies with respect to demolition and disposition. The commenters agreed that it is not enough for the PHA to be silent on this issue and for HUD, therefore, to extrapolate that there will be no changes to the policies and practices regarding demolition and disposition.

HUD response. HUD has not revised the proposed rule in response to this comment. HUD agrees that the demolition and disposition of public housing units is of great public interest. However, existing regulatory and statutory safeguards are sufficient to ensure that PHAs do not undertake such actions without prior HUD approval and appropriate consultations with affected residents and the community. In addition to the PHA Plan approval process, PHAs wishing to demolish or dispose of a development must submit a full demolition/disposition plan to HUD for approval, in accordance with

section 18 of the 1937 Act. Further, as noted above, the PHA must provide the RAB with the opportunity to review and comment on proposed changes to its policies concerning demolition and disposition. The PHA must also provide assurance that these changes were duly approved by the PHA board of directors (or similar governing body) and must make the revised policies available to the public upon request.

Comment: The final rule should provide additional guidance regarding what constitutes a challenge of a Plan element for purposes of triggering HUD review. One commenter made this suggestion. The commenter noted the language of the proposed rule providing that HUD would limit its review of Annual Plans to certain specified elements, and ''[a]s required by section 5A(i)(2) [of the 1937 Act,] . . . any other plan element that has been challenged'' (67 FR 53276, 523277, first column).

HUD response. HUD has not revised the rule in response to this comment. HUD may issue future additional guidance regarding challenges to the Annual Plans should it determine that such guidance is necessary.

Comment: HUD should not eliminate from its review PHA policies on rent computation and rent redeterminations. One commenter wrote that these policies should be reviewed annually to ensure compliance with the law. According to the commenter, evictions often result from improper PHA rent computations. The commenter wrote that HUD's continued review of these policies would help to ensure that PHAs comply with all applicable legal requirements.

HUD response. HUD has not revised the rule in response to this public comment. As with other PHA policies and programs, any changes to the rent computation and redetermination policies must be reviewed by the RAB, approved by the PHA governing board, and made available to the public for inspection. The existence of such changes must be listed in the PHA's streamlined Annual Plan and may be flagged by HUD for further monitoring and oversight, depending on the scope and nature of the changes. Inclusion of this information in the Annual Plan is, therefore, unlikely to provide much further assurance that proper rent calculations will be made.

E. Questions Regarding Implementation

Comment: How soon will HUD make available a streamlined electronic PHA Annual Plan? One commenter posed this question. The commenter also asked whether small PHAs would be expected to continue to use the current electronic Plan template, but simply enter ''not applicable'' for the reporting requirements eliminated by the regulatory changes.

HUD response. HUD is working on the necessary modifications to the electronic PHA Plan template. HUD is also considering further regulatory changes that may affect revisions to the template. When completed, the availability of the revised template will be announced through PIH Notice or other non-regulatory means.

Comment: How will staggered review of the 5-Year Plans be implemented? One commenter asked this question. Specifically, the commenter, a small PHA, asked when its 5-Year Plan would be due. The commenter wrote that it is currently preparing its fourth year Annual Plan for submission in 2003.

HUD response. This is an implementation issue that will be addressed by HUD in separate non-regulatory guidance. HUD will issue a PIH Notice describing how the staggered review provisions of the final rule will be implemented. The PIH Notice will provide PHAs with sufficient time to bring their policies and procedures governing Annual Plan submissions into compliance with the timelines for staggered HUD review.

VI. Discussion of Public Comments Regarding the Proposed Changes to the PHAS

Comment: Questions regarding effective date of deregulatory changes. Two commenters posed questions regarding the effective date of the deregulatory changes being made by HUD. One of the commenters asked if small PHAs would still be required to electronically submit the currently required PHAS reporting data for Fiscal Year 2002 should the final rule become effective by January 1, 2003.

HUD response. The deregulatory changes made by this final rule will become effective on July 24, 2003. The final rule continues to provide for biennial PHAS assessments for small PHAs. To facilitate compliance with biennial PHAS assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under PHAS for that fiscal year.

VII. Discussion of Public Comments Regarding the Proposed Changes to SEMAP

Comment: HUD should not exempt non-audit PHAs from SEMAP. One commenter objected to the proposed exemption from SEMAP assessment and scoring of small PHAs not subject to the requirements of the Single Audit Act. The commenter objected that the proposed rule would not provide any alternative oversight mechanism for assessing whether exempt PHAs are complying with federal law in administering their voucher programs. The commenter also objected to the number of PHAs that would be exempt from SEMAP, writing that approximately one-third of all PHAs may be exempt from management oversight as a result of the proposed rule. Further, the commenter wrote that if the dollar threshold for federal expenditures subject to the Single Audit Act is ever raised, even more PHAs might be exempt from SEMAP.

The commenter wrote that if HUD is concerned about the unfair impacts of using a fewer number of indicators to conduct SEMAP assessments for non-audit PHAs, there are two alternative solutions that are far less drastic than exempting these PHAs altogether from federal oversight. The first alternative is to allow these small PHAs to self-certify their compliance with the seven SEMAP indicators that are independently verified for other PHAs. The second alternative is to alter the percentage threshold for designation as troubled for these small PHAs. The commenter wrote that either of these alternatives, combined with HUD's other proposed changes to SEMAP, would reduce the burden on small PHAs and HUD staff, while retaining some federal oversight of program integrity and accountability, which is the purpose of SEMAP.

HUD response. Upon reconsideration, HUD agrees with the concerns raised by the commenter and has revised the proposed rule accordingly. Small, non-audit PHAs will continue to be subject to SEMAP assessment and scoring, in accordance with the current SEMAP regulations. Those regulations at § 985.3 provide that non-audit PHAs are exempt from assessment under seven of the SEMAP indicators (indicators (a) through (g)) for which the annual independent audit report is a HUD verification method. However, non-audit PHAs must still complete the SEMAP certification for these indicators, and performance under the indicators is subject to HUD confirmatory review.

Comment: HUD should consider making SEMAP scores advisory altogether. One commenter made this recommendation based on the perceived deficiencies with the PIC electronic reporting system. The commenter wrote that PIC does not accept records properly due to a system failure, that it is difficult to clearly identify on PIC which PHA records are being counted towards the PHA's final SEMAP score,

and that the final SEMAP indicators report is inaccurate.

HUD response. HUD has not revised the rule in response to this comment. Adoption of the commenter's suggestion would restrict HUD's ability to require that troubled PHAs undertake remedial action to correct identified management deficiencies, thereby negating one of the purposes of SEMAP assessment. The final rule continues to provide for biennial SEMAP assessments for small PHAs. To facilitate compliance with biennial SEMAP assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under SEMAP for that fiscal year.

Comment: HUD should increase the Housing Choice Voucher Program administrative fee or provide a base level of funding for small PHAs. One commenter made this recommendation. The commenter wrote that this change is necessary to allow small PHAs to hire and retain adequate qualified staff, and that this would allow small PHAs to submit the required SEMAP certification in a timely manner.

HUD response. The suggestion made by the commenter is outside the scope of this rulemaking, which does not concern funding issues. Accordingly, HUD has not revised the proposed rule in response to this comment.

Comment: Late submission of SEMAP certification should not result in an automatic designation of ''troubled.'' One commenter wrote that SEMAP does not presently establish penalties for late submittal of the required SEMAP certification, except to provide that the PHA will be designated as ''troubled.'' The commenter wrote that many small PHAs have difficulty complying with this deadline due to limited staffing, and that the automatic designation of troubled is unduly harsh. As an alternative, the commenter suggested that failure of a PHA to submit its SEMAP certification should result in a reduction of one point for each day the submittal is late.

HUD response. The change suggested by the commenter is outside the scope of the August 14, 2002, proposed rule and, therefore, HUD has not revised the rule in response to this comment.

VIII. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in the PHA Plan process (24 CFR part 903) and the PHAS (24 CFR part 902) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2535–0106, 2535–0107, 2507–0001, and 2577–0226, respectively. The regulatory amendments contained in §§ 902.9, 903.5, 903.11, and 903.12 of this final rule merely modify the scope and frequency of these currently approved information collection requirements to streamline and reduce the paperwork burden imposed on small PHAs. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled Regulatory Planning and Review). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the final rule is concerned with small PHAs with less than 250 public housing or leased housing units, the amendments made by the rule are deregulatory in nature. Specifically, the final rule eliminates, simplifies, and streamlines regulatory requirements for these small PHAs regarding the PHA Annual Plan process and assessments conducted under the PHAS and SEMAP. Further, the deregulatory amendments do not change the amount of funding available to these PHAs. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this final rule are 14.850 (for the Public Housing Program) and 14.871 (for the Housing Choice Voucher Program).

List of Subjects

24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Housing, Rent

subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR parts 902, 903 and 985 as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

■ 1. The authority citation for 24 CFR part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3525(d).

■ 2. Add § 902.9 to read as follows:

§ 902.9 Frequency of PHAS scoring for small PHAs.

REAC will assess and score the performance of a PHA with less than 250 public housing units every other PHA fiscal year, unless the small PHA:

(a) Elects to have its performance assessed on an annual basis; or

(b) Is designated as troubled, in accordance with § 902.67.

■ 3. Revise the introductory paragraph of paragraph § 902.33(a) to read as follows:

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

* * * * *

■ 4. Revise the first sentence of § 902.60(d) to read as follows:

§ 902.60 Data collection.

* * * * *

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year that is being assessed and scored, with no penalty applying, however, until the 16th day of the third month after the PHA fiscal year end. * * *

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 5. The authority citation for 24 CFR part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

■ 6. Revise § 903.5(a)(3) by adding a sentence at the end to read as follows:

§ 903.5 When must a PHA submit the plans to HUD?

