AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

9–30–03 Tuesday
Vol. 68 No. 189 Sept. 30, 2003

Pages 56137–56520

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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

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

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

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

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

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov.*

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

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

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

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

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

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

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

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 56295

Agriculture Department
See Foreign Agricultural Service
See Forest Service
See Rural Housing Service
RULES
Biodiesel Fuel Education Program; administrative provisions, 56137–56143

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56319–56321
Organization, functions, and authority delegations:
Subordinate ATF officials, 56321–56322

Centers for Disease Control and Prevention
NOTICES
Meetings:
Breast and Cervical Cancer Early Detection and Control Advisory Committee, 56295
Injury Prevention and Control Advisory Committee, 56295–56296
Reports and guidance documents; availability, etc.:
Human exposure to environmental chemicals, national report; candidate chemicals for possible inclusion in future releases; list of priority groups, 56296–56298

Centers for Medicare & Medicaid Services
NOTICES
Medicare:
Home health agencies; prospective payment system (2004 FY); update; correction, 56383
Hospice wage index update (2004 FY), 56477–56508

Children and Families Administration
RULES
Grants:
Community Services Block Grant Act programs; Charitable Choice provisions, 56465–56470
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Temporary Assistance for Needy Families Program—Charitable Choice provisions, 56448–56466

Coast Guard
RULES
Drawbridge operations:
Washington, 56173–56174

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Learn and Serve America Programs; technical assistance teleconferences, 56269–56270

Customs and Border Protection Bureau
RULES
Articles conditionally free, subject to reduced rate, etc.:
Caribbean Basin Economic Recovery Act; brassieres; preferential treatment, 56166–56173
NOTICES
Meetings:
Airport and Seaport User Fee Advisory Committee, 56301

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
2003 aggregate, 56322–56324

Education Department
PROPOSED RULES
Grants:
Faith-based organizations; eligibility to participate in direct grant, State-administered, and other such programs, 56417–56423
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56270–56271
Grants and cooperative agreements; availability, etc.:
Postsecondary Education Improvement Fund, 56271–56272
Special education and rehabilitative services—
Alternative Financing Mechanism Program and Access to Telework Fund Program, 56274–56277
Assistive Technology Act Technical Assistance Program, 56272–56274
Rehabilitative Research and Training Centers Program, 56277–56278
Special demonstration programs; model demonstration projects; mentoring for transition-age youth and young adults with disabilities, 56471–56475

Employment and Training Administration
PROPOSED RULES
Workforce Investment Act; nondiscrimination and equal opportunity provisions:
Religious activities; Federal financial assistance, 56385–56390
NOTICES
Adjustment assistance:
A.T. Cross Co., 56325
ACS Industries, Inc., 56325
Alaska Commercial Fisheries Entry Commission, 56325–56326
Aran Mold & Die Co., Inc., 56326
AT&T Wireless Services, Inc., 56326
Bend Tec, Inc., 56326
Cherokee Hosiery Mills, Inc., 56327
Cooper-Atkins Corp., 56327
Elastex, 56327

Federated Merchandising Group, 56327
Fishing Vessels—
SEVEN SONS, 56328
THE VALLI, 56328
TOWEGO, 56328
Goodyear Tire & Rubber Co., 56328
Guardian Industries Corp., 56328
Heraeus Electro-Nite Co., 56329
Hexcel Corp., 56329
Hilti North America, 56329
Implementation Strategies, Inc., 56329
Itronix Corp., 56330
Johnco Hosiery, Inc., 56330
Kelly Services, Inc., 56330
North American Battery Co., 56330
Progressive Processing, 56330–56331
Renfro Corp., 56331
Springs Industries, Inc., 56331
Tetonics, Inc., 56331
V.I. Prewett & Son, Inc., 56331
Watlow Controls, 56331
Wee Socks, 56331

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
University Reactor Instrumentation Program, 56278

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 56174–56176, 56180–56184
Texas, 56176–56180
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Vinclozolin, 56184–56189
Zinc phosphide, 56189–56195
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 56195–56196
PROPOSED RULES
Air pollution control:
Aircraft and aircraft engines; emission standards and test procedures, 56226–56251
State operating permit programs—
Ohio, 56220–56225
Air quality implementation plans; approval and promulgation; various States:
California, 56219
Texas, 56220
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56288–56291
Grants and cooperative agreements; availability, etc.:
National Brownfields Job Training Program, 56291–56292
Meetings:
National Drinking Water Advisory Council, 56292

Equal Employment Opportunity Commission
NOTICES
Meetings:
Revised Employer Information Report; public hearing, 56292–56293

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Air carrier certification and operations:
Large cargo airplanes; flightdeck security
Correction, 56166
Airworthiness directives:
Burkhart Grob Luft-Und Raumfahrt GmbH & Co. LG, 56152–56154
Dornier, 56156–56157
Grob-Werke, 56154–56156
Pratt & Whitney, 56143–56152
Standard instrument approach procedures, 56157–56166
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 56216–56219

Federal Contract Compliance Programs Office
RULES
Contractors and subcontractors; affirmative action and nondiscrimination obligations:
Religious entities; exemption, 56391–56393

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Empire Connection LLC et al., 56281–56284
Environmental statements; availability, etc.:
Dominion Cove Point LNG, LP, 56284–56285
Environmental statements; notice of intent:
Sound Energy Solutions, 56285–56287
Hydroelectric applications, 56287–56288
Meetings
Natural Gas Markets Conference, 56288
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 56279
CenterPoint Energy Gas Transmission Co., 56279
Chandler Wind Partners, LLC, et al., 56279–56280
Questar Pipeline Co., 56280
Tennessee Gas Pipeline Co., 56280
Williston Basin Interstate Pipeline Co., 56280–56281

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Drivers' hours of service—
Technical amendments, 56208–56212
Household goods transportation; consumer protection regulations
Compliance date delay, 56208
Miscellaneous technical amendments, 56196–56208

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
San Francisco Municipal Railway Department, 56374–56375

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 56293
Permissible nonbanking activities, 56293–56294
Meetings; Sunshine Act, 56294

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
California tiger salamander, 56251–56252

Food and Drug Administration
NOTICES
Debarment orders:
Borison, Richard L., 56298–56299
Sardesai, Suhas V., 56299–56300
Striefsky, Edmund J., 56300

Foreign Agricultural Service
NOTICES
Farmers; trade adjustment assistance:
South Carolina; shrimpers and shrimp growers, 56260

Forest Service
NOTICES
Meetings:
Resource Advisory Committee—
Plumas County, 56260

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
RULES
Grants:
Substance Abuse Prevention and Treatment Block Grants and Projects for Assistance in Transition from Homelessness Programs; Charitable Choice provisions
applicable to States, 56429–56449
NOTICES
Meetings:
National Vaccine Advisory Committee, 56294–56295

Health Resources and Services Administration
NOTICES
Meetings:
Primary Care Medicine and Dentistry Training Advisory Committee, 56300–56301

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Immigration and Customs Enforcement Bureau

Housing and Urban Development Department
RULES
Grants:
Faith-based organizations; participation in department programs; equal treatment of all program participants, 56395–56408

Immigration and Customs Enforcement Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56302

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Rate adjustments, 56302–56307

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Talyi, Yaudat Mustafa, et al., 56261–56262

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
See Special Trustee for American Indians Office

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56378

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
Cameron, Hidalgo, and Willacy Counties, TX; Lower Rio Grande Flood Control Project, 56332

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 56262–56265

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Justice Programs Office
PROPOSED RULES
Grants:
Religious organizations; participation in department programs; equal treatment of all program participants, 56409–56415

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56324–56325

Labor Department
See Employment and Training Administration
See Federal Contract Compliance Programs Office
See Occupational Safety and Health Administration
PROPOSED RULES
Workforce Investment Act; nondiscrimination and equal opportunity provisions:
Religious activities; Federal financial assistance, 56385–56390

Land Management Bureau
NOTICES
Helium:
Amarillo, TX: Cliffside Field; Conservation Helium sale; implementation, 56307–56310
Meetings:
Resource Advisory Councils—
Eastern Washington, 56310
Recreation management restrictions, etc.:
West Eugene Wetlands, OR; supplementary rules, 56310–56312
Survey plat filings:
Rhode Island, 56312

Medicare Payment Advisory Commission
NOTICES
Meetings, 56332

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56312–56315

Minority Business Development Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority Business Development Center Program, 56265–56267
Native American Business Development Center Program—
Arizona, 56267–56269

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56333–56335

National Archives and Records Administration
NOTICES
Nixon Presidential historical materials; opening of materials, 56335–56336

National Credit Union Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56336–56337

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Evenflo Co., Inc., 56375–56376
Subaru of America, Inc., 56376

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 56214–56215
Pacific cod, 56213–56214
Yellowfin sole, 56214
Atlantic highly migratory species—
Atlantic bluefin tuna, 56212–56213
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp, 56252–56259
NOTICES
Permits:
Scientific research, 56269

National Park Service
NOTICES
Meetings:
Chalmette Battlefield Task Force Committee, 56316
Gates of Arctic National Park Subsistence Resource Commission, 56316
White House Preservation Committee, 56316–56317

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 56340
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 56340–56350
Applications, hearings, determinations, etc.:
Exelon Generation Co., LLC, 56337–56338
Virginia Electric & Power Co., 56338–56340

Occupational Safety and Health Administration
NOTICES
Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 56331–56332

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Birmingham Green, AL, 56350–56351

Presidential Documents
PROCLAMATIONS
Special observances:
Gold Star Mother's Day (Proc. 7709), 56513–56514
National Farm Safety and Health Week (Proc. 7708), 56509–56511
EXECUTIVE ORDERS
USA Freedom Corps; Volunteers for Prosperity initiative (EO 13317), 56515–56516
ADMINISTRATIVE ORDERS:
Government agencies and employees:
State, Department of and Department of Homeland Security; notice of transmittal of report to the Congress concerning implementation of the Memorandum of Understanding (Notice of September 29, 2003), 03–25023

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Colorado River management; interim water storage guidelines, 56317–56318

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56260–56261

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56351–56352
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 56353–56355
Chicago Board Options Exchange, 56355–56356
Chicago Board Options Exchange, Inc., 56356–56357
International Securities Exchange, Inc., 56357–56358
National Association of Securities Dealers, Inc., 56358–56367
National Securities Clearing Corp., 56367
Pacific Exchange, Inc., 56367–56370
Philadelphia Stock Exchange, Inc., 56370–56371

Small Business Administration
NOTICES
Disaster loan areas:
Indiana, 56371
Pennsylvania, 56371
Virginia, 56371

Special Trustee for American Indians Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56318–56319

State Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Defense Trade Advisory Group, 56372
Organization, functions, and authority delegations:
Assistant Secretary for Consular Affairs, 56372–56373

Surface Transportation Board
NOTICES
Environmental statements; notice of intent:
Central Utah Rail Project, 56376–56377
Railroad services abandonment:
Allegheny & Eastern Railroad, Inc., 56377–56378

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Trade Policy Staff Committee
U.S.-Bahrain Free Trade Agreement—Environmental review, 56373–56374
World Trade Organization:
China; compliance with WTO commitments Hearing, 56374

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Grants:
Homeless Providers Grant and Per Diem Program
Religious organizations; proper use of funds, 56425–56428
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 56378–56379
Privacy Act:
Systems of records, 56379–56382

Separate Parts In This Issue

Part II
Labor Department; Labor Department, Employment and Training Administration, 56385–56390

Part III
Labor Department, Federal Contract Compliance Programs Office, 56391–56393

Part IV
Housing and Urban Development Department, 56395–56408

Part V
Justice Department, 56409–56415

Part VI
Education Department, 56417–56423

Part VII
Veterans Affairs Department, 56425–56428

Part VIII
Health and Human Services Department, 56429–56449

Part VIII
Health and Human Services Department, Children and Families Administration, 56448–56470

Part IX
Education Department, 56471–56475

Part X
Health and Human Services Department, Centers for Medicare & Medicaid Services, 56477–56508

Part XI
Executive Office of the President, Presidential Documents, 56509–56511, 56513–56516

Part XII
Executive Office of the President, Presidential Documents, 56517–56519

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7708 56511
7709 56513

Executive Orders:

13317 56515

Notices:

Notice of September 29, 2003 56519

7 CFR

2903 56137

14 CFR

39 (4 documents) 56143, 56152, 56154, 56156
97 56157
121 56166
129 56166

Proposed Rules:

39 56216

19 CFR

10 56166

20 CFR

Proposed Rules:

667 56386

24 CFR

92 56396
570 56396
572 56396
574 56396
576 56396
582 56396
583 56396
585 56396

28 CFR

Proposed Rules:

31 56410
33 56410
38 56410
90 56410
91 56410
93 56410

29 CFR

Proposed Rules:

37 56386

33 CFR

117 56173

34 CFR

Proposed Rules:

74 56418
75 56418
76 56418
80 56418

38 CFR

Proposed Rules:

61 56426

40 CFR

52 (4 documents) 56174, 56176, 56180, 56181
180 (2 documents) 56184, 56189
300 56195

Proposed Rules:

52 (3 documents) 56219, 56220
70 56220
87 56226

41 CFR

60-1 56392

42 CFR

54 56430
54a 56430

45 CFR

96 56430
260 56449
1050 56466

49 CFR

365 56196
374 56196
375 56208
387 56196
391 56196
393 56196
395 56208
396 56196

50 CFR

635 56212
679 (4 documents) 56213, 56214

Proposed Rules:

17 56251
622 56252

Rules and Regulations

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 2003

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

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 2903

Office of Energy Policy and New Uses; Biodiesel Fuel Education Program—Administrative Provisions

AGENCY: Office of the Chief Economist, Office of Energy Policy and New Uses, USDA.

ACTION: Final rule.

SUMMARY: The Office of Energy Policy and New Uses (OEPNU) adds new regulations for the purpose of administering the Biodiesel Fuel Education Program conducted under the authority of section 9004 of the Farm Security and Rural Investment Act of 2002. This action establishes and codifies the administrative procedures to be followed in the solicitation of competitive proposals, the evaluation of such proposals, and the award and administration of grants under this Program.

DATES: *Effective Date:* This rule is effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: James Duffield at (202) 401–0523 or via electronic mail at *jduffield@oce.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

On July 15, 2003, the Office of Energy Policy and New Uses (OEPNU) published a Proposed Rule (68 FR 41751, July 15, 2003) to provide administrative provisions for the Biodiesel Fuel Education Program. In the Proposed Rule, OEPNU invited comments, which were due by August 14, 2003. The Agency did not receive any comments. No public meetings were requested or held. Therefore, the text in the Final Rule substantively is unchanged from the text proposed on July 15, 2003. OEPNU did make three minor grammatical or stylistic changes, corrected a reference to this part in section 2903.15, and removed specific references to 7 CFR part 3015, since those regulations have been proposed for removal (68 FR 41947, July 16, 2003). Even without those specific references, the Final Rule clearly reminds the public that this program is subject to all applicable USDA regulations.

The Biodiesel Fuel Education Program was authorized in Sec. 9004 of the Farm Security and Rural Investment Act of 2002 (''2002 Farm Bill'') (7 U.S.C. 8104). This Final Rule describes the policies and procedures OEPNU will apply to the Biodiesel Fuel Education Program. These policies are consistent with those used by other USDA agencies, particularly the Cooperative State Research, Education, and Extension Service (CSREES). The rules are consistent with the basic parameters by which most Federal agencies operate competitive grants programs and will be revised as needed to conform with Federal streamlining efforts.

The goals of the Biodiesel Fuel Education Program are to stimulate biodiesel consumption and to accelerate the development of a biodiesel infrastructure. Increasing biodiesel production will increase the demand for farm commodities, which in turn will raise farm prices and net farm income, and lower government program payments. The development of a biodiesel industry would increase employment and stimulate economic growth in rural areas.

Agencies' Roles

Section 9004 of the 2002 Farm Bill (7 U.S.C. 8104) requires that the Secretary make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. In the Joint Explanatory Statement of the Committee of Conference accompanying the 2002 Farm Bill, the Managers encouraged the Secretary of Agriculture to utilize the expertise of OEPNU in carrying out the purposes of this section. The Secretary delegated this authority to the Chief Economist, who is implementing this authority through OEPNU. The USDA Farm Bill Implementation Task Force acknowledged that OEPNU would provide technical oversight for the Program and utilize the services of CSREES in administering the Program.

Memorandum of Understanding

OEPNU and CSREES recognize the need for coordination and collaboration between the agencies to carry out the intent of the law. A memorandum of understanding has been signed by each agency which specifies the manner in which OEPNU and CSREES will collaborate in the administration of the Program. OEPNU will utilize the services of CSREES, pursuant to the Economy Act, 31 U.S.C. 1535, to administer the Program grants, as recommended by the Farm Bill Implementation Task Force. The Task Force recommended CSREES because of the Agency's experience conducting education-related grant programs and to take advantage of CSREES staff specialists who are familiar with administering grants.

Role of Oversight Committee

In implementing the Program, OEPNU has formed an oversight committee, including representatives with relevant expertise from the USDA Forest Service, Office of Procurement and Property Management, Agricultural Research Service, Rural Utilities Service, OEPNU, and CSREES and the Department of Energy Office of Biomass. Expertise of committee members includes research, development and demonstration of alternative fuels, production of alternative fuels, and procurement of alternative fuels.

Request for Applications

The committee has recommended guidelines for the Program, which are included in the Notice of Request for Applications published on July 15, 2003 (68 FR 41770). The closing date for receiving applications was August 14, 2003. Qualified applications that responded to the Request for Applications will be reviewed by the Oversight Committee. and the Committee will recommend awards. OEPNU plans to award one or two continuation grants in FY 2003. Awards made pursuant to the Request for Applications for the Biodiesel Fuel Education Program will be made in accordance with this Final Rule.