(a) * * *

(3) * * * However, HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year rather than the fifth PHA fiscal year).

* * * * *

7. Revise § 903.11(c)(2) to read as follows:

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

* * * * *

(c) * * *

(2) For small PHAs that are not designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4) of this chapter) under section 6(j)(2) of the 1937 Act, the requirements for streamlined Annual Plans are described in § 903.12.

* * * * *

■ 8. Add § 903.12 to read as follows:

§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?

(a) *General.* PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled (see § 902.67(c) of this chapter) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j) of the 1937 Act may submit streamlined Annual Plans in accordance with this section.

(b) *Streamlined Annual Plan requirements for fiscal years in which its 5-Year Plan is also due.* For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (o) and (r). If the PHA wishes to use the project-based voucher program, the streamlined Annual Plan of the small PHA must also include a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan. The information required by § 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

(c) *Streamlined Annual Plan requirements for all other fiscal years.* For all other fiscal years, the streamlined Annual Plan must include:

(1) The information required by § 903.7(g) and (o) and, if applicable, § 903.7(b)(2) with respect to site-based waiting lists and § 903.7(k)(1)(i) with respect to homeownership programs under section 8(y) of the 1937 Act;

(2) If the PHA wishes to use the project-based voucher program, a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan; and

(3) A certification from the PHA that lists the policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k), and (r) that the PHA has revised since submission of its last Annual Plan and provides assurance by the PHA that:

(i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

(ii) The changes were duly approved by the PHA board of directors (or similar governing body); and

(iii) The revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

■ 9. Amend § 903.23 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively and adding new paragraph (b) to read as follows:

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

* * * * *

(b) *Scope of HUD review.* HUD's review of the Annual Plan (and any significant amendments or modifications to the plan) will be limited to the information required by § 903.7(b), (g), (h), and (o), and any other element of the PHA's Annual Plan that is challenged.

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

■ 10. The authority citation for 24 CFR part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 11. Revise § 985.105(a) to read as follows:

§ 985.105 HUD SEMAP responsibilities.

(a) *Frequency of SEMAP assessments.* (1) *Annual review.* Except as provided in paragraph (a)(2) of this section, HUD shall assess each PHA's performance under SEMAP annually and shall assign each PHA a SEMAP score and overall performance rating.

(2) *Biennial review for small PHAs.* HUD shall assess and score the performance of a PHA with less than

250 assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or

(ii) Is designated as troubled, in accordance with § 985.103.

* * * * *

■ 12. Revise § 985.107(a) to read as follows:

§ 985.107 Required actions for PHA with troubled performance rating.

(a) *On-site reviews.* (1) *Required reviews for troubled PHAs.* Except as provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

(2) *On-site reviews for small PHAs.* Notwithstanding paragraph (a)(1) of this section, HUD may elect not to conduct an on-site review of a troubled PHA, if:

(i) The PHA has less than 250 assisted units; and

(ii) HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies.

* * * * *

Dated: June 16, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–15815 Filed 6–23–03; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Tuesday,
June 24, 2003

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1030

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A35; DA–01–03]

Milk in the Upper Midwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on April 22, 2002 concerning pooling provisions of the Upper Midwest Federal milk order. It sets forth the decision of the Secretary and is subject to approval by producers. Specifically, this final decision would continue to prohibit the ability to simultaneously pool the same milk on the Upper Midwest Federal milk order and a State-operated milk order that has marketwide pooling. Additionally, the final decision would continue to limit the amount of milk that can be diverted to nonpool plants from pool distributing plants regulated under the order.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In June 2001, there were 12,748 producers pooled on, and 57 handlers regulated by the Upper Midwest order. Based on these criteria, the vast majority of the producers and handlers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Upper Midwest milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued June 5, 2001; published June 11, 2001 (66 FR 31185).

Tentative Final Decision: Issued February 8, 2002; published February 14, 2002 (67 FR 7040).

Interim Final Rule: Issued April 16, 2002; published April 22, 2002 (67 FR 19507).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Bloomington, Minnesota, on June 26–27, 2001, pursuant to a notice of hearing issued June 5, 2001, and published June 11, 2001 (66 FR 31185).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on February 8, 2002, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, and conclusions, rulings, and general findings of the tentative final decision are hereby approved and adopted and are set forth in full herein. The material issues on the record of hearing relate to:

1. Eliminating the simultaneous pooling of milk on the order and on a State-operated milk order that has marketwide pooling.
2. Allowing overbase milk from California to remain as eligible for pooling on the Upper Midwest Federal milk order.
3. Changing certain pooling provisions of the order regarding performance standards and diversion limits.
4. Changing the rate of partial payments to producers.
5. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

Preliminary Statement: Representatives from the California Department of Food and Agriculture, Dairy Marketing Branch, appeared at the hearing to provide information and to answer factual questions about the California State milk order program. Their appearance was at the request of USDA and their participation was provided as a courtesy to the public. The participation of the California officials was neither in support of nor in opposition to any of the proposals or issues that were heard. The California officials provided publications that detailed and explained the history and operations of the California milk order program, which included how milk is pooled and priced under that State order.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Simultaneous Pooling on a Federal and State-Operated Milk Order

A proposal, published in the hearing notice as Proposal 1, seeking to prevent the simultaneous pooling of milk on the Upper Midwest order and on a State-operated order with marketwide pooling, previously adopted on an interim basis, is proposed to be adopted on a permanent basis by this final decision. The practice of pooling milk on a Federal milk order and simultaneously pooling the same milk on a State-operated milk order has also come to be referred to as ''double dipping.'' Currently, the Upper Midwest order (Order 30) only provides prohibitions for the simultaneous pooling of the same milk on more than one Federal order. The record provides evidence and support for eliminating the ability of milk receiving the benefits of marketwide pooling through a State-operated milk order from simultaneously being pooled on Order 30.

Proposal 1, which sought to end the practice of double dipping, was proposed by Associated Milk Producers, Inc. *et.al.,* First District Association, and Lakeshore Federated Cooperative. These entities are dairy farmer cooperatives who supply a significant portion of the milk needs of the Upper Midwest marketing area. Other entities who joined in support of this proposal included: Foremost Farms USA; Mid-West Dairymen's Company; Bongards' Creameries; Cady Cheese; Cass-Clay Creamery; Ellsworth Cooperative Creamery; Family Dairies USA; Hastings Cooperative Creamery; Kraft Foods; Lynn Dairy; Manitowoc Milk Producers Cooperative; Milwaukee Cooperative Milk Producers; Muller Pinehurst Dairy; Mullins Cheese; Plainview Milk Products; Swiss Valley Farms; Valley Queen; Weyauwega Milk Products; White Clover Dairy, Inc.; and Hilmar Cheese of Hilmar, California.

A witness appearing on behalf of Associated Milk Producers, Inc. (AMPI), a supporter for the direct elimination of double-dipping, provided evidence and testimony that showed an increasing amount of California milk being pooled on Order 30. For the time period of October 2000 through May 2001, said the AMPI witness, there was an estimated $11.4 million negative effect on the pool, the equivalent of about a ten-cent ($0.10) reduction for each hundredweight of milk pooled on the order, as a result of pooling California milk on Order 30. According to the AMPI witness, this estimate was calculated by factoring the amount of milk from California that had been pooled on the Upper Midwest pool from the Order's actual Producer Price Differential (PPD) and applying the difference to the volume of milk pooled on the order.

The AMPI witness indicated the reform of the Federal milk marketing order system, implemented in January 2000, provided economic incentives for California milk to pool on Order 30. Specifically, said AMPI, the use of the higher of either the Class III or Class IV milk price in setting and moving Class I milk prices had yielded generally higher PPDs than existed in the Upper Midwest region prior to reform.

The AMPI witness surmised that Order 30's pooling of California milk, already pooled under the State-operated milk order of California, resulted in obvious inequities. The witness provided estimates of extent and impact on Upper Midwest dairy farmers and was of the opinion that this situation is severe enough to conclude that the Department should move directly to a final decision and avoid the more lengthy procedure of first issuing a recommended decision and then issuing a final decision.

These views and conclusions by the AMPI witness were supported in testimony by a witness appearing on behalf of Foremost Farms USA (Foremost). The Foremost witness testified that California milk pooled on Order 30 grew from about 10 million pounds to an average of 260 million pounds during the 3-month period of March through May 2001. According to calculations by Foremost, an estimated $6 million reduction in value for all milk pooled on the order occurred due to the pooling of California milk on Order 30. This revenue, said Foremost, comes from Upper Midwest dairy farmers who already have the lowest PPD in the Federal order system. Acknowledging that tighter pooling provisions may serve to eliminate the double dipping issue, Foremost was of the opinion that tightening pooling standards would not be the best way to accomplish that end.

A witness representing the Mid-West Dairymen's Company/Lakeshore Federated Dairy Cooperative (MDC), a dairy farmer cooperative located in northern Illinois and southern Wisconsin, testified in support of ending double dipping. This witness also spoke on behalf of Lakeshore Federated Dairy Cooperative, which represents over 4,000 dairy farmers located in Illinois, Iowa, and Wisconsin, and whose milk is pooled mostly on the Upper Midwest order and to a lesser extent on the Central and Mideast Federal milk orders. This witness indicated that Mid-West Dairymen's Company milk supplies the fluid market.