Participating Agencies' Experience and Interaction With Stakeholders

In designing the Request for Applications for the Program, committee members relied on their past experiences with biodiesel education and outreach. For over a decade, USDA has been involved in biodiesel outreach programs. USDA's Office of Energy Policy and New Uses (OEPNU) coordinates activities related to biodiesel and other renewable fuels for the Department. Since 1993, OEPNU has been involved with producer and consumer stakeholder groups interested in developing a biodiesel industry in the United States. One of the Department's first efforts to bring biodiesel stakeholders together took place in September 1995 when OEPNU and the Department of Energy organized a stakeholder meeting in Washington, DC. The purpose of the meeting was to develop a life cycle inventory of biodiesel. This life cycle inventory furthered knowledge about the benefits of biodiesel. Several groups were represented at the meeting, including biodiesel producers, the oilseed processing industry, the rendering industry, engine manufacturers, state and local governments, and environmental groups.

The Agricultural Research Service (ARS) leads the Department's efforts on biodiesel research and demonstration. Since the summer of 1999, the Beltsville Agricultural Research Center (BARC) has been conducting a biodiesel demonstration project that has become a working model for others interested in using biodiesel. All of the Center's 150 pieces of diesel equipment and trucks were converted to a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel (B20). Vehicles from BARC that run on biodiesel and educational materials have been displayed and distributed throughout the country. In January 2000, ARS conducted a workshop to highlight the BARC biodiesel demonstration project. The workshop's 75 attendees represented a broad range of potential users, including Federal Agencies, such as the Departments of Energy, Defense, and the Interior, and the U.S. Postal Service. Officials from nearby cities, counties, and states were also in attendance, as well as private industry groups, farmers and biodiesel suppliers. The biodiesel demonstration project has been highlighted at the BARC Public Day, an annual event that provides an opportunity for ARS scientists to describe their research projects to the public.

A biodiesel outreach program has also been established to introduce biodiesel to USDA and other Federal agencies that operate motor fleets. Beginning in July of 2000, USDA's Office of Procurement and Property Management (OPPM) has been conducting a series of informational meetings at various locations around the United States to educate Federal fleet managers and other stakeholders on the benefits of biodiesel. Meetings have been held in Orlando, FL, San Antonio, TX, Minneapolis, MN, Washington, DC, Kansas City, MI, and Salt Lake City, UT. These meetings are used as a platform to educate motor fleet personnel, postal workers and the public about the major advantages of biodiesel. OPPM has also teamed with other entities interested in the environmental and health effects of biodiesel, such as the American Lung Association and the National Biodiesel Board, to conduct biodiesel education meetings for Federal fleet managers, postal workers, and other interested stakeholders.

Proposal Review

In collaboration with external reviewers, the Oversight Committee will review proposals and recommend awards. The Committee will monitor the Program's performance and provide guidance to OEPNU to insure that the Program objectives are being achieved. The Committee will review progress reports submitted by the grantees and, on a yearly basis, recommend whether the awards should be renewed. Also, on a yearly basis, the Committee will recommend whether to reissue the RFA and award new grants.

CSREES will compile application reviews and recommend awards to OEPNU. OEPNU will make award decisions.

Awards

The Program will fund Biodiesel Fuel Education Program grants in each of FYs 2003 through 2007. Because of the scope of this Program and the limited funds available to support it, OEPNU plans to award one or two continuation grants in FY 2003. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded projects in each of FYs 2004 through 2007.

OEPNU's plan to award only one or two continuation grants should facilitate a national education program with a consistent message. It should also ease the implementation process and allow OEPNU to monitor the Program more effectively. If the Agency were to make numerous smaller awards, this could result in multiple education programs with different emphases and goals, as well as competition for Program participants and human resources to conduct the Program.

Continuation grants are necessary to ensure that the Program follows an orderly and consistent transition from one year to the next over the five-year funding period. A successful Biodiesel Fuel Education Program will be sequential in nature, *i.e.*, conducted in several dependent work phases. For example, phase one might focus on identifying program participants and designing educational tools. Phase 2 might develop a strategy for putting a system and infrastructure in place to reach the targeted audience. Phase 3 could focus on scheduling and travel logistics. The work phases are interdependent, so selecting new grantees each year would cause disruptions and create the potential for repetitive efforts. Authorizing continuation grants will allow the grantees to develop and conduct long-term plans, preserve program continuity, and benefit from learning experiences over the funding period.

The Final Rule is divided into subparts. Subpart A contains general information about the Program prescribed by the authorizing legislation, including the purpose of the Program and eligibility restrictions established by the legislation. Subpart A limits indirect costs to the rate that an applicant has negotiated with the cognizant Federal negotiating agency, and explains that there are no matching funds requirements for the Program. Subpart B describes the continuation grant instrument that OEPNU plans to use and outlines objectives for projects funded by the Program. Subpart C provides information about the publication of program announcements, instructs applicants regarding the minimum content requirements for applications, and directs them to the program announcement for specific instructions regarding application requirements and the order of application contents. Subpart C also lists the application submission information that will appear in program announcements and describes the process for acknowledging the receipt of

applications. In Subpart D of the rule, the process for selecting reviewers is described, and the evaluation criteria applied to applications are enumerated. Subpart D also contains a discussion of the measures employed by OEPNU to protect against conflicts of interest and safeguard applicant and reviewer confidentiality. General award administration guidelines are outlined in Subpart E. Subpart E also delineates the one-time requirement that applicants submit organizational management information and lists the minimum contents of the award document. The last subpart of the rule, Section F, includes supplementary information. This subpart tells grantees how they can obtain review information, what uses of funds and changes to projects are permissible, where they can find instructions about reporting requirements, and other Federal statutes and regulations that apply to the Biodiesel Fuel Education Program. It describes the process for handling confidential aspects of applications and awards and defines terms that are used elsewhere in the rule.

Paperwork Reduction Act of 1995—Information Collection

OEPNU currently is using the services of CSREES to administer this Program. CSREES obtained information collection approval for the ''Generic Application Kit'' (OMB Approval No. 0524–0039), which encompasses the use of required forms to administer another USDA agency's grant program. Should OEPNU decide to administer this Program directly in the future, OEPNU will comply independently with information collection requirements.

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and awards will be made to fewer than ten entities.

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities.

Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Department assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more;

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

Executive Order 13132

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on the policymaking discretion of 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. Nor does this rule impose substantial direct compliance costs on State and local governments.

Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 2903

Agricultural commodities, Energy, Fuel, Fuel additives.

■ For the reasons set forth in the preamble, the Office of Energy Policy and New Uses amends title 7, subtitle B, chapter XXIX, of the Code of Federal Regulations by adding part 2903 to read as follows:

PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

Subpart A—General Information

Sec.

2903.1 Applicability of regulations.
2903.2 Purpose of the program.
2903.3 Eligibility.
2903.4 Indirect costs.
2903.5 Matching requirements.

Subpart B—Program Description

2903.6 Project types.
2903.7 Project objectives.

Subpart C—Preparation of an Application

2903.8 Program application materials.
2903.9 Content of an application.
2903.10 Submission of an application.
2903.11 Acknowledgment of applications.

Subpart D—Application Review and Evaluation

2903.12 Application review.
2903.13 Evaluation criteria.
2903.14 Conflicts of interest and confidentiality.

Subpart E—Award Administration

2903.15 General.
2903.16 Organizational management information.
2903.17 Award document and notice of award.

Subpart F—Supplementary Information

2903.18 Access to review information.
2903.19 Use of funds; changes.
2903.20 Reporting requirements.
2903.21 Applicable Federal statutes and regulations.
2903.22 Confidential aspects of applications and awards.

2903.23 Definitions.

Authority: 7 U.S.C. 8104; 5 U.S.C. 301.

Subpart A—General Information

§ 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 2903.2 Purpose of the program.

The Biodiesel Fuel Education Program seeks to familiarize public and private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

§ 2903.3 Eligibility.

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

§ 2903.4 Indirect costs.

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

§ 2903.5 Matching requirements.

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

Subpart B—Program Description

§ 2903.6 Project types.

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

§ 2903.7 Project objectives.

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (*e.g.*, lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

Subpart C—Preparation of an Application

§ 2903.8 Program application materials.

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The program announcement will provide information about obtaining program application materials.

§ 2903.9 Content of an application.

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: a proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

§ 2903.10 Submission of an application.

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

§ 2903.11 Acknowledgment of applications.

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated

on the program announcement. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

Subpart D—Application Review and Evaluation

§ 2903.12 Application review.

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (*e.g.*, producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

§ 2903.13 Evaluation criteria.

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

§ 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Subpart E—Award Administration

§ 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this part. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the applicable Department assistance regulations (including part 3019 of this title).

§ 2903.16 Organizational management information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

§ 2903.17 Award document and notice of award.

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period;

(6) Total amount of Departmental financial assistance approved by OEPNU during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(10) Other information or provisions deemed necessary by OEPNU and the Authorized Departmental Officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

Subpart F—Supplementary Information

§ 2903.18 Access to review information.

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

§ 2903.19 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) *Changes in project plans.* (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) *Changes in project period.* The project period may be extended by OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) *Changes in approved budget.* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

§ 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

§ 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program.

Project means the particular activity within the scope of the program supported by a grant award.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

Dated: September 24, 2003.

Roger Conway,

Director, Office of Energy Policy and New Uses.

[FR Doc. 03–24727 Filed 9–29–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–13318; AD 2003–19–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. That AD currently requires interim actions to address engine takeoff power loss events until the high-pressure-compressor (HPC) case is redesigned and available for incorporation on the PW4000 engines. That amendment also requires terminating actions for engines installed in the Boeing fleet by incorporating a new Ring Case Configuration (RCC) rear HPC. This amendment requires the same interim and terminating action requirements as that AD, and in addition, expands the terminating action requirements to engines installed on Airbus and McDonnell Douglas fleets. This amendment is prompted by the certification of an RCC rear HPC for PW4000 series turbofan engines installed in the Airbus fleet and McDonnell Douglas fleet. The actions specified by this AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Effective October 30, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 2003. The incorporation by reference of certain other publications as listed in the regulations was approved previously by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002), November 12, 2002 (67 FR 65484, October 25, 2002), and July 7, 2003 (68 FR 43033, June 6, 2003).

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2003–11–18, Amendment 39–13177 (68 FR 33844, June 7, 2003), which is applicable to PW model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, was published in the **Federal Register** on July 21, 2003 (68 FR 43033). That action proposed to mandate the same interim actions as AD 2003–11–18 (with some modifications based on AMOC approvals) to address engine takeoff power loss events, until the RCC rear HPC is incorporated in the PW4000 engines. That action also proposed to mandate the same terminating actions as

AD 2003–11–18, which incorporates the RCC rear HPC on engines installed in the Boeing fleet. That action also proposed to mandate the terminating actions to incorporate the RCC rear HPC on engines installed in the Airbus fleet.

AD 2003–11–18 and the proposal noted that RCC rear HPC certification to 14 CFR part 25 was pending for engines installed in the McDonnell Douglas fleet. The AD and proposal noted that once certified, the terminating action requirements would be added for the McDonnell Douglas MD–11 fleet, by a superseding AD. Based on comments received on the proposal, and the recent 14 CFR part 25 certification for RCC rear HPC engines to be installed in McDonnell Douglas MD–11 airplanes, this AD adds the terminating action requirements for the MD–11 fleet.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. We received comments from four operators and one airframe manufacturer, who all agree with the technical aspects of the proposal, but have concerns with the procedural aspects of the proposal. Due consideration has been given to the comments received.

Typographical Error

One commenter states there is a typographical error in proposal paragraph (u)(3)(ii). In that paragraph, August 31, 2007, should read August 31, 2006.

The FAA agrees and has changed the final rule accordingly.

Request To Add Two Engine Manual References

One commenter recommends adding the engine manual references of PW4000 EM 50A605, 71–00–00, Testing-21, dated June 15, 2003, and PW4000 EM 50A822, 71–00–00, Testing-21, dated March 15, 2002, to paragraph (j)(2) of the proposal. The commenter states that this is needed to ensure that engines tested before the effective date of this superseding AD but after the effective date of AD 2003–11–18 are in compliance.

The FAA does not agree. AD 2003–11–18 already requires Testing-21 to be done in paragraph (j)(1) of the proposal, in accordance with the recommended references regardless if the testing was done before or after the effective date of AD 2003–11–18. Therefore, compliance is achieved, and no changes are made to the final rule based on this comment.

Undue Economic Burden

Three commenters state that in general, when the FAA supersedes ADs, operators must review and revise engineering and maintenance program documentation because the superseded AD carries a new AD number. In this case, the commenters state that since the changes proposed in the NPRM are essentially changes to the effectivity, and not to any of the technical requirements, the expense to operators that results from this AD being superseded would create an undue economic burden. The commenters suggest that the FAA either delay issuing this AD until the McDonnell Douglas MD–11 terminating action can be included, in order to prevent yet another supersedure, or change the superseding AD to a revision to AD 2003–11–18, or issue separate ADs to cover the Airbus fleet and the McDonnell Douglas MD–11 fleet instead of combining all fleets into a single AD as proposed.

The FAA does not agree. Almost a year ago the FAA announced that it would be adding required terminating action to the existing AD by superseding the AD as that terminating action was approved for use on engines installed in the various airplane fleets. The FAA received no comments regarding the use of that method of adding terminating action. When the FAA first superseded the AD to add required terminating action for engines installed in the Boeing fleet, no commenters objected and one commenter even stated that it expected the FAA to supersede the AD again once the terminating action was approved for use on engines installed in the Airbus and McDonnell Douglas fleets. Therefore, the FAA provided ample notice to operators of the intention to supersede the AD on multiple occasions. Including this action, the FAA has superseded a total of eight ADs while addressing the takeoff power surge condition in PW4000 engines. Therefore, the FAA does not agree that this additional supersedure will create an undue or unforeseen economic burden. The FAA does recognize, however, that by issuing an AD that supersedes a previous AD, rather than revising the previous AD, that operators may have to make additional entries in their maintenance records. This is a long-standing issue that pre-dates by many years this particular series of ADs addressing the PW4000 takeoff power surge issue. Approximately 13 years ago, in response to the desires of many operators who did not include a revision number in their maintenance documentation programs, the FAA established criteria for when we would issue an AD as a revision, thus keeping the root AD number the same, and when we would issue a superseding AD, thereby changing the AD number. Generally, the FAA issues a superseding AD when making a change to an instruction or referenced document that affects the substance of the required actions. Even though the applicability of each of the ADs in this series remained the same, supersedures were warranted as we made substantive changes to the regulatory requirements in each subsequent AD, for example, adding mandatory terminating action. Therefore, this AD remains as a supersedure, as proposed. In an effort to keep the economic burden on operators as low as possible, however, the FAA has decided to include in this final rule the mandatory terminating action for engines installed in McDonnell Douglas MD–11 airplanes. Engines incorporating the RCC rear HPC were only recently approved for installation on McDonnell Douglas MD–11 airplanes. Since the original proposal to add mandatory terminating action contemplated that the RCC rear HPC would eventually be required for engines installed in the McDonnell Douglas MD–11 fleet, and since operators expected that the FAA would take that action, the FAA is adding that mandatory action to this final rule, in part, to avoid having to propose yet another superseding AD.

Paragraph Added To Allow Credit For RCC Incorporation

Based on the potential for operators to have already incorporated the RCC rear HPC before the effective date of this AD, a paragraph has been added to the AD to allow credit for incorporating the RCC rear HPC before the effective date of the AD.

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

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13177 (68 FR 33844, June 7, 2003) and by adding a new airworthiness directive, Amendment 39–13318, to read as follows:

2003–19–15 Pratt & Whitney: Docket No. 2000–NE–47–AD. Supersedes AD 2003–11–18, Amendment 39–13177.

Applicability: This airworthiness directive (AD) is applicable to: Pratt & Whitney (PW) models PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

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

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

To prevent engine takeoff power losses due to high-pressure-compressor (HPC) surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration	Designator
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back stator (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any Revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as Configuration A except that HPT 1TVCB has been incorporated using any Revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(4) Phase 3, 1st Run	D	Same as Configuration C except that the engine has not had an HPC overhaul since new, except those engines that are defined as Configuration Designator G.
(5) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any Revision of SBs PW4ENG 72–706, PW4ENG 72–704, or PW4ENG 72–711.
(6) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (i) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC, or the HPC is retrofitted to Configuration I.
(7) Phase 3, 1st Run Subpopulation Engines. These engines are identified by model and serial numbers (SNs) as follows: PW4152: SN 724942 through SN 724944 inclusive; PW4158: SN 728518 through SN 728533 inclusive; PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062: SN 727732 through SN 728000 inclusive and SN 729001 through SN 729010 inclusive; PW4460, PW4462: SN 733813 through SN 733840 inclusive.	G	Engines that incorporated the Phase 3 configuration and did not incorporate Haynes material HPC inner case rear hook at the time they were originally manufactured, that were built from August 29, 1997 up to the incorporation of the HPC inner rear case with Haynes material rear hook at the original engine manufacturer and have not had an HPC overhaul since new.

TABLE 1.—ENGINE CONFIGURATION LISTING—Continued

Configuration	Configuration	Designator
(8) Engines from Configuration G that have passed Testing-21.	H	Engines that have successfully passed Testing-21 performed in accordance with paragraph (i) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC, or the HPC is retrofitted to Configuration I.
(9) Engines installed on Boeing, Airbus, or MD–11 airplanes with a build standard that incorporates a ring case configuration (RCC) rear HPC.	I	Engines that have incorporated PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; or Revision 3, dated September 16, 2003; or PW SB PW4ENG 72–756, dated July 7, 2003; or Revision 1, dated September 15, 2003; or PW SB PW4ENG 72–759, dated July 7, 2003; or Revision 1, dated September 16, 2003; PW SB PW4ENG 72–757, Revision 1, dated September 15, 2003; or have been manufactured with an RCC rear HPC.

Configuration E Engines Installed on Boeing 747, 767, and McDonnell Douglas MD–11 Airplanes

(b) For Configuration E engines, do the following:

(1) Before further flight, limit the number of engines with Configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with Configuration E from service before accumulating 1,300 cycles-since-new (CSN) or cycles-since-conversion (CSC) to Configuration E, whichever is later.

Configuration G and H Engines Installed on Boeing 747, 767, McDonnell Douglas MD–11, and Airbus A300 and A310 Airplanes

(c) For Configuration G and H engines installed on Boeing 747 and 767, McDonnell Douglas MD–11, and Airbus A300 and A310 airplanes, except as provided in paragraph (b) of this AD:

(1) Before further flight, remove from service engines that exceed the CSN or cycles-since-Testing-21 (CST) limits listed in the following Table 2, or perform on-wing Testing-21 on Boeing 747 or McDonnell Douglas MD–11 airplanes in accordance with paragraph (i)(3) or (i)(4) respectively, of this AD. Thereafter, ensure that no Configuration G or H engines exceed the HPC CSN or CST limits listed in Table 2 of this AD.

TABLE 2.—CONFIGURATION G AND H LIMITS

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462	A300/310 PW4152 PW4156A PW4158
G	1,700 CSN	3,000 CSN	2,100 CSN	1,350 CSN	1,150 CSN	2,800 CSN.
H	600 CST	600 CST	600 CST	600 CST.	600 CST	600 CST.

(2) Prior to return to service, Configuration G and H engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Boeing 767 and McDonnell Douglas MD–11 Airplanes

(d) For engines installed on Boeing 767 and McDonnell Douglas MD–11 airplanes, except as provided in paragraph (b) and (c) of this AD:

(1) Before further flight, limit the number of engines that exceed the HPC CSN, HPC cycles-since-overhaul (CSO), or HPC CST limits in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit in Table 3 of this AD.

(2) Prior to return to service, engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Boeing 747 Airplanes

(e) Except as provided in paragraph (b) and (c) of this AD, before further flight, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of Configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 3 of this AD, to not more than one engine per airplane. Table 3 follows:

TABLE 3.—ENGINE LIMITS FOR BOEING AIRPLANES

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO.
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(2) The single Configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 3 of this AD, must be limited to 2,600 HPC CSN or CSO for Configuration A, B, or C engines, or 1,300 HPC CSN or CSC to Configuration E, whichever is later, for Configuration E engines.

(3) Remove from service or perform on-wing Testing-21 in accordance with paragraph (i)(3) of this AD for Configuration D engines, before accumulating 2,600 CSN.

(4) Remove from service or perform on-wing Testing-21 in accordance with paragraph (i)(3) of this AD for Configuration F engines, before accumulating 800 CST.

(5) Prior to return to service, Configuration A, B, C, D, and F engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(f) For Airbus operators that began operation of their A300 fleet after the effective date of this AD, use paragraphs (f)(7) through (f)(9) of this AD to determine which Airbus A300 PW4158 engine category 1 or 3 limits of the following Table 4 of this AD apply to your engine fleet. For Airbus operators that have been in operation before the effective date of this AD, use your PW4158 engine category classification previously determined for your fleet and continue to apply the A300 PW4158 Category limits in Table 4 of this AD, to your fleet.

TABLE 4.—ENGINE LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 Category 1, and A310 PW4156 and PW4156A	A300 PW4158 Category 2, and A310 PW4152	A300 PW4158 Category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO.
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO.
C	2,200 CSO	4,400 CSO	1,600 CSO.
D	4,400 CSN	4,400 CSN	4,400 CSN.
E	Not Applicable	Not Applicable	Not Applicable.
F	800 CST	800 CST	800 CST.

(1) Determine the number of Group 3 Takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (*i.e.* 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (s)(5) of this AD for a definition of a Group 3 Takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 Takeoff surges determined in paragraph (f)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (f)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (f)(3) of this AD is less than 0.005, go to paragraph (f)(5) of this AD. If the surge rate calculated in paragraph (f)(3) of this AD is greater than or equal to 0.005, go to paragraph (f)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (f)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 4 of this AD. If less than 200,000 cycles, go to paragraph (f)(7) of this AD.

(6) If the surge rate calculated in paragraph (f)(3) of this AD is greater than 0.035, use A300 PW4158 Category 3 limits of Table 4 of this AD. If less than or equal to 0.035, go to paragraph (f)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that have occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (s)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (f)(7) of this AD, use A300 PW4158 Category 3 limits of Table 4 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is less than or equal to 31%, use A300 PW 4158 Category 1 limits listed in Table 4 of this AD.

(g) For engines installed on Airbus A300 or A310 airplanes, except as provided in paragraph (c) of this AD, before further flight, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 4 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 4 of this AD. See paragraph (i) of this AD for return to service requirements.

(h) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (f)(6) of this AD, re-evaluate your fleet category within 6 months from the last evaluation, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is less than or equal to 31%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(2) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than or equal to 21% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is less than 21%, use A300 PW4158 Category 2 limits listed in Table 4 of this AD.

Return to Service Requirements

(i) Engines removed from service in accordance with paragraph (c), (d), (e), or (g) of this AD may be returned to service under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing–21) that has been done in accordance with PW4000 Engine Manual (EM) 50A605, 71–00–00, Testing–21, dated June 15, 2003; or PW4000 EM 50A443, 71–00–00, Testing–21, dated March 15, 2002; or PW4000 EM 50A822, 71–00–00, Testing–21, dated March 15, 2002; except for engines configured with Configuration E; or engines that have experienced a Group 3 takeoff surge; or

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A605, 71–00–00, Testing–21, dated March 15, 2002; or PW4000 EM 50A443, 71–00–00, Testing–21, dated November 14, 2001; or PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001; or PW4000 EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001; or PW4000 EM 50A822, 71–00–00, Testing–21, dated November 14, 2001; or PW4000 EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001; or PW Internal Engineering Notice (IEN) 96KC973D, dated October 12, 2001, meet the requirements of Testing–21; or

(3) For PW4056 engines installed on Boeing 747 airplanes, after successfully completing on-wing Testing–21 in accordance with Major IEN 02KCW13E, dated November 21, 2002; or if done prior to the approval of Major IEN 02KCW13E, dated November 21, 2002; in accordance with Minor IENs 02KCW13, dated October 14, 2002; 02KCW13A, dated October 14, 2002; 02KCW13C, dated July 25, 2002; or 02KCW13D, July 29, 2002; except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) For PW4460 and PW4462 engines installed on McDonnell Douglas MD–11 airplanes, after successfully completing on-wing Testing–21, in accordance with Major IEN 02KCW13H, dated December 9, 2002; or if done prior to the approval of Major IEN 02KCW13H, dated December 9, 2002, in accordance with Minor IEN 02KCW13F, dated October 14, 2002; except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(5) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing–21, as long as the requirements of paragraph (c), (d), (e), or (g) of this AD are met at the time of engine installation.

(6) An engine that has incorporated the RCC rear HPC in accordance with:

(i) PW SB PW4ENG 72–755, Revision 3, dated September 16, 2003, for engines installed in Boeing airplanes, or

(ii) PW SB PW4ENG 72–756, Revision 1, dated September 15, 2003, or PW SB PW4ENG 72–759, Revision 1, dated September 16, 2003, for engines installed in Airbus airplanes, or

(iii) PW SB PW4ENG 72–757, Revision 1, dated September 15, 2003, for engines installed in McDonnell Douglas MD–11 airplanes; or

(iv) RCC rear HPCs that were incorporated before the effective date this AD are allowed credit, in accordance with paragraph (t) of this AD.

(v) Completing the SBs referenced in paragraphs (i)(6)(i) through (i)(6)(iii) of this AD changes the engine configuration to Configuration I.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(j) For Configuration A, B, C, D, E, F, G, and H engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001); AD 2001–09–10, (66 FR 21853, May 2, 2001); or AD 2001–01–10, (66 FR 6449, January 22, 2001); do the following:

(1) Operators complying with the ADs listed in paragraph (j) of this AD using the weight restriction compliance method, must perform Testing-21 in accordance with paragraph (i) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between ''A'' flange and ''T'' flange, does not occur.

(2) If an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method after the effective date of this AD, Testing-21 in accordance with paragraph (i) of this AD is required each time fan blade leading edge recontouring is done, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard

(k) For engines to be installed on Boeing airplanes that are inducted into the shop after July 7, 2003; for engines to be installed on Airbus airplanes that are inducted into the shop after the effective date of this AD; and for engines to be installed on McDonnell Douglas MD–11 airplanes that are inducted into the shop 30 days after the effective date of this AD:

(1) Any Segmented Case Configuration (SCC) HPC module that is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module may not be returned to service unless the RCC rear HPC is incorporated in accordance with paragraphs (i)(6)(i) through (i)(6)(iii) of this AD.

(2) Any engine with a SCC HPC module that is not disassembled in accordance with paragraph (k)(1) of this AD, must meet the following minimum build standard:

(i) Do not install an engine with SCC HPC and HPT modules where the CSO of the HPC is 1,500 cycles or more than the CSN or CSO of the HPT.

(ii) Any engine that undergoes separation of the SCC HPC and HPT modules must not be installed on an airplane unless it meets the build standard defined by PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements

(l) For engines to be installed on Boeing, Airbus, or McDonnell Douglas airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (i) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) Engine HPC has incorporated the RCC rear HPC in accordance with paragraphs (i)(6)(i) through (i)(6)(iii) of this AD.

(2) Engine maintenance intended to maintain the airworthiness of the engine between planned shop visits, that requires separation of a major engine flange located between ''A'' flange and ''T'' flange, that results in the engine being reassembled with all gas path-related components remaining in the as-removed condition; or

(3) Engines that successfully passed Testing-21 with zero CST, and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable EM.

Thrust Rating Changes, Installation Changes, and Engine Transfers for Non-Configuration I Engines

(m) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul period, use the lowest cyclic limit of Table 3 or Table 4 of this AD, associated with any engine thrust rating change or with any installation change made during this period. See paragraph (s)(2) for definition of HPC overhaul period.

(n) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 4 of this AD that was used or will be used during the affected HPC overhaul period.

(o) When a PW4158 engine operator whose engine fleet changes category in accordance with paragraph (h) of this AD, use the lowest cyclic limits in Table 4 of this AD that were used or will be used during the affected HPC overhaul period.

(p) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (h) of this AD in the direction of lower to higher Table 4 limits of this AD, are exempt from the lowest cyclic limit requirement in paragraphs (m), (n), and (o) of this AD.

Engines That Surge

(q) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, do the following:

(i) Remove the engine from service before further flight and

(ii) Incorporate the RCC rear HPC in accordance with paragraphs (i)(6)(i) through (i)(6)(iii) of this AD.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For Configuration A, B, C, D, F, G, and H engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (i) of this AD, as applicable.

(ii) For Configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

(3) Paragraphs (q)(1) and (q)(2) of this AD are not applicable to engines that incorporate the RCC rear HPC in accordance with paragraphs (i)(6)(i) through (i)(6)(iii) of this AD.

Terminating Action for Boeing, Airbus, and McDonnell Douglas MD–11 Airplanes

(r) For Boeing, Airbus, and McDonnell Douglas operators with PW4000 engines installed on Boeing 747, 767, Airbus A300, A310, or McDonnell Douglas MD–11 airplanes, modify the engine HPC assembly by incorporating the RCC rear HPC in accordance with (i)(6)(i) through (i)(6)(iii) of this AD, as follows:

(1) For engines installed on Boeing 767 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By May 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane.

(ii) After May 31, 2006, the non-Configuration I engine (SCC HPC module) installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook during the original engine build or during an HPC overhaul in accordance with PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(2) For engines installed on Boeing 747 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By January 31, 2007 and thereafter, ensure that no more than one non-Configuration I engine is installed on the airplane.

(ii) After January 31, 2007, the non-Configuration I engine (SCC HPC module) installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with SB PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(3) For engines installed on Airbus A300, A310, or McDonnell Douglas MD–11 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By August 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the Airbus A300 or A310 airplane, and ensure that no more than one non-Configuration I engine is installed on the McDonnell Douglas MD–11 airplane.

(ii) After August 31, 2006, the non-Configuration I engine installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with SB PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(4) Prior to June 30, 2009, or whenever the HPC module is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module, whichever occurs first, incorporate the RCC rear HPC in accordance with paragraphs (i)(6)(i) through (i)(6)(iii) of this AD. Engines incorporating the RCC rear HPC are Configuration I engines. See paragraph (s)(7) of this AD for definition of HPC rear case assembly.

(5) Incorporation of the RCC rear HPC constitutes terminating action to the Testing-21 requirements as specified in paragraph (l) of this AD, and engine stagger and or hard time limit requirements as specified in paragraphs (c), (d), (e) and (g) of this AD for engines installed on Boeing, Airbus, and McDonnell Douglas airplanes.

Definitions

(s) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (–3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a ''CN'' suffix after the engine serial number if the engine was converted using PW SBs PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms that usually occur in combination during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after completing airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud ''bang(s).''

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected, or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (see Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25–0.30 Mn, using an aircraft automatic data recording system.

(7) HPC rear case assembly is defined as the HPC rear case with heat shields and other minor detail parts installed within the HPC rear case, but not including the HPC rear segmented stators.

Credit for Incorporating the RCC Rear HPC Before the Effective Date of This AD

(t) Engines that have incorporated the RCC rear HPC before the effective date of this AD, in accordance with the following, comply with the RCC rear HPC incorporation requirements of this AD:

(1) PW SB PW4ENG 72–755, Revision 3, dated September 16, 2003, or with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003 for engines installed in Boeing airplanes; or

(2) PW SB PW4ENG 72–756, Revision 1, dated September 15, 2003, or PW SB PW4ENG 72–756, dated July 7, 2003, or PW SB PW4ENG 72–759, Revision 1, dated September 16, 2003, or PW SB PW4ENG 72–759, dated July 7, 2003, for engines installed in Airbus airplanes, or

(3) PW SB PW4ENG 72–757, Revision 1, dated September 15, 2003, for engines installed in McDonnell Douglas airplanes.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Testing-21 Reports

(w) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) and on-wing Testing-21 to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to *9-ane-surge-ad-reporting@faa.gov*. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test or on-wing Testing-21, as applicable.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Documents That Have Been Incorporated By Reference

(x) The actions must be done in accordance with the following Pratt and Whitney (PW) service bulletins (SBs), Internal Engineering Notice (IEN), Temporary Revisions, (TR's), engine manual (EM) sections, and Chromalloy Florida Repair Procedure:

Document No.	Pages	Revision	Date
PW SB PW4ENG 72–714	All	Original	June 27, 2000.
Total pages: 12.			
PW SB PW4ENG 72–714	1–2	1	November 8, 2001.
	3	Original	June 27, 2000.
	4	1	November 8, 2001.
	5–12	Original	June 27, 2000.
Total pages: 12.			
PW SB PW4ENG 72–714	All	2	February 28, 2003.
Total pages: 14.			
PW SB PW4ENG 72–749	All	Original	June 17, 2002.
Total pages: 14.			
PW SB PW4ENG 72–749	1	1	January 8, 2003.
	2–4	Original	June 17, 2002.
	5–7	1	January 8, 2003.
	8	Original	June 17, 2002.
	9–10	1	January 8, 2003.
	11	Original	June 17, 2002.
	12–14	1	January 8, 2003.
Total pages: 14.			
PW SB PW4ENG 72–755	1	2	May 23, 2003.
	2–37	1	April 8, 2003.
	38–39	2	May 23, 2003.
	40–54	1	April 8, 2003.
	55	2	May 23, 2003.
	56–152	1	April 8, 2003.
	153	2	May 23, 2003.
	154–166	1	April 8, 2003.
	167–171	2	May 23, 2003.
	172–179	1	April 8, 2003.
	180–183	2	May 23, 2003.
	184–195	1	April 8, 2003.
	196	2	May 23, 2003.
	197–233	1	April 8, 2003.
	234	2	May 23, 2003.
	235–287	1	April 8, 2003.
Total pages: 287.			
PW SB PW4ENG 72–755	1	3	September 16, 2003.
	2	1	April 8, 2003.
	3–294	3	September 16, 2003.
Total pages: 294.			
PW SB PW4ENG 72–756	All	Original	July 7, 2003.
Total pages: 283.			
PW SB PW4ENG 72–756	1	1	September 15, 2003.
	2–4	Original	July 7, 2003.
	5–6	1	September 15, 2003.
	7–13	Original	July 7, 2003.
	14	1	September 15, 2003.
	15–48	Original	July 7, 2003.
	49	1	September 15, 2003.
	50–51	Original	July 7, 2003.
	52–64	1	September 15, 2003.
	65–109	Original	July 7, 2003.
	110	1	September 15, 2003.