The MDC witness expressed concern about equity among producers and equity among handlers. In this regard, the witness maintained that this issue should be handled on an expedited basis. The MDC witness indicated that the Federal order program has a long history of promoting equity to both

producers and handlers. According to MDC, classified pricing contributes to equity among handlers, and the marketwide pooling of revenue generated from classified pricing provides for equity among producers. Specifically noted by the MDC witness was the purposeful elimination of individual handler pooling as milk marketing orders have consolidated into larger geographic areas.

Federal orders prohibit the pooling of the same milk of a producer on more than one Federal order, noted the MDC witness. Drawing money from one Federal order pool equitably shares revenue with those producers who supply the market, but drawing additional revenue from a second Federal order pool destroys the goal of equity among producers, a reason why the Federal order program prohibits double pooling, maintained MDC. As evidence of the impact of double dipping, MDC presented analysis showing that from January 2000 through April 2001, the Order 30 statistical uniform price per hundredweight averaged $10.8850, with a pool draw of 84.5 cents. Over the same 16-month period, said MDC, the California overbase price averaged about 21.5 cents higher than the blend price in Order 30. Not only is the California overbase price higher than in Order 30, noted MDC, but a California dairyman pooled on Order 30 will also draw the 84.5 cents by being able to simultaneously pool the same milk on Order 30.

The MDC witness testified that the California milk pooling plan places high importance on providing equity to producers and to handlers regulated by the state. The witness noted that establishing producer equity is a basic cornerstone of both the California and Federal milk order programs and that both accomplish this through marketwide pooling. If the Federal order program does not eliminate double dipping, there cannot be equity in prices received by producers in the Midwest or California, said the witness. Eliminating double dipping is desirable, said MDC, because it would not change the movement or the marketing of milk in any significant fashion. Milk would continue to be picked up at the farm and taken to the same plants as is currently done. According to the MDC witness, the only difference would be that no financial benefit would accrue to some producers who currently are able to double dip.

A dairy farmer from Minnesota, who is also the Chairman of the First District Association, President of the Nelson Creamery Association, and serves on the board of the Minnesota Milk Producer's Association (First District), testified in support of amending the Upper Midwest order to prohibit double dipping. The First District witness testified that it is unfair and wrong for dairy farmers pooled on Order 30 to have their milk price intentionally diluted as a result of California milk being pooled on the order. This witness estimated that the impact on the price received by dairy farmers in the Upper Midwest was about 15 to 17 cents per hundredweight. The First District witness also thought it important to indicate that California, with its State-wide milk regulatory system, had chosen not to be a part of the Federal milk order system.

A consultant witness with extensive experience in milk marketing regulations appeared on behalf of the supporters of Proposal 1. The witness provided detailed analysis regarding California milk movements and offered modified wording from that published in the hearing notice to end double dipping. This witness testified that Federal order provisions have always been tailored to prevent producers from pooling the same milk twice and enjoying the benefits of marketwide pooling from more than one order. To this end, according to the witness, a handler regulated on the Upper Midwest order should not be permitted to pool diverted milk if that milk is pooled and priced under either a Federal order or State order that provides for marketwide pooling.

Important to the new consolidated orders was the rejection of ''open pooling'' where milk from anywhere can be pooled on any marketing order, said the witness. The witness indicated that, in his opinion, the Department rejected open pooling because it did not provide an assurance of milk being made available for the fluid market. The witness also expressed the opinion that in markets with 20 percent or less milk used for fluid purposes, the notion of assuring an adequate supply of milk for fluid use becomes of questionable importance.

The witness testified that the statutory requirements for milk marketing orders specify the uniform treatment of producers and that uniform treatment is fundamentally the same as the equitable treatment of producers. The witness said that equitable treatment includes the equal sharing of the proceeds of the pool among all producers pooled on the order. However, the witness thought the notion of equitable treatment would not include producers who are sharing in the proceeds of other marketwide pools on the same milk. To this end, the witness maintained that pooling milk on both the California and Order 30 marketwide pools has resulted in the non-uniform distribution of proceeds to those producers who pool the same milk twice.

The witness also presented an analysis of data from the California Department of Food and Agriculture as well as relied on his knowledge of milk receipts at plants located in the western States of Oregon, Nevada, and Arizona. This analysis shows, said the witness, that almost all of the California milk pooled on the Upper Midwest order is not physically received within the Order 30 area, but is instead being received at California plants. Because the milk is received at California plants, it is pooled under the California marketwide system.

The Secretary of the Wisconsin Department of Agriculture, Trade, and Consumer Protection (WDATCP), accompanied by the Director of Value Added Agricultural Development of the WDATCP, testified in support of amending the Upper Midwest order to stop and prevent the double dipping of milk. The witnesses testified that increasing volumes of California milk was diluting the Class I utilization of the market and was also lowering the benefit to dairy farmers in Minnesota and Wisconsin who are pooled on Order 30.

These Wisconsin officials were of the opinion that artificial regulations, not market forces, allow California milk to simultaneously pool under California's State order program and Order 30. The witnesses found this to be patently unfair and noted that it only serves to lower the income to Wisconsin and Minnesota dairy farmers.

With regard to milk produced far from the order and pooled on Order 30, these witnesses expressed minimal concern about such milk being able to pool on the order provided the same milk could not and would not enjoy the benefit of two marketwide pools. While the impact of pooling distant milk that cannot double dip was acknowledged to have the same impact in lowering returns to Minnesota and Wisconsin dairy farmers, these witnesses took no issue with such distant milk being able to pool on the Upper Midwest order. They expressed the view that adopting more restrictive pooling standards for the purpose of preventing double dipping would interfere with and supplant market forces, such as the economics of transportation and distribution, with artificial regulations.

The President and Chief Executive Officer of Hilmar Cheese, located in Hilmar, California, also testified in favor of preventing California milk from being

pooled simultaneously on the California State order and the Upper Midwest order. Hilmar Cheese (Hilmar) produces a variety of cheeses which are marketed throughout the United States. The Hilmar witness testified that the California milk order system employs marketwide pooling.

The Hilmar witness stated that dairymen in California participate in a marketwide pool through a regulated milk pricing and pooling system that includes quota milk and that is operated by the State of California. The Hilmar witness confirmed the testimony of the California State government witnesses that all Grade A milk sold to a pool plant in California is associated with the pool and shares in the revenue generated from the use of milk in all classes of use. While all plants that manufacture milk into manufactured products such as cheese, frozen products, butter, and milk powder need not be pool plants, said the witness, most plants opt to participate in the pool so that their dairy farmers can reap the benefits of marketwide pooling. Manufacturing plants become pool plants, said Hilmar, by making some of their milk receipts available for Class I and Class II uses. Producers are paid for their milk on the basis of the milk components they ship and on the proportion of their milk sales that are covered by their quota holdings, said this witness. Fat and solids-not-fat, said Hilmar, have their own separate pools, and all producers share equally in the revenue generated by sales in the various milk classes. The total revenue from solids-not-fat in all classes, including revenue from the Class I fluid carrier value, is first adjusted to pay for transportation allowances and credits, and the remaining revenue is reduced by the total value of milk that is quota milk, said the witness. The quota milk pool is determined, said Hilmar, primarily by the pounds of solids-not-fat quota shipped multiplied by the quota premium of $0.195 per pound of solids-not-fat, which is also equal to $1.70 per hundredweight. After deducting the value of quota milk from the adjusted solids-not-fat revenue in the pool, the remaining revenue is divided by the total pounds of solids-not-fat to obtain the overbase (product in excess of quota) and the base solids-not-fat price, said the witness. The quota solids-not-fat price, said Hilmar, is equal to the overbase price plus $0.195 per pound. Under the California milk pooling system, testified Hilmar, all dairy farmers in the pool receive a portion of the revenue from milk sales in all milk classes, even though some dairy farmers will receive more as quota holders than those who hold less quota or no quota.

Because of this revenue sharing with all producers pooled under the California system, testified the Hilmar witness, the same dairy farmers should not also have the opportunity to pool the same milk on a Federal milk order. The witness found it odd that some producers would seek to capture pool revenue from other parts of the country and, at the same time, collect pool revenue from the California pool. Engaging in this sort of behavior, said the Hilmar witness, results in some undesirable consequences. The witness presented an analysis of a 17-month period (beginning with the implementation of order reform) that compared California milk prices with Federal order milk prices. This analysis revealed, according to the witness, that during the 17-month time period, the California overbase price averaged $11.21 per hundredweight (cwt), or $1.03 per cwt over the California Class 4–B (milk used in cheese) milk price. In the Upper Midwest order at Hennepin County (Minneapolis), noted the witness, milk value was only 73 cents higher than the order's Class III price at the reference test. The witness drew attention to the California overbase price averaging nearly 22 cents above the Upper Midwest statistical blend price despite the use of a quota system by California. California overbase dairy farmers, said the witness, already benefit significantly from its diverse product pool, and quota holders benefit in prices received by an additional $1.70 per cwt of milk.

There is an inequity to Upper Midwest producers, said Hilmar, when California overbase milk is pooled in both California and on the Upper Midwest order. Hilmar compared the producer price differential (PPD) for two different locations in the Upper Midwest marketing area (Chicago and Minneapolis) with a plant located in Glenn County, California (some 90 minutes north of Sacramento), where milk pooled under the Upper Midwest order is received. Hilmar testified that comparison of both the California overbase price and the Federal order PPD on the California milk that is pooled but not delivered to the Upper Midwest results in a 95-cent net higher price for the ''double-pooled'' California milk than from California milk not pooled on Order 30. According to the Hilmar witness, the double pooling only serves to augment California prices received by producers by drawing money from the Upper Midwest market, which already has milk prices lower than California's.