Document No.	Pages	Revision	Date
	111–123	Original	July 7, 2003.
	124	1	September 15, 2003.
	125–165	Original	July 7, 2003.
	166	1	September 15, 2003.
	167–172	Original	July 7, 2003.
	173	1	September 15, 2003.
	174–189	Original	July 7, 2003.
	190–192	1	September 15, 2003.
	193	Original	July 7, 2003.
	194–196	1	September 15, 2003.
	197–204	Original	July 7, 2003.
	205–206	1	September 15, 2003.
	207–224	Original	July 7, 2003.
	225	1	September 15, 2003.
	226–241	Original	July 7, 2003.
	242–243	1	September 15, 2003.
	244	Original	July 7, 2003.
	245	1	September 15, 2003.
	246–247	Original	July 7, 2003.
	248	1	September 15, 2003.
	249–255	Original	July 7, 2003.
	256–258	1	September 15, 2003.
	259–281	Original	July 7, 2003.
	282–283	1	September 15, 2003.
Total pages: 283.			
PW SB PW4ENG 72–757	1	1	September 15, 2003.
	2–3	Original	August 15, 2003.
	4	1	September 15, 2003.
	5–34	Original	August 15, 2003.
	35	1	September 15, 2003.
	36–39.	Original.	August 15, 2003.
	40–57	1	September 15, 2003.
	58–105	Original	August 15, 2003.
	106	1	September 15, 2003.
	107–147	Original	August 15, 2003.
	148	1	September 15, 2003.
	149–154	Original	August 15, 2003.
	155–156	1	September 15, 2003.
	157–167	Original	August 15, 2003.
	168	1	September 15, 2003.
	169–195	Original	August 15, 2003.
	196	1	September 15, 2003.
	197–218	Original	August 15, 2003.
	219–220	1	September 15, 2003.
	221–237	Original	August 15, 2003.
Total pages: 237.			
PW SB PW4ENG 72–759	All	Original	July 7, 2003.
Total pages: 228.			
PW SB PW4ENG 72–759	1	1	September 16, 2003.
	2–4	Original	July 7, 2003.
	5–12	1	September 16, 2003.
	13–99	Original	July 7, 2003.
	100	1	September 16, 2003.
	101–134	Original	July 7, 2003.
	135	1	September 16, 2003.
	136–143	Original	July 7, 2003.
	144–146	1	September 16, 2003.
	147–174	Original	July 7, 2003.
	175	1	September 16, 2003.
	176–203	Original	July 7, 2003.
	204	1	September 16, 2003.
	205–224	Original	July 7, 2003.
	225–226	1	September 16, 2003.
	227	Original	July 7, 2003.
Total pages: 227.			
PW IEN 02KCW13E	All	Original	November 21, 2002.
Total pages: 20.			
PW IEN 02KCW13H	All	Original	December 9, 2002.
Total pages: 21.			
PW IEN 96KC973D	All	Original	October 12, 2001.
Total pages: 19.			
PW TR 71–0018	All	Original	November 14, 2001.

Document No.	Pages	Revision	Date
Total pages: 24.			
PW TR 71–0026	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0035	All	Original	November 14, 2001.
Total pages: 24.			
PW4000 EM 50A443, 71–00–00, TESTING–21	All	Original	March 15, 2002.
Total pages: 20.			
PW4000 EM 50A605, 71–00–00, TESTING–21	All	Original	March 15, 2002.
Total pages: 20.			
PW4000 EM 50A605, 71–00–00,.			
TESTING–21	1–7	Original	March 15, 2002.
	8–25	N/A	June 15, 2003.
Total pages: 25.			
PW4000 EM 50A822, 71–00–00, TESTING–21	All	Original	March 15, 2002.
Total pages: 20.			
Chromalloy Florida Repair Procedure, 00 CFL–039–0:			
Summary	1–3	Original	December 27, 2000.
Insp/chk–01	801	Original	December 27, 2000.
Repair–01	901–903	Original	December 27, 2000.
Total pages: 7.			

The incorporation by reference of PW SB PW4ENG 72–714, Revision 1, dated November 8, 2001, PW IEN 96KC973D, dated October 12, 2001; PW TR 71–0018, PW TR 71–0026, and PW TR 71–0035, all dated November 14, 2001; was approved by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002). The incorporation by reference of PW SB PW4ENG 72–749, dated June 17, 2002; PW4000 EM 50A443, Section 71–00–00, Testing-21, dated March 15, 2002; PW4000 EM 50A822, Section 71–00–00, Testing-21, dated March 15, 2002; PW4000 EM 50A605, Section 71–00–00, Testing-21, dated March 15, 2002; and Chromalloy Florida Repair Procedure, 00 CFL–039–0, dated December 27, 2000; was approved by the Director of the Federal Register as of November 12, 2002 (67 FR 65484, October 25, 2002). The incorporation by reference of PW SB PW4ENG 72–714, Revision 2, dated February 28, 2003; PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; PW SB PW4ENG 72–749, Revision 1, dated January 8, 2003; and PW EM 50A605, Section 71–00–00, Testing-21, dated June 15, 2003, was approved by the Director of the Federal Register as of July 7, 2003 (68 FR 33844; June 6, 2003). The Director of the Federal Register approves the incorporation by reference of PW SB PW4ENG 72–714, dated June 27, 2000; PW SB PW4ENG 72–755, Revision 3, dated September 16, 2003; PW SB PW4ENG 72–756, dated July 7, 2003; PW SB PW4ENG 72–756, Revision 1, dated September 15, 2003; PW SB PW4ENG 72–757, Revision 1, dated September 15, 2003; PW SB PW4ENG 72–759, dated July 7, 2003; PW SB PW4ENG 72–759, Revision 1, dated September 16, 2003; PW IEN 02KCW13E, dated November 21, 2002; and PW IEN 02KCW13H, dated December 9, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. PW document copies may be obtained from Pratt and Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605. Chromalloy Florida document copies may be obtained from Chromalloy Florida, 630 Anchors St., NW., Walton Beach, FL 32548; telephone (850) 244–7684; fax (850) 244–6322. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(y) This amendment becomes effective on October 30, 2003.

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

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–24486 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–35–AD; Amendment 39–13317; AD 2003–19–14]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob Luft—und Raumfahrt GmbH & CO KG Models G103 Twin Astir, G103 Twin II, G103A Twin II Acro, and G103C Twin III Acro Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BURKHART GROB LUFT—UND RAUMFAHRT GmbH & CO KG (GROB) Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes. This AD requires you to modify the airspeed indicators and install a flight speed reduction placard and an aerobatic maneuver restriction placard (as applicable). This AD also requires you to revise the flight and maintenance manual. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the possibility of damage to the fuselage during limit load flight due to inadequate safety margins designed into the fuselage. Such a condition could result in reduced structural integrity of the fuselage and lead to loss of control of the sailplane.

DATES: This AD becomes effective on October 20, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of October 20, 2003.

We must receive any comments on this proposed AD by October 31, 2003.

ADDRESSES: Use one of the following to submit comments on this AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–35–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this AD from GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productsupport@grob-aerospace.de.*

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The LBA, which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III 2 ACRO sailplanes. The LBA reports that the safety margins established into the design of the fuselage may not be sufficient to sustain limit loads during certain maneuvers and during flight at certain speeds.

The manufacturer will continue to investigate the effects of certain flight conditions on the fuselage structure. After completing this investigation, FAA may take additional AD action.

What are the consequences if the condition is not corrected? If not prevented, damage to the fuselage could result in reduced structural integrity. This condition could lead to loss of control of the sailplane.

Is there service information that applies to this subject? GROB has issued Alert Service Bulletin No. ASB315–63/2, dated June 2, 2003, and Alert Service Bulletin No. ASB315–64, dated June 30, 2003.

What are the provisions of this service information? These service bulletins include procedures for:

—Modifying the air speed indicators;
—Installing placards restricting flight speeds, prohibiting aerobatic maneuvers, and restricting load limits; and
—Incorporating revisions to the flight and maintenance manuals.

What action did the LBA take? The LBA classified these service bulletins as mandatory and issued German AD Number 2003–185, dated May 30, 2003, and German AD Number 2003–231, dated July 16, 2003, in order to ensure the continued airworthiness of these sailplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These GROB Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Per this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other GROB Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes of the same type design that are registered in the United States, this AD is being issued to prevent the possibility of damage to the fuselage during limit load flight due to inadequate safety margins designed into the fuselage. Such a condition could result in reduced structural integrity of the fuselage and lead to loss of control of the sailplane.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletins.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

What are the differences between this AD, the LBA AD, and the service information? The LBA AD and the service information require completion of the actions required in this AD prior to further flight. We require completion of all actions within the next 10 hours time-in-service (TIS) after the effective date of this AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 10 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions required by this AD accomplished without compromising the safety of the airplanes.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we 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 altered products, special flight permits, and alternative methods of compliance. 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.

Comments Invited

Will I have the opportunity to comment prior to the issuance of the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–35–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–35–AD'' in your request.

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. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–19–14 Burkhart Grob Luft—und Raumfahrt Gmbh & Co KG: Amendment 39–13317; Docket No. 2003–CE–35–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 20, 2003.

What Other ADs Are Affected By This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
G103 TWIN ASTIR	All.
G103 TWIN II	All.
G103A TWIN II ACRO	All.
G103C TWIN III ACRO	All.

What Is The Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the possibility of damage to the fuselage during limit load flight due to inadequate safety margins designed into the fuselage. Such a condition could result in reduced structural integrity of the fuselage and lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the airspeed indicators; install flight speed, aerobatic maneuver, and load limit restriction placards (as applicable); and revise the flight and maintenance manual (as applicable).	Within the next 10 hours time-in-service (TIS) after October 20, 2003 (the effective date of this AD).	Per GROB Alert Service Bulletin No. ASB315–63/2, dated June 2, 2003, and Alert Service Bulletin No. ASB315–64, dated June 30, 2003.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory A. Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD must be done in accordance with GROB Alert Service Bulletin No. ASB315–63/2, dated June 2, 2003, and GROB Alert Service Bulletin No. ASB315–64, dated June 30, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productsupport@grob-aerospace.de.*

You may review copies at FAA, Central Region, Office of the Regional Counsel, 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.

Is There Other Information That Relates to This Subject?

(h) German AD 2003–185, dated May 30, 2003, and German AD 2003–231, dated July 16, 2003 also address the subject of this AD.

Issued in Kansas City, Missouri, on September 19, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24283 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–26–AD; Amendment 39–13316; AD 2003–19–13]

RIN 2120–AA64

Airworthiness Directives; Grob-Werke Model G120AA Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all GROB-WERKE (GROB) Model G120A airplanes. This AD requires you to modify the flight control system operating levers. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent failure of a ball bearing in the flight control system operating levers. Such failure could lead to reduced control or loss of control of the airplane.

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

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

ADDRESSES: You may get the service information identified in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productssupport@grob-aerospace.de.* You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–26–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that a damaged ball bearing in a flight control system operating lever was found. The damage was found during regular maintenance. It is believed that the damage was caused by incorrect installation.

What is the potential impact if FAA took no action? If not corrected, this condition could cause failure of a ball bearing in affected flight control system operating levers. Such failure could result in reduced control or loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all GROB Model G120A. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 15, 2003 (68 FR 41760). The NPRM proposed to require you to modify the flight control system operating levers.

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD 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.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. 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.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 6 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 modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	No cost for parts	$600	6 × $600 = $3,600.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–26–AD'' in your request.

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:

2003–19–13 Grob–Werke: Amendment 39–13316; Docket No. 2003–CE–26–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 11, 2003.

Are Any Other ADs Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
G120A	All.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI)

issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent failure of a ball bearing in the flight control system operating levers. Such failure could lead to reduced control or loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the flight control system operating levers for damaged ball bearings and replace any lever with a damaged ball bearing.	Inspect within the next 50 hours time-in-service (TIS) after November 11, 2003 (the effective date of this AD). Replace levers with damaged ball bearings prior to further flight after the inspection.	In accordance with GROB Service Bulletin No. MSB1121–033, dated May 8, 2003 (which includes Attachment 1, dated May 8, 2003).
(2) Accomplish the modifications to: (a) elevator rod 1, part number (P/N) 120A–4400.08 or part number 120A–4217 (which supersedes P/N 120A–4400.08); and (b) the flight control system operating levers.	Within the next 50 hours TIS after November 11, 2003 (the effective date of this AD).	In accordance with GROB Service Letter No. SL1121–009, dated May 23, 2003, and GROB Service Bulletin No. MSB1121–034, dated May 19, 2003 (which includes Attachment 1, dated May 19, 2003).
(3) Only install flight control system operating levers that have been modified in accordance with paragraph (e)(2)(a) and (e)(2)(b) of this AD.	As of November 11, 2003 (the effective date of this AD).	

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Material Incorporated by Reference?

(g) Actions required by this AD must be done in accordance with GROB Service Letter No. SL1121–009, dated May 23, 2003; GROB Service Bulletin No. MSB1121–033, dated May 8, 2003 (which includes Attachment 1, dated May 8, 2003); and GROB Service Bulletin No. MSB1121–034, dated May 19, 2003 (which includes Attachment 1, dated May 19, 2003). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may get a copy from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productssupport@grob-aerospace.de.* You may review copies at FAA, Central Region, Office of the Regional Counsel, 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.

Is There Other Information That Relates to This Subject?

(h) German AD 2003–164/2, dated May 22, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on September 18, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24284 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–319–AD; Amendment 39–13320; AD 2003–20–02]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes Equipped With Certain Pratt & Whitney PW306B Engine Nacelles

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that requires a one-time inspection of the anti-ice tubing in the engine nacelle at the joint between the anti-ice tubing adapter and duct, and also between the joint of the anti-ice shutoff valve and the same duct, to detect any air leakage at the joints. This action is necessary to prevent an uncommanded engine shutdown in a critical phase of flight due to leakage of air from a loose clamp on the anti-ice tubing joint. This action is intended to address the identified unsafe condition.

DATES: Effective November 4, 2003.

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

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes was published in the **Federal Register** on July 15, 2003 (68 FR 41762). That action proposed to require a one-time inspection of the anti-ice tubing in the

engine nacelle at the joint between the anti-ice tubing adapter and duct, and also between the joint of the anti-ice shutoff valve and the same duct, to detect any air leakage at the joints.

Comments

The FAA provided the public the opportunity to participate in the development of this AD. We received no comments on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Change to Hourly Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to do the inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,120, or $65 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:

2003–20–02 Fairchild Dornier Gmbh (Formerly Dornier Luftfahrt GmbH): Amendment 39–13320. Docket 2001–NM–319–AD.

Applicability: Model 328–300 series airplanes equipped with Pratt & Whitney PW306B engine nacelles, from engine nacelle serial number DR0001 up to and including serial number DR0051, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded engine shutdown in a critical phase of flight due to leakage of air from a loose clamp on the anti-ice tubing joint, accomplish the following:

Inspection

(a) Within 45 days after the effective date of this AD, perform a detailed inspection of the anti-ice tubing in the engine nacelle at the joint between the anti-ice tubing adapter and duct, and also between the joint of the anti-ice shutoff valve and the same duct, to detect any air leakage at the joints, as specified in the Accomplishment Instructions of Dornier Service Bulletin SB–328J–71–107, Revision 1, dated July 4, 2001. If no leakage is detected, no further action is required by this AD.

Note 1: 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.''

Modification

(b) If air leakage is found during the detailed inspection required by paragraph (a) of this AD, before further flight, modify the joint by doing the applicable actions specified in the Accomplishment Instructions of Dornier Service Bulletin SB–328J–71–107, Revision 1, dated July 4, 2001.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions must be done in accordance with Dornier Service Bulletin SB–328J–71–107, Revision 1, dated July 4, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directive 2001–296, dated October 18, 2001.

Effective Date

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

Issued in Renton, Washington, on September 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24488 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30388; Amdt. No. 3076]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on September 12, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC Number	Subject
09/05/03	AK	Anchorage	Ted Stevens Anchorage Intl	3/8586	MLS Rwy 6L, Orig–A
09/05/03	AK	Anchorage	Ted Stevens Anchorage Intl	3/8587	ILS Rwy 6R (CAT I, II, III) Amdt 11B
09/05/03	AK	Anchorage	Ted Stevens Anchorage Intl	3/8588	ILS Rwy 6L, Orig
09/05/03	AK	Bethel	Bethel	3/8582	ILS/DME Rwy 18, Amdt 5
09/05/03	AK	Bethel	Bethel	3/8583	NDB Rwy 18, Amdt 8B
09/05/03	AK	Bethel	Bethel	3/8584	VOR/DME Rwy 18, Amdt 1
09/05/03	AK	Bethel	Bethel	3/8585	RNAV (GPS)–A, Orig
09/05/03	AK	Port Heiden	Port Heiden	3/8645	NDB/DME Rwy 5, Amdt 2A
09/05/03	AK	Port Heiden	Port Heiden	3/8646	NDB/DME Rwy 13, Amdt 2
09/05/03	AK	Port Heiden	Port Heiden	3/8647	NDB Rwy 5, Amdt 5
09/05/03	AK	Port Heiden	Port Heiden	3/8648	NDB Rwy 13, Amdt 5
09/05/03	AK	Port Heiden	Port Heiden	3/8649	GPS Rwy 5, Orig
09/05/03	AK	Port Heiden	Port Heiden	3/8650	GPS Rwy 13, Orig
09/05/03	AK	Savoonga	Savoonga	3/8602	GPS Rwy 5, Orig
09/05/03	AK	Soldotna	Soldotna	3/8603	VOR–A, Amdt 6
09/05/03	AK	Soldotna	Soldotna	3/8604	GPS Rwy 7, Orig
09/05/03	AK	Soldotna	Soldotna	3/8605	NDB/DME Rwy 7, Amdt 1
09/05/03	AK	Talkeetna	Talkeetna	3/8601	NDB Rwy 36, Amdt 1B
09/05/03	AZ	Nogales	Nogales	3/8437	VOR/DME or GPS–B, Amdt 2
09/05/03	AZ	Nogales	Nogales	3/8438	NDB or GPS–C, Amdt 2
09/05/03	AZ	Nogales	Nogales	3/8445	VOR or GPS–A, Amdt 3
09/05/03	AZ	St. Johns	St. Johns Industrial Airpark	3/8440	VOR/DME or GPS–A Amdt 1A
09/05/03	CA	Santa Monica	Santa Monica Muni	3/8465	VOR or GPS–A, Amdt 10A
09/05/03	CA	San Francisco	San Francisco	3/8254	VOR or GPS–B, Amdt 5B
09/05/03	IL	Chicago	Du Page	3/8569	ILS Rwy 2L, Amdt 1A

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/05/03	IL	Jacksonville	Jacksonville Muni	3/8570	VOR or GPS Rwy 13, Orig
09/05/03	IN	Indianapolis	Eagle Creek Airpark	3/8431	LOC Rwy 21, Amdt 3A
09/05/03	IN	Indianapolis	Eagle Creek Airpark	3/8439	NDB or GPS Rwy 21, Amdt 3A
09/05/03	IN	Lafayette	Lafayette/Purdue University	3/8428	VOR or GPS–A, Amdt 25
09/05/03	IN	Muncie	Delaware County—Johnson Field	3/8434	VOR or GPS Rwy 14, Amdt 16
09/05/03	MI	Clare	Clare Muni	3/8457	VOR or GPS–A, Amdt 1B
09/05/03	MI	Mount Pleasant	Mount Pleasant Muni	3/8459	VOR or GPS Rwy 27, Orig A
09/05/03	MI	Saginaw	Saginaw/MBS Intl	3/8544	ILS Rwy 23, Amdt 4
09/05/03	MI	Saginaw	Saginaw County H.W. BROWNE	3/8458	VOR/DME or GPS–A, Amdt 3A
09/05/03	MN	Redwood Falls	Redwood Falls Muni	3/8498	VOR/DME RNAV Rwy 30, Amdt 1
09/05/03	MN	Redwood Falls	Redwood Falls Muni	3/8499	VOR or GPS–A, Amdt 4
09/05/03	MN	Redwood Falls	Redwood Falls Muni	3/8500	GPS Rwy 30, Orig
09/05/03	ND	Bismarck	Bismarck	3/8493	GPS Rwy 31, Amdt 30B
09/05/03	ND	Bismarck	Bismarck	3/8494	VOR or GPS–A, Amdt 19A
09/05/03	ND	Minot	Minot Intl	3/8396	VOR or GPS Rwy 8, Amdt 10A
09/05/03	ND	Minot	Minot Intl	3/8397	VOR or GPS Rwy 26, Amdt 12
09/05/03	OH	Mansfield	Mansfield Lahm Regional	3/8531	ILS Rwy 32, Amdt 15B
09/05/03	OH	Mansfield	Mansfield Lahm Regional	3/8788	VOR or GPS Rwy 32, Amdt 6B
09/05/03	SD	Huron	Huron Regional	3/8233	ILS Rwy 12, Amdt 9A
09/05/03	SD	Huron	Huron Regional	3/8234	VOR or GPS Rwy 12, Amdt 21A
09/05/03	SD	Huron	Huron Regional	3/8235	NDB Rwy 12, Amdt 20B
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8473	RNAV (GPS) Rwy 3, Orig
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8474	RNAV (GPS) Rwy 15, Orig
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8475	RNAV (GPS) Rwy 21, Orig
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8476	RNAV (GPS) Rwy 33, Orig

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8477	RNAV (GPS) Rwy 9, Orig
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8486	NDB Rwy 3, Amdt 24A
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8488	VOR or Tacan Rwy 15, Amdt 21
09/05/03	WI	Boscobel	Boscobel	3/8608	VOR/DME or GPS–A, Amdt 3
09/05/03	WI	Oshkosh	Wittman Regional	3/8552	RNAV (GPS) Rwy 36, Amdt 1
09/05/03	WI	Platteville	Platteville Muni	3/8610	VOR/DME RNAV or GPS Rwy 25, Amdt 6
09/05/03	WI	Watertown	Watertown Muni	3/8636	VOR/DME RNAV or GPS Rwy 5, Amdt 3A
09/05/03	WI	Watertown	Watertown Muni	3/8637	NDB or GPS Rwy 23, Amdt 1A
09/05/03	WI	Wisconsin Rapids	Alexander Field	3/8635	GPS Rwy 20, Orig
09/05/03	GA	Albany	Southwest GA Regional	3/8556	LOC BC Rwy 22, Amdt 7
09/04/03	GA	Alberton	Elbert County-Patz Field	3/8354	VOR/DME or GPS Rwy 10, Amdt 2C
09/04/03	GA	Augusta	Augusta Regional at Bush Field	3/8353	NDB or GPS Rwy 35, Amdt 28
09/04/03	GA	Augusta	Augusta Regional at Bush Field	3/8352	ILS Rwy 35, Amdt 26
09/04/03	GA	Augusta	Daniel Field	3/8351	RADAR–1, Amdt 7
09/04/03	GA	Winder	Winder-Barrow	3/8350	VOR/DME RNAV or GPS Rwy 23, Orig-B
09/05/03	GA	Plains	Peterson Field	3/8292	VOR/DME or GPS–B, Amdt 1
09/05/03	GA	Jesup	Jesup-Wayne County	3/8291	NDB or GPS Rwy 28, Amdt 2A
09/05/03	GA	Jesup	Jesup-Wayne County	3/8290	NDB or GPS Rwy 10, Amdt 1A
09/05/03	NC	Kenansville	Duplin County	3/8001	GPS Rwy 4, Orig-A
09/05/03	NC	Kenansville	Duplin County	3/8000	GPS Rwy 22, Orig-A
09/05/03	NC	Kenansville	Duplin County	3/7999	LOC Rwy 22, Orig
09/05/03	NC	Kenansville	Duplin County	3/7998	NDB Rwy 22, Orig
09/05/03	TN	Knoxville	Knoxville Downtown Island	3/8219	VOR/DME or GPS–B, Amdt 6
09/05/03	NY	Utica	Oneida County	3/8620	NDB or GPS Rwy 15, Amdt 9C
09/05/03	NY	Utica	Oneida County	3/8618	ILS Rwy 15, Amdt 3C

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/05/03	NY	Endicott	Tri-Cities	3/8616	VOR or GPS–A, Amdt 4
09/05/03	NY	Binghamton	Greater Binghamton/Edwin A. Link Field	3/8529	VOR or GPS Rwy 10, Amdt 6A
09/05/03	NY	Binghamton	Greater Binghamton/Edwin A. Link Field	3/8528	ILS Rwy 16, Amdt 6B
09/04/03	NY	Glens Falls	Floyd Bennett Memorial	3/8047	RNAV (GPS) Rwy 19, Orig
09/05/03	NJ	Manville	Central Jersey Regional	3/8564	GPS Rwy 7, Orig
09/04/03	CO	Fort Collins-(Loveland)	Fort Collins-Loveland Muni	3/8449	NDB Rwy 33, Amdt 4A
09/04/03	CO	Fort Collins (Loveland)	Fort Collins Loveland Muni	3/8448	ILS Rwy 33, Amdt 5B
09/02/03	UT	St. George	St. George Muni	3/8244	VOR/DME Rwy 34, Amdt 3
09/02/03	UT	Richfield	Richfield Muni	3/8242	RNAV (GPS) Rwy 19, Orig
09/02/03	WY	Worland	Worland Muni	3/8213	VOR or GPS Rwy 16, Amdt 5A
08/29/03	TX	Dallas	Dallas-Love Field	3/8113	ILS Rwy 13L, Amdt 31A
08/29/03	TX	Dallas	Dallas-Love Field	3/8114	ILS Rwy 13R, Amdt 4C
08/29/03	TX	Dallas	Dallas-Love Field	3/8115	ILS Rwy 31L, Amdt 19D
08/29/03	TX	Dallas	Dallas-Love Field	3/8116	ILS Rwy 31R, Amdt 3C
08/29/03	TX	McKinney	McKinney Muni	3/8121	ILS Rwy 17, Amdt 2
08/29/03	TX	El Paso	West Texas	3/8203	VOR/DME or GPS–A, Amdt 4
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8686	RNAV (GPS) Rwy 34R, Orig-A
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8681	RNAV (GPS) Rwy 16L, Orig-A
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8691	ILS Rwy 34R, Orig-C
09/08/03	ID	Coeur D'Alene	Coeur D'Alene Air Terminal	3/8643	VOR or GPS–A, Orig-A
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8680	ILS Rwy 16L, Amdt 1D
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8682	VOR Rwy 16L/R Amdt 13
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8683	ILS Rwy 16R (CAT I,II,III), Amdt 12C
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8684	RNAV (GPS) Rwy 16R, Orig-A
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8685	RNAV (GPS) Rwy 34L, Orig-A
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8687	NDB Rwy 16R, Amdt 1

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8688	VOR Rwy 34L/R, Amdt 9
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8689	NDB Rwy 34R, Amdt 8
09/08/03	WA	Seattle	Seattle-Tacoma INTL	3/8690	ILS Rwy 34L, Orig-B
09/08/03	CO	Denver	Centennial	3/8660	GPS Rwy 35R, Orig
09/08/03	CO	Denver	Centennial	3/8659	GPS Rwy 28, Orig
09/08/03	CO	Denver	Centennial	3/8658	VOR/DME RNAV Rwy 28, Amdt 1A
09/08/03	CO	Denver	Centennial	3/8656	ILS Rwy 35R, Amdt 8
09/08/03	CO	Denver	Centennial	3/8655	NDB Rwy 35R, Amdt 10
09/08/03	ID	Twin Falls	Joslin Field-Magic Valley Regional	3/8641	NDB or GPS Rwy 25, Amdt 5A
09/08/03	AK	Delta Junction/Fort Greely	Allen AAF	3/8763	VOR Rwy 18, Orig
09/08/03	AK	Delta Junction/Fort Greely	Allen AAF	3/8764	GPS Rwy 18, Amdt 1
09/08/03	AK	Delta Junction/Fort Greely	Allen AAF	3/8765	NDB–A, Amdt 1
09/08/03	AK	Delta Junction/Fort Greely	Allen AAF	3/8766	VOR/DME or TACAN Rwy 18, Amdt 1
09/08/03	AK	Nome	Nome	3/8810	NDB Rwy 27, Amdt 1A
09/08/03	CA	Burbank	Burbank-Glendale-Pasadena	3/8817	VOR Rwy 8, Amdt 10C
09/08/03	CA	Burbank	Burbank-Glendale-Pasadena	3/8819	ILS Rwy 8, Amdt 35B
09/08/03	CA	Burbank	Burbank-Glendale-Pasedena	3/8820	RNAV (GPS) Rwy 8, Orig
09/08/03	CA	Burbank	Burbank-Glendale-Pasadena	3/8821	LOC Rwy 8, Amdt 2B
09/08/03	CA	Burbank	Burbank-Glendale-Pasadena	3/8822	NDB Rwy 8, Amdt 2B
09/02/03	TX	Levelland	Levelland Muni	3/8239	NDB Rwy 17, Amdt 2A
09/02/03	TX	Levelland	Levelland Muni	3/8240	NDB Rwy 35, Amdt 1B
09/02/03	TX	Levelland	Levelland Muni	3/8241	GPS Rwy 35, Orig
09/02/03	MO	Chillicothe	Chillicothe Muni	3/8257	NDB or GPS Rwy 14, Amdt 7
09/0/03	OK	Mangum	Scott Field	3/8260	RNAV (GPS) Rwy 17, Orig
08/30/03	MO	Cassville	Cassville Muni	3/8262	VOR or GPS Rwy 8, Amdt 1A
09/02/03	MO	Camdenton	Camdenton Memorial	3/8263	VOR or GPS-A, Amdt 3
09/02/03	TX	Levelland	Levelland Muni	3/8264	GPS Rwy 17, Orig

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/04/03	MA	Beverly	Beverly Muni	3/8402	GPS Rwy 16, Orig–A
09/04/03	ME	Augusta	Augusta State	3/8403	GPS Rwy 35, Orig
09/04/03	ME	Houlton	Houlton INTL	3/8404	GPS-A, Orig
09/04/03	ME	Old Town	Dewitt Field Old Town Muni	3/8405	NDB or GPS Rwy 22, Amdt 5
09/04/03	CT	Oxford	Waterbury-Oxford	3/8406	GPS Rwy 36, Orig–A
09/04/03	ME	Augusta	Augusta State	3/8407	GPS Rwy 8, Orig
09/04/03	MA	Stow	Minute Man Airfield	3/8408	NDB or GPS–A, Amdt 7B
09/04/03	MA	Nantucket	Nantucket Memorial	3/8409	VOR or GPS Rwy 24, Amdt 13A
09/04/03	MA	Nantucket	Nantucket Memorial	3/8410	GPS Rwy 33, Orig–B
09/04/03	MA	Chatham	Chatham Muni	3/8411	NDB or GPS–A, Orig–A
09/04/03	MA	Plymouth	Plymouth Muni	3/8412	GPS Rwy 6, Amdt 2A
09/04/03	MA	Taunton	Taunton Muni	3/8413	NDB or GPS Rwy 30, Amdt 4A
09/04/03	ME	Auburn-Lewiston	Auburn-Lewiston Muni	3/8420	NDB or GPS Rwy 4, Amdt 10A
09/05/03	SD	Winner	Bob Wiley Field	3/8205	VOR or GPS–A, Amdt 6A
09/04/03	MA	Orange	Orange Muni	3/8422	NDB or GPS–B, Amdt 4B
09/04/03	MA	Orange	Orange Muni	3/8423	VOR or GPS–A, Amdt 6
09/04/03	TX	Greenville	Majors	3/8533	NDB or GPS Rwy 35, Amdt 1B
09/05/03	TX	Mount Pleasant	Mount Pleasant Muni	3/8546	RNAV (GPS) Rwy 17, Orig–B
09/05/03	TX	Mount Pleasant	Mount Pleasant Muni	3/8547	RNAV (GPS) Rwy 35, Orig–A
09/05/03	MO	Washington	Washington Memorial	3/8574	VOR Rwy 16, Amdt 2
09/05/03	MA	Vineyard Haven	Marthas Vineyard	3/8627	VOR or GPS Rwy 6, Orig–D
09/05/03	MA	Orange	Orange Muni	3/8628	GPS Rwy 32, Orig–B
09/05/03	SD	Winner	Bob Wiley Field	3/8205	VOR or GPS–A, Amdt 6A
09/05/03	MA	Vineyard Haven	Marthas Vineyard	3/8630	VOR or GPS Rwy 24, Orig–B
09/05/03	NH	Berlin	Berlin Muni	3/8631	GPS Rwy 18, Orig
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8300	RADAR–1, Amdt 10A
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8301	ILS Rwy 13, Amdt 27
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8302	ILS Rwy 22R, Amdt 9A

EFFECTIVE UPON PUBLICATION—Continued

FDC Date	State	City	Airport	FDC Number	Subject
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8303	LOC BC Rwy 4L, Amdt 6C
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8304	VOR/DME Rwy 22R, Amdt 8D
09/03/03	LA	Baton Rouge	Baton Rouge Metropolitan, Ryan Field	3/8305	NDB Rwy 31, Amdt 2
09/03/03	LA	Lake Providence	Byerley	3/8306	NDB Rwy 17, Amdt 1
09/03/03	LA	Lake Providence	Byerley	3/8307	GPS Rwy 17, Orig
09/05/03	VT	Rutland	Rutland State	3/8632	GPS Rwy 19, Amdt 2A
09/05/03	MA	Vineyard Haven	Marthas Vineyard	3/8633	ILS Rwy 24, Orig–B
09/05/03	TX	Granbury	Granbury Muni	3/8667	VOR/DME–A, Orig–A
09/05/03	TX	Granbury	Granbury Muni	3/8668	GPS Rwy 14, Orig
09/08/03	MA	Hyannis	Barnstable Muni-Boardman/Polando Field	3/8768	VOR or GPS Rwy 6, Amdt 7C
09/08/03	MA	Hyannis	Barnstable Muni-Boardman/Polando Field	3/8770	RNAV (GPS) Rwy 24, Orig
09/08/03	NE	Lincoln	Lincoln Muni	3/8801	ILS Rwy 17R, Amdt 6B
09/08/03	NE	Lincoln	Lincoln Muni	3/8802	ILS Rwy 35L, Amdt 11B
09/08/03	NE	Lincoln	Lincoln Muni	3/8803	NDB or GPS Rwy 35L, Amdt 8B
09/08/03	NE	Lincoln	Lincoln Muni	3/8804	VOR or GPS Rwy 17L, Amdt 6C
09/08/03	NE	Lincoln	Lincoln Muni	3/8805	VOR or GPS Rwy 17R, Amdt 11B
09/08/03	NE	North Platte	North Platte Regional Airport, Lee Bird Field	3/8806	VOR or GPS Rwy 35, Amdt 17B
09/02/03	FL	Marathon	Marathon/The Florida Keys Marathon	3/8218	NDB or GPS Rwy 7, Amdt 3
09/05/03	FL	Fort Pierce	St. Lucie County INTL	3/8558	ILS Rwy 9, Amdt 1A
09/09/03	IL	Chicago	Chicago-O'-Hare INTL	3/8875	RNAV (GPS) Y Rwy 22R, Orig–A
09/09/03	MI	Grand Rapids	Grand Rapids/Gerald R. Ford INTL	3/8871	ILS Rwy 8R, Amdt 5D
09/09/03	MI	Grand Rapids	Grand Rapids/Gerald R. Ford INTL	3/8872	ILS Rwy 26L, Amdt 20A
09/05/03	SD	Sioux Falls	Joe Foss Field	3/8478	RNAV (GPS) Rwy 27, Orig

[FR Doc. 03–24066 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No. FAA–2003–15653; Amendment Nos. 121–287 and 129–38]

RIN 2120–AH96

Flightdeck Security on Large Cargo Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on July 18, 2003 (68 FR 42874). That rule provided an alternative means of compliance to operators of all-cargo airplanes that are required to have a reinforced security flightdeck door.

EFFECTIVE DATE: This correction is effective on September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, telephone (202) 267–9579.

Correction

In the final rule FR Doc. 03–18075, published on July 18, 2003, (68 FR 42874), make the following corrections:

1. On page 42874, in column 1 in the heading section, beginning on line 4, correct ''Amendment Nos. 121–287 and 129–37'' to read ''Amendment Nos. 121–287 and 129–38.''