In light of their analysis, said Hilmar, double dipping is not the type of innovation that creates real value, and double dipping only moves money and distorts and discourages—and ultimately damages—the dairy industry. Hilmar chose not to engage in this behavior.

Additional support for eliminating double dipping was offered by a representative of Marigold Foods. Marigold Foods (Marigold) is a handler that has five regulated distributing plants located within the Upper Midwest order. Marigold is concerned, the witness indicated, about California milk being pooled on the order and reducing dollars paid to their local dairy farmers. According to the Marigold witness, California milk is not leaving the State of California and is not available to serve the fluid market in Order 30. Marigold indicated that they pay a $1.70 Class I differential on most of their milk purchases as well as over-order premiums to assure a supply of milk. However competitive the over-order premiums, Marigold indicated, they are not enough to assure themselves a supply of milk, noting that several of their suppliers have indicated a financial need to reduce shipments to Marigold's distributing plants. The witness attributed this situation to the ability of California milk to be pooled simultaneously on the California State order and on Order 30.

The Marigold witness testified that the Order 30 PPD was being reduced by 10 to 15 cents per cwt by the pooling of California milk. Marigold indicated that this money was funded by the market's Class I fluid milk processors and that these funds should be going to the dairy farmers who serve, or are available to serve as needed, the Order 30 fluid market. Marigold stressed that they already compete for a supply of milk with handlers who are regulated by another Federal order and with entities who have obtained funds from Order 30 from the pooling of California milk. Competing with California only intensifies an inequitable situation in Marigold's ability to compete for a supply of milk, said the witness.

Marigold stated that it is through a regulatory loophole that producer milk which is not available to serve the fluid market is permitted to receive money from the Order 30 pool when the same milk is already receiving a benefit from marketwide pooling in a State-operated order. The witness said that this situation is unjust and contrary to the purposes of the legislation that authorizes Federal milk marketing orders for bringing forth an adequate supply of milk to meet fluid needs.

Accordingly, the Marigold witness urged a prompt end of the ability of milk to double dip. By closing this regulatory loophole, said the Marigold witness, equity would be restored to Upper Midwest dairy farmers because the action would ensure that the money paid for milk by a regulated handler is shared among farmers who serve or are available to serve the fluid market.

Land O' Lakes is of the opinion that California does not have marketwide pooling. In support of their proposal, LOL pointed to other State dairy programs. They noted that the North Dakota State Order and the Pennsylvania Milk Marketing Board are currently considering the adoption of marketwide pooling. Other pricing programs, said LOL, such as the Northeast Compact and various over-order pricing agencies such as the Upper Midwest Marketing Agency would appear threatened if Proposal 1 were adopted. Other LOL views and proposals are discussed later in this decision.

Other opposition took the form of describing the general inadequacy of the Upper Midwest's pooling provisions and not the elimination of double dipping per se. While Dairy Farmers of America (DFA) testified that it opposes the ability of the same milk to simultaneously pool on two Federal milk orders, they did not oppose simultaneous pooling occurring on both a Federal and State-operated milk order such as California's. DFA indicated their ability to derive monetary benefits from both the Federal and California State milk order program has been of assistance in meeting their desired business objectives. DFA did submit their own proposal, published in the hearing notice as Proposal 4, which addressed broader pooling standards and concerns. DFA's proposal is discussed later in this decision.

For over 60 years, the Federal government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument that dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry.

The declaration of the AMAA is specific: ''the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.'' The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use.

In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (Section 608c(5)). As these features and constraints were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Although some hearing participants are of the opinion that marketwide pooling cannot solve disorderly marketing conditions, marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, speaks directly to the objective of the AMAA of ensuring uniform prices to producers supplying a market. The Federal order program purposefully moved away from individual handler pooling—a pooling method not uncommon when many milk marketing orders represented much smaller and much more local milk marketing areas. Through marketwide pooling, the equalization of prices paid to dairy farmers did have implications that affected the competitive relationship between processors along with uniform prices received by dairy farmers. Under individual handler pooling, the use-values of milk by a handler are averaged, or blended, and distributed separately to only those producers who had supplied the handler. With marketwide pooling, a handler regulated by an order with high Class I use was no longer able to exercise control over producers through the higher blend prices they were able to pay to producers who were, for example, more favorably located to the plant. Similarly, handlers with lower Class I use who were unable to pay as large a blend price found that marketwide pooling greatly improved their position in competing for a supply of milk. Prices paid by handlers were equalized across the entire market where handlers competed with each other for fluid sales and producers received a more uniform price for their milk.

Under the California State milk order program, similar objectives to that of the AMAA are clear. The record evidence indicates the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others, and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors received a much higher return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the State which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California

Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are, for all intents and purposes, identical to those of the Federal order program.

It is clear from this review of the Federal and the California State programs that the orderly marketing of milk is intended. Both provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, and as indicated in both briefs and in comments to the tentative final decision by the supporters for Proposal 1, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76, a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government with marketwide pooling.

Since the 1960's, the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. As noted above, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent ''double pooling'' became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously pool under a Federal order, has, for all intents and purposes, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Upper Midwest order needs amending to prevent the ability to pool milk on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York, as indicated in record testimony, operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because Federal orders have prohibited the same milk being pooled simultaneously, the Federal order program has had no reason again to address specifically double dipping or double pooling issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other states with marketwide pooling similarly do not double pool Federal order milk.

The record contains various opinions offered to explain why the practice of double dipping has occurred. Some offered that the Class I price structure changes implemented with Federal order reform resulted in a much higher PPD than existed under the old Upper Midwest and Chicago orders, providing a financial incentive. Some cited the change in how orders, including Order 30, zoned Class I prices and producer blend prices, suggesting if these zoning methods had been retained, the incentive for California milk to double dip on Order 30 may never have been an issue. Others noted that the Federal order location value of fluid milk in much of California is actually higher than in Order 30 and thus implied that tighter pooling provisions would most likely prevent California milk from being pooled on Order 30.

These are all interesting and valid observations that can lead to reasonably concluding that California milk would not seek to be pooled on Order 30 if not for the regulatory amendments. However, determining whether double dipping and its impacts are a result of the reformed Class I pricing structure does not lead to the conclusion that the price structure needs to be abandoned or severely altered. Rather, the issues here are whether the double dipping is a pooling problem that needs to be solved and whether the first proposal, with or without various modifications, is an effective solution to that problem. As noted above, the Department believes the pooling problem needs a pooling solution and a modification of the first proposal will effectively solve the problem. When equity is not provided for, the disorderly marketing conditions that have arisen in Order 30 become the same as those existing prior to Federal orders adopting provisions preventing the double pooling of milk.

California milk should only be eligible for pooling on Order 30 when it is not pooled on the California State order and it meets the Upper Midwest's pooling standards. A distinction needs to be made here between a producer and the milk of a producer. While much of the record testimony speaks of producers in the same vein as the milk of producers, it is necessary to clarify the obvious intent of all hearing participants that it is the milk of a producer that becomes pooled. It is clear from the context of the record testimony that this was intended.

The Federal milk order program, including Order 30, does not regulate producers. Rather, the program regulates handlers—those entities that are the first buyers of milk from producers and who incur the minimum payment obligations to producers. The Federal milk order program has no authority to regulate producers in their capacity as producers and cannot, for example, preclude a producer from being pooled anywhere, provided the milk of the producer meets the pooling standards of an order. For this reason, Federal milk orders, including Order 30, provide separate definitions for a producer in the *Producer* definition and for the milk of a producer in the *Producer milk* definition. This distinction is also important because the record evidence indicates California milk delivered directly from farms to plants located outside the State is not pooled on the State order. If a California producer delivers milk directly from the farm to pool plants regulated by the Upper Midwest order, and if that milk satisfies the pooling standards of the Upper Midwest order, that milk will be pooled on the Upper Midwest order.

The amendatory wording provided below, intended to eliminate double dipping, is at some variance from that proposed by the proponents of Proposal 1. The wording is different because the proposed modified wording of Proposal 1 would prevent double dipping on only diverted milk. The wording presented below would apply to any milk that participates in a State-operated milk order that provides for the marketwide pooling of milk and would not prohibit the ability of milk to participate in the Order 30 pool when not part of a State-operated milk order program providing for marketwide pooling.

2. California Overbase Milk and Pooling

A proposal, published in the hearing notice as Proposal 3, that sought to exclude California quota milk from being pooled on the Upper Midwest order is not adopted. As California has quota and overbase prices for milk, this

proposal would allow overbase milk from California to be eligible for pooling on Order 30.

Two proposals were offered by Land O'Lakes (LOL) that sought to permit the continued pooling of California milk on the Upper Midwest Order. Specifically, a proposal, published in the hearing notice as Proposal 2, would ''grandfather'' or exempt any California milk previously qualified for pooling on the Upper Midwest order from any amendment to the order which would thereafter exclude the pooling of such milk. This proposal was abandoned and is not discussed further in this decision. Another proposal, published in the hearing notice as Proposal 3, sought to exclude only California quota milk from being pooled on the Upper Midwest order. LOL is a cooperative association that has member producers whose milk is pooled under both the California State and Upper Midwest milk orders.

The witness testifying on behalf of LOL indicated that his organization supports the concept of efficient and orderly marketing and that the pooling of milk under an order should be based on performance. However, LOL indicated they were not in favor of restricting access to pooling to benefit a select few. LOL was of the opinion that fewer restrictions to pooling provides for market efficiencies, resulting in lower costs in serving the Class I needs of a market. The witness testified that LOL engages in double dipping. They indicated they engage in this practice to gain additional revenue to subsidize the losses incurred in servicing the fluid market in Order 30. They did not think marketing conditions warrant the Department of Agriculture treating the issue as an emergency.