Issued in Washington, DC on September 23, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–24745 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 03–29]

RIN 1515–AD24

Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to one of the provisions of the Customs Regulations that implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). The interim regulatory amendments involve the brassieres provision of section 213(b) and primarily reflect changes made to that statutory provision by section 3107 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the minimum U.S. material content requirements that apply for purposes of preferential treatment of brassieres under the CBERA. This document also includes a number of other changes to the CBERA implementing regulations for brassieres to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective September 30, 2003. Comments must be submitted by December 1, 2003.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Robert Abels, Office of Field Operations (202–927–1959).

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

Textile and Apparel Articles Under the Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Public Law 106–200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels. Paragraph (2)(A) of the statute includes, in clause (iv), a specific provision covering brassieres from designated CBTPA beneficiary countries.

On October 2, 2000, the President signed Proclamation 7351 to implement the provisions of the CBTPA. This Proclamation, which was published in the **Federal Register** (65 FR 59329) on October 4, 2000, modified the Harmonized Tariff Schedule of the United States (HTSUS) by, among other things, the addition of a new Subchapter XX to Chapter 98 to address the majority of the textile and apparel provisions of the CBTPA. Within that Subchapter XX, the brassieres provision of paragraph (2)(A)(iv) of the CBTPA statute is dealt with in U.S. Note 2(d) and in subheading 9820.11.15.

On October 5, 2000, the U.S. Customs Service (now the Bureau of Customs and Border Protection (CBP)) published in the **Federal Register** (65 FR 59650) T.D. 00–68 to amend the Customs Regulations on an interim basis in order to set forth basic legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those interim regulations, consisting of §§ 10.221 through 10.227 of the Customs Regulations (19 CFR 10.221 through 10.227), include, in paragraph (a) of § 10.223, a list of the various groups of articles that are eligible for preferential treatment under the statute. Paragraph (a)(6) of § 10.223 specifically addressed the basic CBTPA brassieres provision of subclause (I) of paragraph (2)(A)(iv) of the statute and subheading 9820.11.15 of the HTSUS. The regulatory texts set forth in T.D. 00–68 did not address subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS, because under the terms of the statute those provisions applied only to articles entered on or after October 1, 2001.

On October 4, 2001, CBP (as legacy Customs) published in the **Federal**

Register (66 FR 50534) T.D. 01–74 to amend the Customs Regulations on an interim basis in order to implement the terms of subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS. Those regulatory amendments involved primarily the addition of a new § 10.228 which set forth specific rules for the application of the minimum 75 and 85 percent U.S. fabric component content requirements under subclauses (II) and (III) that took effect for purposes of preferential treatment of brassieres described in subclause (I) starting on October 1, 2001.

Trade Act of 2002 Amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Public Law 107–210, 116 Stat. 933. Section 3107(a) of the Act made a number of changes to the textile and apparel provisions of paragraph (2)(A) of section 213(b) of the CBERA. The amendments made by section 3107(a) of the Act included a revision of the brassieres provisions of paragraph (2)(A)(iv) of the statute which involved the following textual changes: (1) Subclause (I) was amended by the addition of exception language regarding articles covered by certain other clauses under paragraph (2)(A); and (2) subclauses (II) and (III) were amended by replacing each reference to ''fabric components'' with ''fabrics,'' by adding exclusion language regarding findings and trimmings after each reference to fabric(s), and by adding various references to articles that are ''entered'' and that are ''eligible'' under clause (iv). The principal effects of the language changes within subclauses (II) and (III) were: (1) Adoption of a cost or value percentage standard based on a comparison between U.S. fabric and all fabric (rather than based on a comparison between U.S. fabric components and all fabric) contained in the articles; and (2) removal of the requirement that the articles must be both produced and entered in the same year. The amended paragraph (2)(A)(iv) text now reads as follows:

(iv) CERTAIN OTHER APPAREL ARTICLES.—(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on October 1, 2001, and during each of the 6 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which included, among other things, modifications to the HTSUS to implement the changes to section 213(b)(2)(A) of the CBERA made by section 3107(a) of the Act. Those modifications included an amendment of U.S. Note 2(d) to Subchapter XX, Chapter 98, HTSUS, to reflect the changes to subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute discussed above. The Proclamation further provided that this amendment of U.S. Note 2(d) was effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

Changes to the Interim Regulatory Texts

As a consequence of the statutory amendments described above and as a result of the modifications to the HTSUS made by Proclamation 7626, the interim regulatory provisions published in T.D. 01–74 no longer reflect the current standards that apply for purposes of preferential treatment of brassieres under the CBERA. CBP notes in this regard that the effect of the statutory changes requires changes throughout the text of interim § 10.228. Moreover, following publication of T.D. 01–74, some other issues came to the attention of CBP that warrant additional changes to the interim § 10.228 text.

Accordingly, this interim rule document revises interim § 10.228 in its entirety to reflect the amendments to the statute and to clarify or otherwise improve the previously published text. This document is limited to the text of interim § 10.228 and therefore does not address the change that the Act made to paragraph (2)(A)(iv)(I) of the statute; that provision was reflected in § 10.223(a)(6) within the interim CBTPA regulations published in T.D. 00–68 referred to above and is discussed in a separate interim rule document that addresses the other statutory changes to the CBERA made by the Act.

It is the intention of CBP, after the close of the public comment period prescribed in this document, to publish one final rule document that addresses the revised § 10.228 provisions contained in this document and the other regulatory changes pertaining to brassieres under the CBTPA that were published in T.D. 01–74. That final rule document will summarize and respond to the public comments previously submitted on the changes to §§ 10.222 and 10.223(a)(7) published in T.D. 01–74 and will also address any comments submitted on the revised § 10.228 text set forth in this document. Because CBP has significantly modified § 10.228 in this document, CBP will not consider or address any public comments previously submitted on the text of § 10.228 as published in T.D. 01–74 that have been addressed by statutory changes. Any other comments previously submitted will be addressed. If a member of the public wishes to have CBP consider a new issue involving § 10.228, a new comment setting forth that issue may be submitted in accordance with the comment procedures prescribed in this document.

The interim regulatory changes to § 10.228 contained in this document are discussed below.

Amendments To Reflect the Statutory Changes

The changes to § 10.228 set forth in this document that are in response to the changes made to paragraph (2)(A)(iv) of the statute by section 3107(a) of the Act are as follows:

1. The definition of ''fabric components formed in the United States'' in paragraph (a)(3) has been replaced by a definition of ''fabrics formed in the United States'' to reflect the fact that subclauses (II) and (III) of the statute no longer refer to fabric

''components.'' Similarly, the definition of ''cost'' in paragraph (a)(4) and the definition of ''declared customs value'' in paragraph (a)(5) have been modified to refer simply to ''fabrics.''

2. The following changes have been made to paragraph (b) which concerns the 75/85 percent U.S. fabric content requirements for preferential treatment in subclauses (II) and (III) of the statute:

a. In the introductory text of paragraph (b)(1), reference is made to the year that begins on ''October 1, 2002'' (rather than ''October 1, 2001'') to reflect the applicable effective date set forth in Proclamation 7626.

b. Throughout the paragraph (b) texts, all references to U.S.-formed ''fabric components'' have been replaced by references to U.S.-formed ''fabric,'' the words ''produced and'' have been removed from the expression ''produced and entered,'' and the parenthetical reference ''(exclusive of all findings and trimmings)'' has been added as appropriate after references to ''fabrics'' and ''fabric.'' These changes simply conform the regulatory text to the wording changes in the statute.

c. Paragraph (b)(1)(i), which concerns the 75 percent requirement of subclause (II) of the statute, has been changed to refer to articles that are ''entered as articles described in § 10.223(a)(6),'' and paragraph (b)(1)(ii), which concerns the 85 percent requirement of subclause (III) of the statute, has been changed to refer to articles that ''conform to the production standards set forth in § 10.223(a)(6).'' These wording changes are in response to the statutory wording changes regarding articles that are ''entered'' and that are ''eligible'' under clause (iv). The differences in wording in the two regulatory texts are necessary in order to enable the 85 percent standard to operate. CBP notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (2)(A)(iv)(I) of the statute and § 10.223(a)(6)), it would be impossible in the first year following the statutory changes (that is, starting on October 1, 2002) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year, in which case there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (2)(A)(iv)(I) of the statute and § 10.223(a)(6) against which compliance with the 85 percent standard can be determined. The wording used in paragraph (b)(1)(ii) of the regulatory text (which is also reflected in the general statement of the paragraph (b)(1) introductory text and in the general rule in paragraph (b)(2)(i)(A)), by referring to articles that meet the U.S./Caribbean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

d. In the general rules of application set forth in paragraph (b)(2)(i), two new subparagraphs (C) and (D) have been added to clarify the application of the different regulatory language for the 75 and 85 percent standards discussed at point c. above, and former subparagraph (D) has been removed because it concerned the year of production which is no longer relevant under the amended statutory text.

e. Also in paragraph (b)(2)(i), former subparagraph (C) has been redesignated as subparagraph (E) and the text has been modified, and a new subparagraph (L) has been added, primarily to reflect that the findings and trimmings referred to in the context of brassieres are not limited to foreign findings and trimmings.

f. Also in paragraph (b)(2)(i), former subparagraph (E) has been redesignated as subparagraph (G) and the text, which concerns a new producer or new entity controlling production, has been revised to incorporate the new wording (''entered as articles described in § 10.223(a)(6)'') of paragraph (b)(1)(i) and to clarify what CBP believes is a necessary conclusion under the statutory text, that is, that in the described context the producer or entity must first meet the 85 (rather than the 75) percent standard.

g. In paragraph (b)(2)(ii), a new Example 2 and a new Example 3 have been added to cover new subparagraphs (C) and (D) of paragraph (b)(2)(i), and Examples 2 through 6 consequently have been redesignated as Examples 4 through 8.

h. Also in paragraph (b)(2)(ii), redesignated Example 6 has been revised in order to replace the former ''produced and entered'' in the same year scenario with a factual pattern addressing the 75 versus 85 percent standard and entry in different years.

i. Also in paragraph (b)(2)(ii), redesignated Example 7 has been revised in order to reflect that the 85 percent standard (rather than the 75 percent standard) applies to a new producer or entity controlling production, as stated in redesignated and revised subparagraph (G) of paragraph (b)(2)(i).

3. In paragraph (c)(3)(i), the text of the declaration of compliance has been modified by removing each reference to ''components'' and by removing the words ''produced and'' before the word ''entered'' in blocks 4 and 6, in each case to reflect changes in statutory language.

4. Finally, in paragraph (d)(1)(v), the next to last sentence has been modified to state that the inventory records must indicate that the required production occurred (rather than ''identify the date of'' production), and the last sentence has been modified to refer to purchases made during the ''accounting period'' (rather than ''year''), because the year of production is not relevant under the amended statute.

Other Amendments

In addition to the changes described above that result from the changes made to the statute by section 3107(a) of the Act, CBP has included a number of other changes in the revised text of § 10.228 set forth in this document. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. The definition of ''cost'' in paragraph (a)(4) and the definition of ''declared customs value'' in paragraph (a)(5) have been revised for purposes of clarity, in particular in order to include rules covering cases in which there is no price based on an exportation to a CBTPA beneficiary country.

2. The definition of ''year'' in paragraph (a)(6) has been reworded for purposes of clarity.

3. In Example 1 under paragraph (b)(2)(ii), the words ''in the first year'' have been added to the scenario in the first sentence to clarify that the year in question is one during which the 75 percent standard must be met.

4. In Example 5 under paragraph (b)(2)(ii), the references to foreign origin straps have been replaced by references to ''strips and labels'' to ensure that the example is clearly directed to findings and trimmings and not to materials that are considered to be components of brassieres.

5. In paragraph (c)(3)(i), the text of the declaration of compliance has been modified by replacing the words ''all articles'' with ''brassieres'' in blocks 4 through 6 and by simplifying the wording within block 6.

6. Finally, in paragraph (c)(3)(ii), the subparagraph (E) instruction for completion of block 6 has been removed

in light of the simplification of the block 6 text, and former subparagraph (F) consequently has been redesignated as (E).

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date

Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), CBP has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the Caribbean Basin Economic Recovery Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), CBP finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

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 control number.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(c)(1).

List of Subjects in 19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ For the reasons set forth in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

■ 2. Section 10.228 is revised to read as follows:

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) *Entered.* ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.223(a)(6) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.225, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in § 10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in § 10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.223(a)(12), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.223(a)(6) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in § 10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in § 10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer's entire production of articles that meet the description in § 10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.223(a)(6), but the entered articles do not meet the requisite 85 percent standard until the third year; the entered articles fail to meet the 75 percent standard in the fourth year; and the entered articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's

articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

(19 CFR 10.223(a)(6) and 10.228)

1. Year beginning date: October 1, _____. Year ending date: September 30, _____.	Official U.S. Customs and Border Protection Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES—Continued

(19 CFR 10.223(a)(6) and 10.228)

7. Authorized signature:	8. Name and title (print or type):
Date:	

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Bureau of Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the **Federal Register**.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: September 25, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–24796 Filed 9–29–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–03–034]

Drawbridge Operation Regulations; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. This deviation allows the bridge to temporarily operate only one leaf of the bascule unless notice is provided for double-leaf openings. The deviation is necessary to facilitate painting of the structure with

its mandatory contaminant containment system in place.

DATES: This deviation is effective from 6 a.m. September 15 through 6 p.m. November 11, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 220–7270. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (206) 220–7282.

SUPPLEMENTARY INFORMATION: Washington State Department of Transportation (WSDOT) requested this deviation from normal operations of the dual First Avenue South bascule bridges in order to facilitate painting. The containment system for contaminants and other equipment must be modified or removed in order to operate the movable span. WSDOT has proposed to work on one leaf of the bascules at a time so that one side of the bridges may remain operable according to the normal operating regulations of the bridge. In this way, vessels that can safely pass one-leaf openings may continue to pass the bridge during the project. Other vessels need to provide five hours notice for opening both sides of the bascule spans from 6 a.m. on September 15 through 6 p.m. on November 11, 2003. The five hours minimum notice will enable the contractor to remove equipment, adjust rigging, and evacuate workers from the leaf. Currently, the draws need not open for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Monday through Friday, except all Federal holidays but Columbus Day. Currently, the draws shall open at any time for vessels of 5000 gross tons and over, a vessel towing a vessel of 5000 gross tons and over, or a vessel proceeding to pick up for towing a vessel of 5000 gross tons and over. At other times the draws open on signal for the passage of vessels. Vessels on the related reach of the waterway should be able to provide at least five hours notice for double-leaf openings without unreasonable inconvenience. Traffic on the waterway includes container barges with regularly scheduled movements as well as sailboats, motor yachts, and tugboats. Large vessels of 5000 gross tons have not passed through the dual bridges in recent years. This deviation does not exempt these vessels from the five hours notice. The bridges when closed provide 32 feet of vertical clearance above mean high water for the central 100 feet of the drawspans.

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

Dated: September 15, 2003.

Jeffrey M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 03–24691 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 273–0408a; FRL–7562–8]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revisions regulate the emission of sulfur oxides from the combustion of liquid and gaseous fuels. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 1, 2003, without further notice, unless EPA receives adverse comments by October 30, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and final action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
MBUAPCD	412	Sulfur Content of Fuels	08/21/02	10/16/02

TABLE 1.—SUBMITTED RULES—Continued

Local agency	Rule #	Rule title	Revised	Submitted
MBUAPCD	413	Removal of Sulfur Compounds	08/21/02	10/16/02

On December 3, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of MBUAPCD Rules 412 and 413 into the SIP on July 13, 1987 (52 FR 26148).

C. What Is the Purpose of the Submitted Rule Revisions?

Sulfur oxides help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control sulfur oxides emissions.

Rule 412 limits the sulfur content of fuels burned in the MBUAPCD jurisdiction. The purpose of the revision to Rule 412 is to extend the sulfur compound limitation to gaseous fuels.

Rule 413 clarifies the requirements of Rule 412. The purpose of the revision to Rule 413 is to improve the format and text.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for nonattainment areas (*see* section 172(c)(1) and must not relax existing requirements (*see* sections 110(l) and 193). The MBUAPCD regulates a sulfur oxides attainment area and need not fulfill RACT requirements. *See* 40 CFR part 81.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).

B. Do the Rules Meet the Evaluation Criteria?

Rule 412 increases the stringency of the requirements with the changes cited above. Rule 413 improves the SIP by reformatting and rewording. We believe the rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 30, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 1, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: August 15, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(302)(i)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(302) * * *

(i) * * *

(B) * * *

(*4*) Rules 412 and 413, adopted on September 1, 1974 and revised on August 21, 2002.

* * * * *

[FR Doc. 03–24555 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–155–1–7591a; FRL–7564–5]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on January 3, 2003, to require that equipment associated with a new or relocated concrete crushing facility be located or operated at least 440 yards from any building used as a single or multi-family residence, school, or place of worship. This action is being taken under section 110 of the Federal Clean Air Act (the Act, or CAA).

DATES: This direct final rule will be effective December 1, 2003 without further notice, unless EPA receives adverse comments by October 30, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), at the EPA Region 6 Office listed below. Electronic comments should be sent to either *spruiell.stanley@epa.gov* or at *http://www.regulations.gov,* which is an alternate method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the General Information part of this document. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during official business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, at (214) 665–7212, or *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. What Is Being Addressed in this Document?
II. Have the Requirements for Approval of a SIP Revision Been Met?
III. What Final Action is EPA Taking?
IV. General Information
V. Statutory and Executive Order Reviews

I. What Is Being Addressed in This Document?

In today's action we are taking direct final action to approve revisions to Title 30 of the Texas Administrative Code (30 TAC) Section 116.112—Distance Limitations into the Texas SIP. The TCEQ adopted these revisions on December 18, 2002, and submitted the revisions to us for approval as a revision to the SIP on January 3, 2003.

Section 116.112 currently establishes distance limitations for lead smelters in Section 116.112(1) and distance limitations for hazardous waste permits in Section 116.112(2). The existing distance limitations were approved September 18, 2002 (67 FR 58607).

On December 18, 2002, TCEQ added a new paragraph (3) to Section 116.112, to implement House Bill (HB) 2912, Section 5.07, 77th Texas State Legislature, 2001. HB 2912, Section 5.07 amended the Texas Health and Safety Code to add a new Section 382.065, which requires the TCEQ, by rule, to restrict the location or operation of new and relocated concrete crushing facilities. Paragraph (3) requires all equipment associated with a concrete crushing facility to be located or operated at least 440 yards from any building used as a single or multi-family residence, school, or place of worship. The distance limitation does not apply to existing concrete crushing facilities which are authorized and actually located or operating at the site as of September 1, 2001. An existing facility does not include a concrete crushing facility authorized but not actually located or operating at the site as of September 1, 2001.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The restriction on location and operation of new or relocated concrete crushing plants provides additional protection for persons occupying any building used as a single or multi-family

residence, school, or place of worship. This restriction strengthens the existing SIP by providing additional assurance that occupants in such buildings will not be adversely affected by exposure to the air contaminants emitted from concrete crushing facilities. This provision, together with the existing SIP-approved provisions of Section 116.111(2)(A)(i), will ensure better protection of public health and welfare. This meets the requirement in 40 CFR 51.160(a) that each plan include legally enforceable procedures to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these will result in (1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. Compliance with this distance requirement to locate a concrete crushing plant at least 440 yards from any building used as a single or multi-family residence, school, or place of worship, will help ensure that the requirements of 40 CFR 51.160 are met.

The revision also meets 40 CFR 51.160(e) by identifying a type of facility that will be subject to review under 40 CFR 51.160(a). In this case, Texas has identified concrete crushing facilities and specified a distance requirement for such facilities.

This distance limitation does not apply to an existing concrete crushing facility which was authorized and actually located or operating at a site as of September 1, 2001. This provision allows an existing concrete crushing facility to continue operating at the site and to change its existing permit at such a site without being required to meet the distance limitation that otherwise applies to new and relocated facilities. If an existing facility were to relocate to another location after September 1, 2001, then the facility must comply with the distance limitation in Section 116.112(3).

As proposed by TCEQ on September 27, 2002, the distance limitations in Section 116.112(3) would have applied to all equipment and stockpiles associated with a concrete crushing facility. In response to public comments on the proposed rule, the TCEQ changed the rule to remove the references to stockpiles. This change was based upon TCEQ's determination that a stockpile associated with a concrete crushing facility is not subject to House Bill (HB) 2912, Section 5.07, the legislation that required TCEQ to adopt this distance limitation.

The exclusion from the distance limitation in Section 116.112(3) to an existing concrete crushing facility authorized and actually located or operating at a site as of September 1, 2001, and to stockpiles associated with a concrete crushing facility does not affect our ability to approve the distance limitations in Section 116.112(3). Such facilities must continue to meet the existing SIP-approved requirements in Section 116.111(2)(A)(i), which require sources subject to new source permitting in Texas to protect public health and welfare. This meets the requirements of 40 CFR 51.160(a) by ensuring that emissions from such facilities will not interfere with the attainment or maintenance of a national standard. Such facilities are also subject to the current SIP-approved requirements of Section 116.111(2)(A)(ii) which provides that when TCEQ issues a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the TCEQ shall consider any adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the schools. This ensures protection of individuals in such schools from adverse effects of emissions of air contaminants from such facilities.

The Technical Support Document, which is part of the record for this action, contains more detailed information on how the revision meets the requirements of the Act, including Section 110 and implementing regulations.

III. What Final Action Is EPA Taking?

We are approving as a revision to the Texas SIP revisions of 30 TAC Section 116.112—Distance Limitations, which Texas submitted on January 3, 2003. We are processing this action as a direct final action because it adds noncontroversial regulations to the SIP. We do not anticipate any relevant adverse comments. However, we are today publishing in the ''Proposed Rules'' section of today's **Federal Register** a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will become effective on December 1, 2003 without further notice unless we receive adverse comment by October 30, 2003. If we receive such comments, we will publish a document withdrawing the direct final rule in the **Federal Register** and informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 1, 2003. Please note that if we receive adverse comment on a part of this rule and if the part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not subject to an adverse comment.

IV. General Information

A. What Is the Public Rulemaking File?

The EPA is committed to ensuring public access to the information used to inform the public of the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision-making process. The official public rulemaking file consists of the documents specifically referenced in a particular agency action, any public comments received, and other information related to the action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the Agency's official administrative record for the action.

B. How Can I Get Copies of This Document and Other Related Information?

1. *An official public rulemaking file is available for inspection at the Regional Office.* The Regional Office has established an official public rulemaking file for this action under Identification Number (ID No.) TX–155–1–7591. The public rulemaking file is available for viewing at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Contact the person listed in the ''For Further Information Contact'' section to schedule your inspection. If possible, schedule the appointment two working days in advance of your visit. Official hours of business for the Regional Office are Monday through Friday, 8:30 a.m. to 4 p.m. excluding federal holidays. Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency during official business by appointment.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

2. *You may access this Federal Register document electronically*

through the Regulations.gov Web site located at http://www.regulations.gov. The Regulations.gov Web site is the central online rulemaking portal of the United States government and is a public service to increase participation in the government's regulatory activities by offering a central point for submitting comments on regulations.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, through hand delivery/courier or by facsimile. Instructions for submitting comments by each method are discussed below. To ensure proper receipt by EPA, identify the appropriate ID No. 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.'' The EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section D below.

1. *Electronically.* To submit comments electronically (via e-mail, *Regulations.gov*, or on disk or CD ROM), 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. The EPA's policy is that EPA will not edit your comments. 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 public rulemaking file. 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 submitted by electronic mail (e-mail) to Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov*, Attention ''Public comment on ID No. TX–155–1–7591''. In contrast to the Regulations.gov Web site, EPA's e-mail system is not an ''anonymous'' system. If you send an e-mail comment directly to EPA, your e-mail address will be automatically captured and included as part of the comment that is placed in the official public rulemaking file.

ii. *Regulations.gov.* Comments may be submitted electronically at the Regulations.gov Web site, the central online rulemaking portal of the United States government. Every effort is made to ensure that the Web site includes all rule and proposed rule notices that are currently open for public comment. You may access the Regulations.gov Web site at *http://www.regulations.gov.* Select ''Environmental Protection Agency'' at the top of the page and click on the ''Go'' button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and follow the online instructions for submitting comments. Unlike EPA's e-mail system, the Regulations.gov Web site is an ''anonymous'' system, which means that any personal information, e-mail address, or other contact information will not be collected unless it is provided in the text of the comment. See the Privacy Notice at the Regulations.gov Web site for further information. Please be advised that EPA cannot contact you for any necessary clarification unless your contact information is included in the body of comments submitted through the Regulations.gov Web site.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text ''Public comment on ID No. TX–155–1–7591'' on the disk or CD ROM. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text ''Public comment on ID No. TX–155–1–7591'' in the subject line of the first page of your comments.

3. *By Hand Delivery or Courier.* Deliver your written comments or comments on a disk or CD ROM to: Mr. Guy Donaldson, Acting Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, Attention ''Public comment on ID No. TX–155–1–7591.'' Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding federal holidays.

4. *By Facsimile.* Fax your comments to: (214) 665–7263, Attention ''Public comment on ID No. TX–155–1–7591.''

D. How Should I Submit CBI to the Agency?

You may assert a business confidentiality claim covering CBI information included in comments submitted by mail or hand delivery in either paper or electronic format. CBI should not be submitted via e-mail or at the Regulations.gov Web site. Clearly mark any part or all of the information submitted which is claimed as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official administrative record and one copy that does not contain the CBI to be included in the public rulemaking file. If you submit CBI on a disk or CD ROM, mark the outside of the disk or the CD ROM that it contains CBI and then identify the CBI within the disk or CD ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR Part 2. For comments submitted by EPA's e-mail system or through the Regulations.gov Web site, no CBI claim may be asserted. Do not submit CBI to the Regulations.gov Web site or via EPA's e-mail system. Any claim of CBI will be waived for comments received through the Regulations.gov Web site or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **For Further Information Contact** section of this notice.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate ID No. in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

V. Statutory and Executive Order Reviews

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 15, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended under Chapter 116, Subchapter B, Division 1, by revising the existing entry for Section 116.112 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
*	*	*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter B—New Source Review Permits				
Division 1—Permit Application				
*	*	*	*	*
Section 116.112	Distance Limitations	12/18/02	September 30, 2003	
*	*	*	*	*

[FR Doc. 03–24553 Filed 9–29–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 290–0419c; FRL–7565–4]

Interim Final Determination That State Has Corrected a Deficiency in the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rule 4901.

DATES: This interim final determination is effective on September 30, 2003. However, comments will be accepted until October 30, 2003.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118 or *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 7, 2002 (67 FR 5725), we published a limited approval and limited disapproval of SJVUAPCD Rule 4901 as adopted locally on July 15, 1993 and submitted by the State on December 10, 1993. We based our limited disapproval action on deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after March 11, 2002 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On July 17, 2003, SJVUAPCD adopted revisions to Rule 4901 that were intended to correct the deficiencies identified in our limited disapproval action. On August 19, 2003, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our February 7, 2002 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our February 7, 2002 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4901, 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.

II. EPA Action

EPA is making an interim final determination that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action on the previous version of this rule, 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. section 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.

We believe 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, 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 initially impose sanctions or to keep applied sanctions in place 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/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. 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. See 5 U.S.C. 553(d)(1).

III. Statutory and Executive Order Reviews

This action stays and/or 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 (Pub. L. 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 September 30, 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 December 1, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 18, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–24771 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 290–0419a; FRL–7563–6]

Revision to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). The revision concerns the emission of particulate matter (PM–10) from wood burning fireplaces and wood burning heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 1, 2003 without further notice, unless EPA receives adverse comments by October 30, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or

submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

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

Table of Contents

I. The State's Submittal
A. What rule did the State submit?
B. Are there other versions of this rule?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Public comment and final action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	07/17/03	08/19/03

On September 11, 2003, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved SJVUAPCD Rule 4901, originally adopted on July 15, 1993, into the SIP on February 7, 2002 (67 FR 5725).

C. What Is the Purpose of the Submitted Rule Revisions?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions.

The purpose of revisions to Rule 4901 is to correct the deficiencies cited in the limited approval/limited disapproval of February 7, 2002.

In our 2002 rulemaking, we concluded that the version of Rule 4901 under our review at that time did not fulfill the requirement under section 189(b) of the CAA that applies to serious PM–10 nonattainment areas to implement best available control measures (BACM), including Best Available Control Technology (BACT), with respect to significant sources and source categories, such as residential wood combustion. In our 2002 rulemaking, we referred SJVUAPCD to our reference document, *Technical Information Document for Residential Wood Combustion Best Available Control Measures,* EPA–450/2–92–002 (September 1992), for our national policy on determining BACM for residential wood combustion and for a list of potential BACM measures that should be implemented unless the district demonstrates that they are not achievable given local conditions.

In our 2002 rulemaking, we also indicated that, since the list of measures in our 1992 reference document was then over nine years old, SJVUAPCD should implement all those measures that are achievable as well as any other measures achievable in San Joaquin that have been developed in other serious PM–10 nonattainment areas. Finally, although we did not intend to identify the only measures necessary to fulfill BACM, we noted three items from the national policy that seemed likely to be achievable: (1) Requirements for mandatory episodic curtailment; (2) requirements for upgrading wood stoves and fireplaces to meet EPA-certified phase II standards upon property sale or transfer; and (3) requirements for limiting the number of wood stoves and fireplaces per acre in new residential development and requirements for EPA-certified phase II standards on those being installed.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA), must require BACM, including BACT, for significant source categories or major sources in serious PM–10 nonattainment areas (*see* section 189(b)), and must not relax existing requirements (*see* sections 110(l) and 193). SJVUAPCD is a serious PM–10 nonattainment area and must fulfill the requirements of BACM/BACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document,* EPA–452/R–93–008.
- *General Preamble Appendix C3—Available Residential Wood Combustion Control Measures,* 57 FR 18072 (April 28, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, EPA–450/2–92–002 (September 1992).

B. Does The Rule Meet the Evaluation Criteria?

We believe that Rule 4901 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations, and fulfills the BACM/BACT requirement for this source category. The revised rule now contains the three specific types of requirements that we identified as likely to be achievable in our February 2002 final rule. Specifically, the rule is revised to require mandatory episodic curtailment for wood burning fireplaces and wood burning heaters when the Air Quality Index, as described in 40 CFR 58, exceeds 150. The Air Pollution Control Officer is required to notify the public of the mandatory curtailment. Second,

the rule is revised to require that any seller of real property assure that each wood burning heater is EPA Phase II certified or rendered permanently inoperable. Appropriate documentation must be provided by the seller to the buyer and the APCO. Third, the rule is revised to (a) prohibit the installation of a wood burning fireplace in a new residential development with a density greater than two dwelling units per acre, (b) to prohibit the installation of more than one wood burning fireplace or wood burning heater per dwelling unit in any new residential development with a density equal to or less than two dwelling units per acre, and (c) to prohibit the installation of more than two EPA Phase II certified wood burning heaters per acre in new residential development with a density equal to or greater than three dwelling units per acre.

In addition, SJVUAPCD has performed a BACM demonstration for residential wood combustion as part of the *San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller* (2003 PM–10 Plan), which was adopted locally on June 19, 2003, and submitted by CARB to EPA by letter dated August 19, 2003. In appendix G of the 2003 PM–10 Plan, SJVUAPCD evaluated the list of potential BACM measures contained in EPA's 1992 national policy document for residential wood combustion and also considered measures that have been implemented in other parts of the country to determine what provisions in the previous version of Rule 4901 needed to be revised to comply with the BACM requirement. We have determined that this demonstration provides adequate support for our conclusion that the rule, as revised, complies with the BACM requirement for residential wood combustion in San Joaquin Valley and thereby corrects the deficiencies identified in our 2002 final rulemaking on the previous version of Rule 4901.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 30, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 1, 2003. This will incorporate SJVUAPCD Rule 4901 into the federally-enforceable SIP superceding the version of Rule 4901 currently part of the applicable SIP and will terminate all sanction and FIP clocks associated with our previous action on this rule.

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 18, 2003.

Deborah Jordon,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(317) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(317) Amended regulation for the following APCD was submitted on August 19, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4901, adopted on July 15, 1993 and amended on July 17, 2003.

* * * * *

[FR Doc. 03–24772 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0311; FRL–7327–6]

Vinclozolin; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on succulent beans at 2.0 parts per million (ppm); canola at 1.0 ppm; eggs, milk, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance for succulent beans will expire on September 30, 2005 and the canola, eggs, milk, meat and meat-by-product tolerances will expire on November 30, 2008.

DATES: This regulation is effective September 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0311, must be received on or before December 1, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0311. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 26, 2003 (68 FR 14628) (FRL–7289–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6278) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. The Agency received comments from North Williamette Research and Extension Center at Oregon State University, Norpac Foods,

Inc., Washington State University Tri-Cities, Northern Canola Growers Association, and Earthjustice on behalf of the Northwest Coalition for Alternatives to Pesticides, the Natural Resources Defense Council and Farmworker Justice Fund. The comments from outside parties are summarized in Unit V. followed by the Agency's response.

The petition requested that 40 CFR 180.380 be amended by extending the tolerances for the combined residues of the fungicide vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm for two years. The petition also requested that 40 CFR 180.380 be amended by making the tolerances permanent for canola at 1.0 ppm; eggs, milk, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm.

Several recent regulatory actions by EPA are pertinent to this petition. In the **Federal Register** of July 18, 2000 (65 FR 44453) (FRL–6594–8), EPA established time-limited tolerances at the levels identified in Unit II. for use of vinclozolin on succulent beans, canola, eggs, milk, meat and meat-by products of cattle, goats, hogs, horses, sheep, and poultry. These tolerances were made time-limited because of the need for a developmental neurotoxicity study to determine whether vinclozolin which causes antiandrogenic effects shares a common mode of toxicity with other members of the imide group of the dicarboximide class of fungicides which are considered antiandrogenic and with other compounds outside of this class of fungicides that may also be considered antiandrogenic.

The tolerances established July 18, 2000, were approved taking into consideration BASF's May 31, 2000 request to EPA to amend its vinclozolin registration to cancel uses on onions, raspberries, and ornamental plants immediately and to delete uses on kiwi, chicory, lettuce, and succulent beans over the following four years. *See* the **Federal Register** notice of September 20, 2000 (65 FR 56894)(FRL–6744–2). As later approved by EPA these use cancellations contained an existing stocks provision which permitted legal use of vinclozolin on succulent beans until September 30, 2005. Id.

Objections to the tolerances established in July, 2000, were filed on behalf of the Natural Resources Defense Council, the Environmental Working Group, the Pineros Campesinos Unidos del Noroeste, and the Northwest Coalition for Alternatives to Pesticides by Earthjustice Legal Defense Fund. These objections were withdrawn after EPA approved BASF's use cancellation request and EPA agreed to notify the objecting parties if any future requests were made for uses of vinclozolin under an emergency exemption from the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, and consider the objecting parties comments on any such request.