The real issue facing the industry, said the LOL witness, is not California milk. The impact of pooling reserve supplies of milk is the same regardless of where the milk is located, said LOL. The witness argued that regardless of location, performance criteria must be met to provide for pooling eligibility, and therefore performance requirements rather than the artificial restrictions offered by Proposal 1 should be addressed. According to the witness, increasing shipping requirements would provide all the equity necessary as handlers shipping the minimum requirements will be forced to ship more milk or reduce the volume of milk pooled. LOL contends that producers have the right to pool milk based on performance, stressing that where the milk originates is irrelevant.

The LOL witness testified that the Class I pricing surface adopted as a result of Federal milk order reform has allowed for more liberalized pooling, thereby allowing access to higher levels of Class I revenues. The witness said that the net impact of Federal order reform has been positive for Upper Midwest dairy farmers. LOL did stress that access to additional Class I revenues should only be gained through performance, with market participants demonstrating a willingness to service the fluid needs of the market. According to the LOL witness, the utilization of milk for Class I fluid uses will tend to equilibrate as the needs of milk order areas beyond Order 30 are met based on performance. The witness said that the milk of producers should be allowed to move freely to meet the needs of the markets. In this regard, testified LOL, Upper Midwest entities must be willing to share the local proceeds from Class I use if they expect to share other markets' Class I proceeds or risk the loss of credibility when participating in deciding how milk orders should function.

According to the LOL witness, California does not have a marketwide pool. The witness noted that proceeds from fluid and soft dairy product use are paid to producers on the basis of quota, while non-quota milk is priced based on manufacturing values. The returns on quota equity, said LOL, are not distributed marketwide, noting that is has been only recently that the State of California instituted a value difference between quota and overbase milk. It is LOL's assertion that California's lack of marketwide pooling should not prohibit the ability of overbase milk to be pooled on Order 30.

The LOL proposal for allowing the pooling of overbase milk from California on Order 30 should not be adopted for the same reasons discussed in finding that Proposal 1 should be adopted immediately. Regardless of LOL opinions, the only reasonable conclusion that can be reached is that the California State order program does have marketwide pooling and that overbase milk received at a California plant is pooled on the State order and thereby shares in the benefits that accrue to producers under the State's marketwide pooling plan. This conclusion is substantiated by the testimony and participation by California State officials who operate the California State milk order program. Additionally, it seems contrary to the argument advanced by LOL that milk, regardless of where it is located, should be pooled on the basis of performance. California milk, other than a one-time shipment of a days' production of a producer, does not actually leave the State to consistently service the Order 30's Class I needs.

3. Performance Standards and Diversion Limits

A proposal offered by the Dairy Farmers of America (DFA) and the National Farmers Organization (NFO), published in the hearing notice as Proposal 4, addressed two separate issues: establishing performance standards for milk not traditionally associated with the Upper Midwest marketing area and the ability of pool distributing plants to divert an unlimited volume of milk to nonpool plants. The portion of the proposal seeking to establish diversion limits for pool distributing plants adopted on an interim basis is proposed to be adopted on a permanent basis in this final decision. The record does not support adoption of performance standards for milk based on the location of the producer or the milk of a producer. DFA is a member-owned cooperative of nearly 17,000 farms that produce and market milk across a significant portion of the United States. NFO is also a member-owned cooperative that produces and markets milk in Order 30, the State of California, and in other Federal milk orders.

Specifically, the Upper Midwest order is proposed to be amended to provide a diversion limit of 90 percent of producer receipts, including diversions, for pool distributing plants regulated under the order. In addition, the market administrator may adjust the diversion limit for pool distributing plants as marketing conditions warrant. Since supply plants pooling milk on the Upper Midwest order must ship 10 percent of receipts, including milk diverted to a pool distributing plant and certain other types of plants, there is no reason to impose a diversion limit on supply plants.

DFA testified that two primary benefits of the Federal order program include allowing producers to benefit from the orderly marketing of milk and to share in the marketwide distribution of revenue that results mostly from Class I milk sales. Orderly marketing influences milk to move to the highest value use when needed and for milk to clear the market when not used in Class I, said DFA. The witness insisted that the pooling of distant milk that does not show a service to the Class I market is inconsistent with Federal order policy, and such milk should not be eligible to share in the revenue that accrues from Class I use.

Pooling standards are universal in their intention, said DFA, requiring a measure of commitment to a market

marked by the ability and willingness to supply the Class I needs of that market. The witness also noted that pooling standards are individualized in their application and each market requires standards that work for the conditions that apply in that individual market. The witness quoted the Final Decision of milk order reform as follows: ''the pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers with a common marketing area to establish an association with the fluid market.''

The DFA witness drew from the history of milk marketing and commented on the problems of producers in their attempts at improving their economic circumstances. The witness identified shortcomings of the marketplace resulting in the difficulty of the milk supply being able to service the market's fluid needs in a manner that treats all producers equitably. The superior negotiating position of milk buyers and the variations in supply and demand were examples provided by the witness that have always ''tripped up'' dairy farmers in their marketing efforts. The witness added that farmers' attempts to improve on past efforts always seemed to fail when one or more suppliers would find a way to opt out of the added cost of serving the market to obtain a higher return for themselves. Marketwide pooling, said the DFA witness, eliminated the differences in prices paid to suppliers within the same market and, in turn, eliminated the non-productive competitive drive for higher returns since everyone faced the same terms of trade. The witness also noted the absence of any action recommending any change to these fundamental features of milk orders and noted that every Federal order shares returns to all producers marketwide.

The DFA witness was of the opinion that the new Class I pricing structure, together with the interface of the pricing surface and the pooling provisions found in each order, resulted in significant changes in the marketplace for milk. The link between performance and pooling, said the witness, was altered by these reforms and needs to be reviewed. DFA noted that many entities, including themselves, moved quickly to take advantage of these changes in order rules. The witness indicated that when in a competitive dairy economy, an entity must make pooling decisions that aim to increase returns, and competitors must attempt to do the same or risk their competitive position.

Pooling provisions of Order 30 work well for milk produced in the marketing area, said DFA, but do not work well for milk produced out of the area. Producers need only deliver a days' production a single time to a pool plant to have their milk eligible for pooling. This, combined with no loss of producer eligibility, provided a producer does not deliver to another Federal order plant, makes Order 30 an attractive market in which to pool milk, the witness stated.

The witness also relied on, and drew heavily from, the order reform Final Decision (64 FR 16026) which explained the marketing area boundaries of the consolidated Upper Midwest marketing area. Although the prior marketing order areas of the Chicago Regional and Upper Midwest orders did not have a considerable degree of overlapping fluid milk disposition, they did have an extensive overlapping procurement area, according to the witness. In light of this, the witness noted that the reform Final Decision could therefore find no justification on the basis of overlapping sales for increasing the consolidated marketing area beyond what was adopted. Rather, it is the extensive overlapping of a common procurement area, or milkshed, that is the most compelling reason for explaining the boundaries of the consolidated Upper Midwest marketing area.

The witness noted, too, that there was extensive discussion early in the construct of the 1996 Farm Bill concerning the merits of having a single national Federal order. Such an outcome would have resulted in a single blend price across the entire country. Noting that Congress debated several proposals and several economic studies over this issue, Congress rejected the idea of a single marketing order with the premise of one blend price. According to the witness, open pooling, which may result in blend prices being equalized across a large territory, is counter to the intent of Congress and the legislative directive of the Farm Bill—-to consolidate the orders into no fewer than 10 and not more than 14.

The DFA witness expressed alarm about milk from distant areas sharing in the blend price when that milk neither serves the fluid market nor balances the market when extra milk is needed by fluid processors. The witness referenced the rejection of the concept of open pooling discussed in the reform Final Decision and indicated that the decision rejected this because open pooling provides no reasonable assurance that milk will be made available to satisfy the fluid needs of the market. The witness also noted further that proposals to create and fund ''stand-by'' pools were also rejected.

DFA was of the opinion that open pooling is not appropriate for Order 30. Additionally, because of the distance and cost involved in moving milk to the market, milk needed in the fall months to accommodate increased demand because of increased school milk sales—or to provide a manufacturing outlet for milk produced in excess of fluid needs—would not be provided. It is irrelevant, said the witness, if the milk in question originates from California or any other place because such milk is no more burdensome than distant milk produced in Idaho or any other area. Under the open-pooling concept, said DFA, ''distant'' milk able to pool alongside ''local'' deliveries only serves to pyramid the volume pooled.

Prohibiting the simultaneous pooling of milk on a State-operated marketwide pool and the Order 30 pool (the focus of Proposal 1) said DFA, does not fully address the pooling problems at hand. The witness provided evidence and testimony that showed an increasing amount of ''distant'' milk pooled on the Upper Midwest order which, they maintain, is not serving the Class I needs of the market. The witness submitted analysis demonstrating that when milk is pooled without being available for Class I use—referred to as ''paper pooled''—on Order 30, returns to local producers who are consistently serving the fluid market are decreased.

Analysis was provided by DFA to illustrate how the pooling of milk on Order 30 has changed by examining the amount of milk pooled on the order and where the milk was produced. Using October 1997 as a reference time period prior to the consolidation of the orders, the witness provided data showing that 2.4 billion pounds of milk were associated with the Chicago Regional and Upper Midwest markets, but only 1.6 billion pounds of milk were pooled because of class-price relationships. The 2.4 billion pounds were produced by 27,250 producers located in 13 States from Tennessee to Minnesota and from New Mexico to Michigan. The witness noted that over 93 percent of the producer milk was produced within the consolidated marketing area, and 91.4 percent of the milk pooled was produced within the States of Wisconsin and Minnesota. In comparison, the witness provided data subsequent to the implementation of order reform: During June 2001, 12,748 producers pooled 1.5 billion pounds of milk on consolidated Order 30, with a total of 84 percent of the milk pooled produced within the consolidated marketing area and 79 percent

originating from Minnesota and Wisconsin. The other 16 percent of the total milk pooled on Order 30 during June 2001 was from California.

The witness testified that DFA considers it important to end the near open pooling of large volumes of milk that never serve the fluid market by modifying the order's pooling standards and establishing diversion limits for pool plants. To this end, DFA offered a proposal requiring milk produced outside the States that comprise the Upper Midwest milk marketing area be grouped into, and reported as, individual State ''units.'' Each unit would be subject to the same shipping standards for pool supply plants, said DFA.

Additionally, DFA was of the opinion that the order lacks the means to define the potential size of the pool. In this regard, DFA thought it appropriate to establish a limit on the amount of producer milk that a pool plant can divert. Because a producer need only deliver one day's production to an Order 30 pool plant to qualify and thereafter remain qualified to pool their milk on the order, DFA noted, a pool plant may subsequently divert all of the producer's milk to any plant without any of that milk being required to serve the fluid market. It is this shortcoming of the Order 30 producer milk definition that provides the means by which milk from distant areas is able to pool on Order 30, stated DFA.

Stressing the costs associated with transporting milk long distances, DFA was of the opinion that no economic basis exists for such milk to actually make itself available to consistently serve the fluid market. Therefore, the witness concluded, milk located far from the order should be required to meet performance standards equal to the performance standards for milk originating within the order. The ease of qualifying for pooling on Order 30, said DFA, has attracted and caused to be pooled increasing volumes of milk which have only served to lower the order's blend price. The economic burden of the cost of delivering milk to a pool plant becomes a one-time event, said DFA. Thereafter the milk need never perform in servicing the fluid market while reducing returns to producers whose milk is actually serving the market's Class I needs, the witness concluded.

DFA was of the opinion that their proposal provides reasonable standards for demonstrating consistent performance in supplying the fluid market by milk from outside the States comprising Order 30. This would result in milk from distant areas performing on the same basis as local milk, said the witness, while not discriminating, penalizing, or establishing any barriers to the pooling of milk from any area on Order 30. The witness also stated this feature of their proposal is an adequate and reasonable standard for requiring all market participants to share in the responsibility of serving the fluid market.

DFA presented an analysis of data depicting mileages from California and Idaho to locations in Order 30 with the performance standards they proposed. This was offered to illustrate DFA's opinion that distant milk would not rationally seek to be pooled on Order 30 when required to perform in the same way as milk from within the States that comprise the marketing area. The witness presented a review of the relationship between the order's blend price return versus the cost of delivering milk to the Order 30 market. The witness claimed that a daily delivery of milk from California would yield a net loss of $71,647, while a daily delivery from Idaho would yield a net loss of $48,576 in the month of January 2000. On the basis of such losses, DFA concluded that such distant milk would not seek to be pooled on Order 30.

DFA then presented a comparison of blend price return versus hauling costs with no performance standards. After absorbing the one-time hauling cost, both the California and Idaho milk supplies would have generated a positive return in the first month, growing to much higher returns in the second month, concluded the witness. Stressing that once the cost of the initial haul to qualify a producer for pooling is incurred, the subsequent pooling of milk would continually enjoy monetary benefits of being pooled on Order 30 without servicing the fluid market.

The DFA witness was of the opinion that their proposal has a measurable economic consequence that is in line with existing Federal milk order principles. If the economic returns are positive, said DFA, regulation would not prohibit pooling of distant milk and thus would provide a reasonable and defendable standard. The witness also said that each State unit must be treated individually and perform as a stand-alone entity under the same performance standards as currently applicable to supply plants. The witness stressed that this feature of their proposal provides a reasonable economic test of whether or not the market needs such milk for Class I use, and that economic returns must be earned in the marketplace and not by what is provided in pooling reports.

DFA was of the opinion that Order 30 should not be amended on an emergency basis prior to proceedings to consider amending other orders. The distant pooling of milk on Order 30 has been occurring for a long time—since January 2000, DFA stated. While the volume of distant milk pooled has increased, the negative impact on Order 30 blend prices has been reduced by the fact that Order 30 handlers have, in a not dissimilar fashion, pooled large volumes of milk on the Central and Mideast Federal milk orders, stated the witness, adding that California milk under their control was also being double pooled on the Central Order, Order 32. DFA was also of the opinion that if the Upper Midwest order is amended prior to consideration of appropriate amendments to the Central and Mideast orders, the pooling problems exhibited in the Upper Midwest would only ''migrate'' to these other marketing areas, resulting in even more disorderly marketing conditions.

A witness from the Northwest Milk Marketing Federation testified in support of DFA's proposals. The Northwest Milk Marketing Federation (NMMF) is a cooperative representing over 97 percent of dairy farmers whose milk is pooled on the Pacific Northwest Federal milk order.

The NMMF witness stated that Federal orders should have performance requirements which reasonably require all volumes of milk associated with the pool to proportionately service the fluid needs of the market. The witness was of the opinion that Idaho milk could pose a threat to producers in the Pacific Northwest if that milk can be pooled without meeting performance standards. The proposals offered by DFA adequately address such pooling issues and should be adopted in Order 30, said the witness. This would not only alleviate the issue of pooling distant milk, but would serve as a model for other Federal order hearings, namely the Pacific Northwest, where similar pooling problems exist, said the witness.

Opponents of DFA's proposals stressed that marketing conditions prevailing in the Upper Midwest require only the elimination of double dipping. Associated Milk Producers, Inc., First District Association, and Lakeshore Federated Dairy Cooperative expressed concern that DFA's proposal does not thoroughly address the need to end double dipping. They claimed that DFA's analysis of hauling costs only serves to exclude and target Idaho and California milk, and the value of such analysis of the Order 30 marketing conditions is misplaced. Similarly, they

noted that back-hauling, where a lower shipping rate can be obtained from a hauler who has the ability to back-haul or return with other freight instead of returning empty, leaves open the possibility that double pooled California milk could, in fact, have positive returns even if required to perform.

The opponents also claimed that other loopholes in DFA's proposal might allow California milk to continue double pooling on Order 30. Class I fluid milk products, including concentrated milk which California plants routinely process in meeting the fluid milk standards of California, could be pooled on Order 30, noted the witness. For example, concentrated milk could be delivered to Order 30 and subsequently returned to California for use in that State's Class 4a or 4b uses of milk, the witness added.

Opponents were also of the opinion that illegal trade barriers to the movement of milk in Federal orders would be erected if DFA's proposal were adopted. Idaho milk that performs in the same manner as Minnesota milk should be eligible for pooling in the same way the order now provides for Minnesota milk, provided the same milk is not pooled more than once, stated opponents. Similarly, said the opponents, eligibility requirements in other Federal milk orders should not exclude milk based on its point of origin. They also stressed that trying to differentiate ''historical'' milk supplies from other ''distant'' milk for pooling purposes would be difficult and an unreliable test for determining pooling eligibility. In this regard, they noted the pooling of milk received from Montana dairy farmers on the old Upper Midwest order, Order 68. Also, their review of historical data revealed that Missouri milk, for example, was long associated with the Texas order, but is now associated with the Southeast order. Changes in milk association can and do occur, opponents noted, and USDA should not create rigid rules as to when, where, and how such association may be permitted.

A witness representing Kraft Foods (Kraft) also testified in opposition to DFA's proposal, depicting it as being designed to create a severe, detrimental, and economic disincentive to pool milk on the Upper Midwest market because the performance standards called for would increase the transportation burden borne by distant producers. They were of the opinion that if this proposal were adopted, it would be nothing more than Government imposing a discriminatory transportation burden on distant producers and hindering a producer's free marketing choices.

Along the theme of transportation burdens, the Kraft witness also expressed the opinion that when producers incur disproportionately large transportation costs in supplying the fluid needs of the market, those producers would not be receiving uniform prices as required by law. Kraft was of the opinion that DFA's proposal is inconsistent with what the witness described as the AMAA's prohibition against consideration of a handler's use of milk as a condition of blend price receipt, adding also that it would create an unlawful and unauthorized exception in providing for uniform prices to producers. In effect, the Kraft witness explained that the DFA proposal would require selected groups of distant producers to incur transportation costs and other regulatory burdens not required of nearby producers under the order. Participation in the Upper Midwest market would only guarantee that distant farms would incur monetary losses, Kraft asserts. Additionally, said Kraft, DFA's proposal is unlawful because it conditions the pooling of distant producers upon utilization of their milk by a Class I distributing plant. In this regard, Kraft questioned the legality of requiring designated groups of dairy farmers to incur extraordinary expenses of shipping milk to Class I plants while other pooled farmers would be able to share in the Class I revenue without the same burden.

Finally, Kraft expressed the opinion that DFA's proposal would, if adopted, violate the law because it would be erecting illegal trade barriers by limiting the marketing of milk products in Order 30 depending on where the milk is located. The performance requirements placed on producers within Order 30, said Kraft, would be different from requirements for producers outside the order.

The part of the proposal by DFA limited to the establishment of diversion limits for pool distributing plants adopted on an interim basis is proposed to be adopted on a permanent basis in this final decision. The record does not support the adoption of performance standards for pooling milk on the order on the basis of its location. Establishing a limit on the amount of milk that a pool distributing plant may divert provides for a complete set of provisions for identifying which producers, which producer milk, and which handlers should share in the benefits that accrue from the marketwide pooling of milk on the Upper Midwest order. By setting a limit, the integrity of the performance standards of the order will be improved. If Order 30 does not limit the amount of milk that may be diverted by pool distributing plants, the pool is effectively undefined.

Diversions are needed to accommodate the movement of milk properly associated with the market when not needed for Class I use. A diversion limit will also establish the amount of producer milk that may be associated with the integral milk supply of a pool plant. As discussed earlier, the diversions being considered are shipments of milk directly from the farm to a nonpool plant pursuant to the Producer milk definition provided for in § 1030.13(d). The Upper Midwest order also allows for supply plants to deliver producer milk directly from the farm to another pool plant. However, since the intent of allowing a supply plant to ship producer milk directly from the farm to pool plants is to provide for more efficient movement of milk to pool distributing plants, milk shipments such as these are not included in the context of diversions as it relates to pool distributing plants and are, therefore, not limited in the quantity of milk a supply plant can direct ship to another pool plant.

The marketing conditions of the Upper Midwest order are unique, and this uniqueness should be reflected in the pooling standards of this order. As indicated in testimony and in briefs, the Upper Midwest market area has about a 20 percent use of milk for fluid use, with the remainder of the milk used in lower-valued classes. In light of this relatively low share of milk volume that is needed to supply the Class I needs of the market, this decision finds basic agreement with those who expressed opposition to DFA's proposal. Specifically, the marketing conditions of Order 30 do not exhibit the need to require additional performance standards for milk located outside of the marketing area or, as DFA describes, milk located outside of the States that currently comprise the consolidated Upper Midwest Milk Marketing Area. Accordingly, all pool plants, regardless of location, may become eligible to have the milk of producers pooled on Order 30 by meeting the performance standards specified for the various types of pool plants.

In several instances in testimony and in their post-hearing brief, DFA was of the opinion that ''distant'' milk does not have, and is not required to meet, the same performance standards as ''local'' milk. Any supply plant or a cooperative acting as a handler (as provided for and described in § 1000.9(c)) would need to ship ten (10) percent of their reported

producer receipts to pool distributing plants and certain other plants each month in order to qualify for being pooled. Therefore, producer milk included in reports by handlers described in § 1000.9(c) is included in determining whether or not the handler has qualified for being pooled on the order. No distinction is made by the order whether the milk pooled is ''local'' or ''distant.'' Thus all of the producer milk of the handler meets the same qualification standards regardless of the physical location of the producer or the milk of a producer.

DFA maintains that the proposal seeking only to eliminate double dipping (Proposal 1) does not go far enough in addressing their general concerns about performance standards for the system of orders, including the Upper Midwest order. The argument is troublesome. On one hand, DFA fundamentally asserts that performance standards are critical to the orderly marketing of milk and for determining those participants who are actually serving the fluid market, including the Order 30 market, stressing that only these participants should share in the benefits of the pool. At the same time, by their own testimony, DFA engages in the practice of double dipping, yet does not find double dipping disruptive to the orderly marketing of milk, even when such ''distant'' milk from California will rarely, if ever, again be shipped to pool plants, including distributing plants regulated by the order. This decision finds little logic in asking for a finding that no disorder results from allowing the simultaneous pooling of distant milk under California's State operated system and on Order 30, while at the same time asking for a finding that alternative performance standards are needed because of the disruptive effects to orderly marketing by pooling ''distant'' milk which does not consistently service the fluid market.

Pooling standards of milk orders, including Order 30, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market for sharing in the Class I proceeds. Pooling standards of the order are represented in the *Pool plant, Producer,* and the *Producer milk* definitions of the order. Taken as a whole, these definitions set forth the criteria for pooling. Pooling standards should continue to be performance based in Order 30. This is the only viable basis for determining those eligible to share in the pool. It is primarily the additional revenue from the Class I use of milk that adds additional revenue, and it is reasonable to expect that only those producers who consistently supply the market's fluid needs should be the ones to share in the distribution of pool proceeds.

With regard to the Final Decision for the reform of the Federal milk order program, it is true that the common procurement area was the most compelling basis in forming the consolidated Upper Midwest marketing area. However, it is not the procurement area that provides the additional revenue to the pool. Rather, the revenue is derived largely from the Class I use of milk by regulated handlers that have Class I sales in the marketing area. In this regard, it is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of the Upper Midwest order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy in the benefits of being pooled on Order 30. What is important and fundamental to all Federal orders, including Order 30, is the proper identification of producers, the milk of those producers, and handlers that should share in the market's pool proceeds.

Pooling of ''distant'' milk on the Upper Midwest order is neither new nor without precedent. The record testimony and evidence show milk pooled on Order 30 from nearly all corners of the country. However, this decision acknowledges that with the advent of the economic incentives for California milk to pool on Order 30 and, at the same time, enjoy the benefits of being pooled under California's State-operated milk pooling program, significantly more milk has come to be pooled that has no legitimate association with the integral milk supplies of Order 30 pool plants. The association at present has been made possible only through what some market participants describe as a regulatory loophole. The Upper Midwest order also provides a significant degree of pooling flexibility in the form of provisions allowing system and unit pooling. These provisions promote the orderly marketing of milk by minimizing the inefficient movement of milk for the sole purpose of meeting pooling standards.

This final decision finds basic agreement with some of the reasons offered in testimony and reiterated in briefs by opponents to DFA's proposal for organizing ''distant'' milk into State units. Requiring each State unit to ship at least 10 percent of the quantity of milk to a distributing plant regulated under the order effectively sets a performance standard different from the States that comprise Order 30. For example, of the milk received from Idaho, the DFA proposal would establish a standard for at least 10 percent of such milk to be shipped to a distributing plant in order for this milk to be producer milk pooled on the order. However, the same would not be required, for example, that 10 percent of all Wisconsin milk be shipped to distributing plants regulated under the order. It is the ability of milk from California to double dip that is the primary source of disorderly marketing conditions and for much more milk being pooled on Order 30. By eliminating the ability to double dip, it is reasonable to conclude that California milk is unlikely to be pooled on Order 30 for economic reasons illustrated in DFA's testimony and analysis contained in the record of this proceeding.

In their exceptions to the tentative final decision, DFA indicated disappointment that their proposal for establishing ''state units'' for milk pooling purposes was not adopted. Their exception asserted that without the adoption of this proposal milk located distant from the Upper Midwest marketing area would be able to be pooled without demonstrating any actual service to the market's fluid needs. Their exceptions further asserted that by not adopting the ''state units'' pooling provision, the tentative final decision failed to properly distinguish between ''in area'' and ''out of area'' milk for pooling purposes. In addition, their exception criticized the tentative decision because it does not recognize geographic location as a pertinent market factor in determining milk's qualification for pooling.

Notwithstanding DFA's exception, the record does not support adopting the ''state unit'' or location-based performance standards for pooling milk on the order for the reasons articulated in the tentative decision. The marketing conditions of the Upper Midwest marketing area do not exhibit the need for performance standards beyond those adopted in the tentative final decision. Accordingly, the exceptions submitted for adopting location-based performance standards are not persuasive and are therefore denied. The remaining issue is establishing appropriate diversion limits for all pool plants, including limits for distributing plants which limits currently do not exist in the Upper Midwest milk order provisions.

In addition to describing what a dairy farmer must do to become a producer under the order, the producer definition of the order provides that a full day's

production of the milk of a dairy farmer be physically received at a pool plant anytime during the first month a producer is associated with the market before the milk of a producer can be diverted. Provisions for diverting milk are a desirable and needed feature of an order because they facilitate the orderly and efficient disposition of the market's milk not used in Class I uses. When producer milk is not needed in the market for Class I use, a provision should be made for its movement to nonpool plants for manufacturing without loss of producer milk status. Provision should also be provided to minimize the inefficient movement of milk solely for pooling purposes. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

Diverted milk is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the pool plant causing the milk to be diverted. While diverted milk is not physically received at the pool plant that causes the milk to be diverted, such milk is nevertheless an integral part of the milk supply of the diverting pool plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not, and is not, properly associated with the diverting plant. Therefore, such milk should not be pooled.

Associating more milk than is actually part of the diverting plant's milk supply only serves to reduce the potential blend price paid to all dairy farmers whose milk is part of the pool. Allowing the pooling of milk far in excess of reasonable needs by the absence of diversion limits only provides for association with the market through ''paper-reporting'' and not by service to the Class I needs of the market. Without a diversion limit, the order's ability to provide for effective performance standards and orderly marketing is weakened.

On the basis of the record, the lack of a diversion limit for producer milk by distributing plants has opened the door for pooling much more milk, and, in theory, an infinite amount of milk on the market. In the specific marketing conditions of Order 30 evidenced by the record of this proceeding, the lack of a diversion limit for producer milk at distributing plants has caused milk to be pooled on the order that cannot be considered reasonably associated with the market.

The diversion limits for pool distributing plants offered by DFA are reasonable, and, in fact, are needed for upholding the purpose of providing for performance requirements in serving the Class I needs of the market. The order already effectively sets a diversion limit on pool supply plants by requiring these plants to ship 10 percent of their receipts, including diversions, to distributing plants regulated under the order. Therefore, an effective 90 percent limit on the amount of milk that could be diverted has already been established. Accordingly, the specific amendatory wording offered by DFA with respect to pool supply plants is not necessary. However, in the case of pool distributing plants, the order does need specific amendatory language to carry out this intent.

The amendatory language provided by DFA would add other order distributing plants to which cooperative handlers (as described in § 1000.9(c)) may divert milk. DFA claims that this matches the pool supply plant provisions for shipments to a distributing plant. It does do this. However, the amount of milk for which a pool supply plant is able to qualify for pooling is limited to the amount of shipments that are not made on the basis of agreed-upon Class II, Class III, and Class IV utilization. Milk that moves directly from the farm to another order pool distributing plant that is allocated to Class I becomes producer milk in the receiving order. This milk cannot be used for qualification, and the cooperative handler (as described in § 1000.9(c)) does not receive a qualification credit on direct shipped milk for Class I. A cooperative handler should not receive qualification for milk it ships to distributing plants if such milk is only to be used for pool qualification purposes and is delivered on an agreed upon Class II, Class III, or Class IV use of milk.

In exceptions to the tentative final decision, DFA asserted that the amendatory language they offered is integral to the establishment of appropriate diversion limits. Despite DFA's exception, the record strongly supported a 90 percent diversion limit without location differentiation for pool distributing plants. A 90 percent diversion limit adopted on an interim basis is serving as an effective means of identifying those producers, producer milk, and handlers who should benefit from marketwide pooling of milk on the Upper Midwest order. Adopting this standard on a permanent basis should continue its effectiveness.

4. Changing the Rate of Partial Payment

A proposal that would change the rate of the partial payment to producers and cooperatives for milk delivered during the first 15 days of the month to the lowest class price for the prior month times 103 percent, published in the hearing notice as Proposal 5, is not adopted. Therefore, the partial payment rate should remain as currently provided for by the order—at the lowest class price for the prior month.

Both DFA and NFO were among those who supported increasing the minimum partial or advance payment due producers and cooperatives from the prior month's lowest class price to 103 percent of the prior month's lowest class price. A representative of DFA testified that since the inception of Federal order reform, the percentage of a producer's pay price, as measured by dividing the statistical uniform price by the prior month's Class III price, has declined from 95 percent to 91 percent in comparison to this relationship prior to reform. The witness presented detailed analysis supporting their position that the relative reduction in the partial payment is a trend that is having a significant negative impact on dairy farmers' cash flow. According to analysis presented, DFA concluded that using 103 percent of the lowest class price of the previous month would return the balance between the partial payment and final payment to the same relative level as prior to Federal order reform. The change should not have significant impact on handlers required to make minimum payments, said the witness.

A witness for the Wisconsin Cheese Makers Association (WCMA) testified in opposition to changing the rate of the minimum partial payment provision. The witness testified that the WCMA represents 25 supply plants on the Upper Midwest order and that increasing the required minimum payment would be a burden to their member plants because they would need to borrow more money to meet the partial payment. Requiring a larger partial payment, testified the WCMA witness, would require increased borrowing and thus increased costs for the plants. The witness explained that since the partial payment is only a minimum payment, plants may pay more if they desire to, but not all plants pay more than the minimum partial payment. According to the witness, the reduction in the percent of the prior month's Class III price as a percent of the statistical uniform price is a short-term phenomena and that, over time, the relationship would move back to the higher percentage that occurred prior to Federal order reform.

It is difficult to determine whether or not there is a trend occurring, as DFA maintains, that would be corrected or mitigated by changing the rate of the

partial payment. Milk prices are an outcome of supply and demand conditions for milk. Prices tend to increase during tighter supplies and fall when milk is plentiful relative to demand. The up and down fluctuations of milk prices does not in itself indicate a trend, nor does it suggest a structural flaw in how the order prices milk since price fluctuations are a response to changes in the quantity of milk supplied and in the quantity of milk demanded.

Since Federal order reform, a 17-month period at the time of the hearing, the data shows two months in which the partial payment and the final payment were equal. However, if the partial payment rate were increased to 103 percent of the lowest class price, as proposed, four months (about 24 percent of the 17-month period) would have had a partial payment greater than or equal to the final payment.

The opponents of this proposal noted that Federal order reform and its newer pricing system have only been in place for a short time—17 months—suggesting that there has not been adequate time to observe various pricing scenarios that might occur over a more lengthy evaluation period. For example, there has been no significant price decline since the implementation of Federal order reform that would serve to aid in evaluating the effect of declining prices on the difference between the partial and final payment obligations. Class III and Class IV prices have been relatively stable during the beginning two thirds of the 17-month period, with prices beginning to show consistent increases during the last third of the period (December 2000 through May 2001).

The record testimony and post-hearing briefs supporting a change in the rate of partial payment assert that payments to producers and cooperatives, particularly by a cheese plant, are a ''pass through'' from the Federal order pool. A cheese plant/Class III handler receives the PPD from the pool (a ''pool draw'') in order to pay the order's minimum prices to producers. However, the majority of the payment to producers and cooperatives in the Upper Midwest is derived from cheese sales. The statistical uniform or blend price is received by producers in the form of a PPD calculated from the marketwide pooling of all milk on the order at classified prices. In a market like the Upper Midwest, which has a relatively low Class I differential ($1.80) and low Class I utilization (15–20 percent), the resulting PPD is less than in markets with higher Class I use and higher Class I differential values. Over the 17-month period of January 2000 through May 2001, the Upper Midwest PPD ranged from 43 cents to $1.43 and averaged $0.83 per cwt. Handlers did not know what the PPD would be until several days before payment was due to its dairy farmers. In light of this, it is not reasonable to establish a partial payment rate at a level that may increase the likelihood of requiring handlers to pay out part or all of the PPD prior to receiving payments from the producer settlement fund. This caution seems especially important in the Upper Midwest market where the PPD is relatively low and can be completely offset by the price difference between the prior month's lowest class price and the current month's Class III price.

There is no compelling reason for changing the payment rate of the partial payment to producers. In the data presented by proponents at the hearing, the partial payment required by the order exceeded the final payment during numerous months. In most cases, the months in which the partial payment exceeded the final payment occurred prior to the implementation of Federal order reform.

A DFA exception to the tentative final decision asserted that the current partial payment terms of Order 30 result in dairy farmers effectively financing the operations of handlers. The partial payment provision of the order is a minimum requirement placed on handlers to pay producers. The provision places no restrictions on producers or handlers to negotiate alternative payment arrangements that may call for more frequent payments. Accordingly, no persuasive argument is made for a higher rate frequency of payment for milk beyond that already provided under the terms of the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this final decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The Order amending the order regulating the handling of milk in the Upper Midwest marketing area was approved by producers and published in the **Federal Register** on April 22, 2002 (67 FR 19507) as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

March 2003 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on April 22, 2002 (67 FR 19507), regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

Dated: June 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on April 16, 2002, and published in the **Federal Register** on April 22, 2002 (67 FR 19507), are adopted without change and shall be and are the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86 all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR part 1030) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month ( ), _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name) _____
(Title) _____
(Address) _____
(Seal)
Attest

[FR Doc. 03–15831 Filed 6–23–03; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Tuesday,
June 24, 2003

Part VI

The President

Executive Order 13308—Further Amendment to Executive Order 12580, as Amended, Superfund Implementation

Federal Register
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Tuesday, June 24, 2003

Presidential Documents

Title 3—

The President

Executive Order 13308 of June 20, 2003

Further Amendment to Executive Order 12580, as Amended, Superfund Implementation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (the ''Act''), and section 301 of title 3, United States Code, Executive Order 12580 of January 23, 1987, is hereby amended as follows:

Section 1. In Section 1(b)(1), the phrase ''Sections 105(a), (b), (c), and (g)'' is revised to read ''Sections 105(a), (b), (c), (g) and (h)''.

Sec. 2. In Section 5, a new subsection (f) and a new subsection (g) are added to read as follows:

''(f) The functions vested in the President by Section 107(o) and (p) of the Act are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody, or control of those departments and agencies.

(g) Subject to subsection (f) of this Section, the functions vested in the President by Section 107(o) and (p) of the Act are delegated to the Administrator except that, with respect to determinations regarding natural resource restoration, the Administrator shall make such determinations in consultation with the appropriate Federal natural resource trustee.''

Sec. 3. New Sections 12, 13, and 14 are added to read as follows:

''**Sec. 12.** *Brownfields.*

(a) The functions vested in the President by Sections 101(39) and (41) and 104(k) of the Act are delegated to the Administrator.

(b) The functions vested in the President by Section 128(b)(1)(B)(ii) of the Act are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to property subject to their jurisdiction, custody, or control.

(c) The functions vested in the President by Section 128(b)(1)(E) of the Act are delegated to the heads of Executive departments and agencies in cases where they have acted under subsection (b) of this Section.

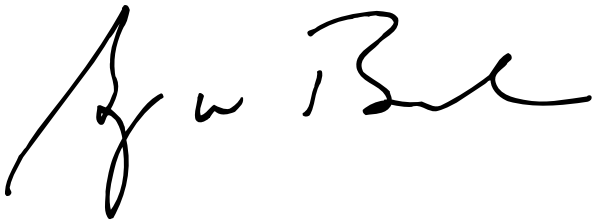
(d) Subject to subsections (b) and (c) of this Section, the functions vested in the President by Section 128 of the Act are delegated to the Administrator.

''**Sec. 13.** *Preservation of Authorities.*

Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

''**Sec. 14.** *General Provision.*

This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.''



THE WHITE HOUSE,
June 20, 2003.

[FR Doc. 03–16102
Filed 6–23–03; 8:45 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 192/P.L. 108–31

To amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts, and for other purposes. (June 17, 2003; 117 Stat. 775)

S. 273/P.L. 108–32

Grand Teton National Park Land Exchange Act (June 17, 2003; 117 Stat. 779)

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