Also as part of BASF's May 31, 2000 cancellation request, BASF asked EPA to revoke tolerances permitting vinclozolin residues in cucumbers and peppers. *See* the **Federal Register** final rule of June 12, 2002 (67 FR 40185)(FRL–6835–6). Earlier, in 1998, BASF had requested that EPA cancel vinclozolin use on strawberries and stonefruit. Id. Consistent with these two actions by BASF, EPA, on June 12, 2002, revoked tolerances for strawberries, stone fruit, cucumbers, and peppers, 67 FR 40185 (June 12, 2002). This present rulemaking further implements September, 2000 cancellation order by extending the vinclozolin succulent bean tolerance through the date as to which use remains legal on succulent beans, September 30, 2005. Extending the succulent bean tolerance in this manner means that vinclozolin which is legally used on succulent beans pursuant to the cancellation order will not render the treated crops adulterated as a matter of law. *See* 21 U.S.C. 346a(l)(5). In a future action, EPA will be proposing to revoke the tolerances for vinclozolin on onions and raspberries given that those uses are now cancelled.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for the combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm.

EPA completed a full risk assessment for vinclozolin as part of the July 18, 2000 tolerance action. July 18, 2000 (65 FR 44453). This risk assessment was updated later that year in connection with the release of the Reregistration Eligibility Document (RED) for vinclozolin. U.S. EPA, Reregistration Eligibility Document Vinclozolin (October 2000) (available at *http://www.epa.gov/REDs/2740red.pdf)*. In its July 18, 2000 tolerance decision, EPA concluded that the time-limited tolerances met FFDCA section 408's safety standard. (65 FR 44462). Since that time risks from vinclozolin exposure have declined as the strawberry and stone fruit tolerances have been revoked and the last date for legal use on raspberries and onions has passed by almost 2 years. The registration of vinclozolin for use on succulent beans and lettuce will be canceled on July 15, 2004 with the last legal use of existing stocks established as September 30, 2005. At that point, the only remaining uses for vinclozolin will be on belgian endive, canola, and wine grapes. Taking into account the risk assessments done in conjunction with the July 18, 2000 tolerance action and the vinclozolin RED and the reduction in exposure that has occurred as a result of the cancellations of use on strawberries, stone fruit, onions, and raspberries and the tolerance revocations for cucumbers and peppers,

EPA concludes that extending the succulent bean tolerance until September 30, 2005, and the canola tolerance until November 30, 2008 meets the section 408 safety standard that is, there is a reasonable certainty of no harm to the general public, including infants and children, from aggregate exposure to vinclozolin.

EPA has retained a time limitation on the canola tolerance because a developmental neurotoxicity study assessing anti-androgenic and neuro-endocrine endpoints has not been conducted. Completion of such a DNT study has been delayed both because EPA needs to investigate anti-androgenic and neuro-endocrine endpoints, endpoints not previously examined in DNT studies, and because the results of the DNT study are critical to assessing whether vinclozolin shares a common mechanism of toxicity with other pesticides which may affect androgens. The Agency currently has no guidance for how this modified DNT study should be conducted, and what specific toxicity endpoints should be evaluated to capture anti-androgenic and neuro-endocrine effects. The Agency is currently examining the vinclozolin data base, as well as data for other chemicals which may effect the androgens. This data analysis extends to both data available in-house and in the literature. When this data analysis is complete, it may be necessary to present this information to the Agency's FIFRA Science Advisory Panel (SAP) to gain insight into whether the chemicals share a common mode of action, whether and how they should be considered in a cumulative risk assessment, and how a DNT study can help the Agency understand this common mechanism question. The data analysis, together with the SAP comments, will be useful in designing the required modified DNT study so that all pertinent toxicological endpoints are measured, and the study is properly conducted. Because the DNT study has not been conducted, EPA has retained the additional 10X FQPA safety factor for the protection of infants and children.

IV. Comments

The Agency received five comments summarized below. The Agency's responses are at the conclusion of the comments.

Comment 1. The North Williamette Research and Extension Center (NWR&EC) of Oregon State University expressed support for extending the tolerance for use of vinclozolin on succulent beans for two years. NWR&EC indicated that the additional time is needed in order to fully evaluate the efficacy of the potential replacement fungicides (fluazinam and BAS 510) in controlling *Sclerotinia sclerotiorum* under conditions of high disease pressure. Additionally, NWR&EC states that the consequences could be disastrous for a currently financially precarious agricultural industry if adequate time is not allowed for large scale testing of alternative fungicides to ensure efficacy comparable to vinclozolin.

Comment 2. Norpac Foods Inc. (NFI) expressed support for extending the tolerance for use on succulent bean for two years. NFI indicated that vinclozolin has been very effective in controlling white mold (*Sclerotinia sp.*) on succulent beans and has significantly reduced the economic impact of the disease upon the industry. NFI believes that extension of the existing tolerance would allow the industry time to pursue alternative control measures that are currently undergoing evaluation.

Comment 3. The Washington State Pest Management Resource Service (WSPMRS) of the Washington State University Tri-Cities expressed support for extending the tolerance for use of vinclozolin on succulent beans, and discussed the economic significance of succulent bean production to the state of Oregon. WSPMRS indicated that while there have been efforts to register alternative fungicides, researchers believe that field data gathered thus far has not been adequate to assure that the proposed replacement fungicides will prove as efficacious as vinclozolin in controlling white and gray mold.

Comment 4. The Northern Canola Growers Association (NCGA)expressed support for making permanent the tolerances for use of vinclozolin on canola. NCGA discussed the economic importance of canola production to North Dakota, and noted that vinclozolin is a critical tool used by canola growers to combat the devastating effects of *Sclerotinia sclerotiorum*.

Comment 5. Earthjustice commented on behalf of the Northwest Coalition for Alternatives to Pesticides, Natural Resources Defense Council, and Farmwork Justice Fund. Earthjustice discussed in detail three concerns. First, Earthjustice expressed concern that vinclozolin is an endocrine-disrupting chemical and a probable human carcinogen. Second, Earthjustice expressed concern that the notice of filing published in the **Federal Register** on March 26, 2003 did not describe the Agency's duty to cancel vinclozolin's tolerances for succulent beans. Earthjustice asserts that EPA should describe its legal obligations with vinclozolin in the final **Federal Register** notice responding to the registrant's petition. Third, Earthjustice states that EPA should fill data gaps before taking any regulatory action on vinclozolin. Earthjustice further states that the current data gaps are an extension of decades of data gaps, that EPA appears to be giving up on collecting or analyzing the required data, that EPA has failed to collect data on risks to drinking water, and that EPA admits to numerous other data gaps. Earthjustice concludes their comment by stating that EPA should only finalize the proposed tolerances after collecting required data, making the required findings and fully informing the public about the Agency's regulatory duties for vinclozolin.

Agency response to comments 1–3. Considerations related to the beneficial impacts of a pesticide are cognizable under the FFDCA only in very narrow circumstances. *See* 21 U.S.C. 346a(b)(2)(B). Those circumstances have not been argued to be present here.

Agency response to comment 4. Given the outstanding data, the Agency has decided not to make the vinclozolin tolerances on canola and the associated egg, milk, meat and meat-by-product tolerances permanent but instead has placed a 5 year time limitation on these tolerances. The Agency will reevaluate this issue after the data as identified in the October 2000 Vinclozolin Registration Eligibility Document are received and sufficiently evaluated.

Agency response to comment 5. The Agency agrees with Earthjustice's discussion of the hazard assessment for vinclozolin in that it is an anti-androgen, and a Group C possible human carcinogen, an effect related to its anti-androgenic properties. These effects, however, were fully considered in the risk assessments conducted for the chemical. The Agency also agrees with Earthjustice that additional data are needed to fully characterize vinclozolin's hazard potential. These data were required as part of the October 2000 Vinclozolin Registration Eligibility Document. In order to account for the data deficiencies, the 10X FQPA safety factor was retained for vinclozolin risk assessments. This 10X factor results in a total safety factor of 1000X.

As noted, the major data deficiency for vinclozolin is the modified developmental neurotoxicity (DNT) study in which antiandrogenic and neuroendocrine endpoints must be assessed. The design and execution of this study presents a host of difficult science issues, including how the study can be conducted in a manner to explore common mechanism questions

involving anti-androgenic chemicals. Significant work on this issue has been done. Although EPA in 2000 thought this issue could be resolved relatively quickly, that has not proven correct. Since 2000 EPA has completed a significant amount of work, some of which is currently ongoing. The Agency has completed an updated review of literature data for vinclozolin, and is currently examining in-house data for other chemicals, both those whose major toxic effects are related to androgen hormones, and those which have other major effects, but which still may be appropriate for inclusion in a cumulative risk assessment for androgen-related toxicity. Additional review of literature data for these chemicals is still required. The Office of Pesticide Programs (OPP) has also consulted with researchers in EPA's Office of Research and Development (ORD) who are conducting work for OPP in two areas. First, ORD is conducting experiments to determine whether the androgen-related toxicity of compounds whose effects are caused by different molecular mechanisms are additive, synergistic, or neither. Secondly, ORD is doing both experimental work and mathematical modeling to support a Physiologically Based Pharmacokinetic (PBPK) model for anti-androgenic compounds to support a cumulative risk assessment. Much of the work being done in ORD has been completed, although some remains ongoing. These data are important in assuring that the cumulative risk assessment for these chemicals is scientifically sound.

With regard to the presence of vinclozolin metabolites in drinking water, on February 14, 2001 the Agency issued a data call-in notice to BASF Corporation. The data call-in notice required the submission of a small prospective ground water monitoring study and a surface water monitoring study. These studies are required to be submitted by March 7, 2005 and March 8, 2004, respectively. The studies require that data be collected on vinclozolin and major degradation products. Additionally, on December 20, 2000, the Agency issued a data-call-in notice to BASF for an aerobic soil metabolism study and a soil column leaching/adsorption/desorption study to gain additional data on the persistence, biodegradation, and migration of vinclozolin in soil profile. These studies have been submitted to the Agency and are under review.

Finally, Earthjustice alleges that EPA admitted to many other data gaps in publishing the Notice of Filing (NOF) pertaining to these tolerances. The language cited by NRDC, however, is merely the boilerplate added by EPA to all NOFs to indicate that EPA has not yet finished its review of the petition at the time the NOF is published.

In response to Earthjustice's assertion that the Agency should fully describe the cancellation status of vinclozolin uses, EPA would note that the NOF for this tolerance action was prepared by the petitioner, BASF Corporation, as the statute requires. In this rulemaking document, EPA has fully and accurately described the status of the 2000 cancellation order and the agreement regarding NRDC's withdrawal of its objections to the 2000 tolerance action.

V. Conclusion

Therefore, the tolerances are established for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm. The tolerance for succulent beans will expire on September 30, 2005, and the canola, eggs, milk, meat and meat-by-product tolerances will expire on November 30, 2008.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0311 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 1, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0311, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''''Policies that have federalism implications'' is defined in the Executive order to include regulations that have'' substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.380 is amended by revising the expiration date for the following commodities in the table in paragraph (a) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
Bean, succulent ...	2.0	9/30/05
* * *	* *	* *
Canola	1.0	11/30/08
Cattle, fat	0.05	11/30/08
Cattle, meat byproducts	0.05	11/30/08
Cattle, meat	0.05	11/30/08
* * *	* *	* *
Egg	0.05	11/30/08
Goat, fat ..	0.05	11/30/08
Goat, meat byproducts	0.05	11/30/08
Goat, meat	0.05	11/30/08
Hog, fat ...	0.05	11/30/08
Hog, meat byproducts	0.05	11/30/08
Hog, meat	0.05	11/30/08
Horse, fat	0.05	11/30/08
Horse, meat byproducts	0.05	11/30/08
Horse, meat	0.05	11/30/08
* * *	* *	* *
Milk	0.05	11/30/08
* * *	* *	* *
Poultry	0.1	11/30/08
Poultry, meat byproducts	0.1	11/30/08
Poultry, meat	0.1	11/30/08
* * *	* *	* *
Sheep, fat	0.05	11/30/08
Sheep, meat byproducts	0.05	11/30/08
Sheep, meat	0.05	11/30/08

* * * * *

[FR Doc. 03–24782 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0319; FRL–7329–9]

Zinc Phosphide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on alfalfa, forage; alfalfa hay; barley, grain; barley, hay; barley, straw; bean, dry, seed; beet, sugar, roots; beet, sugar, tops; potato; timothy, forage; timothy, hay; wheat, forage; wheat, grain; wheat, hay; and wheat, straw. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0319, must be received on or before December 1, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0319. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html/*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/*

to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of July 9, 2003 (68 FR 40939) (FRL–7314–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6419, PP 1E6306, PP 1E6270, PP 1E6337, PP 9E5082, PP 0E6199, and PP 1E6292) by IR-4, 681 U. S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by the registrant, HACO, Inc., P.O. Box 7190, Madison, WI 53707. The Agency received a number of comments on the notice of filing published on July 9, 2003 (68 FR 40939). All comments were in favor of establishing the food tolerances proposed in the notice.

The petitions requested that 40 CFR 180.284 be amended by establishing tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide, in or on alfalfa, forage and alfalfa, hay at 0.1 parts per million (ppm); barley, grain and barley, hay at 0.05 ppm, and barley, straw at 0.2 ppm; bean, dry at 0.05 ppm; beet, sugar, roots at 0.05 ppm and beet, sugar, tops at 0.2 ppm; potato at 0.05 ppm; timothy, forage and timothy, hay at 0.05 ppm; and wheat, grain, wheat, hay, and wheat, straw at 0.05 ppm.

EPA is also deleting several established tolerances in § 180.284(b) that are no longer needed, as a result of this action. The tolerance deletions are time-limited tolerances established under section 18 emergency exemptions that are superceded by the establishment of general tolerances for zinc phosphide under § 180.284(a).

The following deletions to § 180.284(b) are replaced in § 180.284(a):

1. Delete the time-limited tolerances for barley, grain at 0.01 ppm, barley, hay at 0.20 ppm, and barley straw at 0.02 ppm. Tolerances for barley, grain at 0.05 ppm, barley, hay at 0.2 ppm, and barley, straw at 0.2 ppm are established by this action under § 180.284(a).

2. Delete the time-limited tolerances for beet, sugar, roots at 0.05 ppm and beet, sugar, tops at 0.1 ppm. Tolerances for sugar, beet, roots are established at 0.05 ppm and sugar, beet, tops at 0.2 ppm under § 180.284(a).

3. Delete the time-limited tolerance for potato at 0.05 ppm. A tolerance for potato is established at 0.05 ppm under § 180.284(a).

4. Delete the time-limited tolerances for timothy, forage and timothy, hay at 0.1 ppm. Tolerances for timothy, forage and timothy, hay are established at 0.5 ppm under § 180.284(a).

5. Delete the time-limited tolerances for wheat, grain, wheat, hay and wheat, straw at 0.01 ppm. Tolerances for wheat, grain, wheat, hay, wheat, straw, and wheat, forage are established at 0.05 ppm under § 180.284(a).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide on alfalfa, forage and alfalfa, hay at 0.2 ppm; barley, grain at 0.05; barley, hay at 0.2 ppm; barley, straw at 0.2 ppm; bean, dry, seed at 0.05 ppm; beet, sugar, roots at 0.05 ppm; beet, sugar, tops at 0.2 ppm; potato at 0.05 ppm; timothy, forage and timothy, hay at 0.5 ppm; and wheat, forage, wheat, grain, wheat hay, and wheat, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zinc phosphide are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 0.1 milligram/kilogram/day (mg/kg/day) LOAEL = 1.0 mg/kg/day based on increased mortality and kidney hydronephrosis in male rats
870.3150	90-Day oral toxicity in nonrodents	Waived
870.3200	21/28-Day dermal toxicity	Waived

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 2.0 mg/kg/day Maternal LOAEL = 4.0 mg/kg/day based on mortality Developmental NOAEL = >4.0 mg/kg/day Developmental LOAEL = not established
870.370	Prenatal developmental in non-rodents	Waived
870.3800	Reproduction and fertility effects	Waived
870.4100	Chronic toxicity rodents	Waived
870.4100	Chronic toxicity dogs	Waived
870.4200	Carcinogenicity rats	Waived
870.4300	Carcinogenicity mice	Waived
870.5375	Mutagenicity-mouse lymphoma	Positive for gene mutation, with and without S9 mammalian metabolic mutation
870.5385	Chromosomal aberration	Negative for gene mutation
870.5500	Mutagenicity-Ames	Negative for gene mutation, with and without S9 mammalian metabolic mutation
870.620	Acute neurotoxicity screening battery	NOAEL = >10 mg/kg/day LOAEL = not established
870.6200	Subchronic neurotoxicity screening battery	NOAEL = 0.1 mg/kg/day LOAEL = 2.0 mg/kg/day based on clinical toxicity (not neurotoxicity)

B. Toxicological Endpoints

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

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

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

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

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ZINC PHOSPHIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg/day	Developmental Toxicity Study-Rat LOAEL = 4.0 mg/kg/day based on maternal deaths on gestation day 10 (i.e., after 4 doses) though day 16
Chronic dietary (all populations)	NOAEL= 0.1 g/kg/day UF = 1,000 Chronic RfD = 0.0001 mg/kg/day	90–Day Oral Toxicity Study-Rats LOAEL = 1.0 mg/kg/day based on increased mortality, increased absolute and relative liver weight, and hematological alterations
Short-term dermal (1 to 7 days) Intermediate-term (1 week to several months) Long-term dermal (several months to lifetime) (Residential)	Not applicable	Dermal exposure is not expected since baits are not absorbable and Zn phosphide powder is too polar to be absorbed through the skin
Short-term inhalation (1 to 7 days) Intermediate-term inhalation (1 week to several months) Long-term inhalation (several months to lifetime) (Residential)	Not applicable	Inhalation exposure is not expected. End-use baits are not powdery or respirable
Cancer (oral, dermal, inhalation)	Not applicable	Not applicable

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.284(a)) for residues of phosphine resulting from the use of zinc phosphide, in or on a variety of raw agricultural commodities including: Grape (0.01 ppm), grass (rangeland) (0.1 ppm), and sugarcane (0.01 ppm). Tolerances with regional registration are established 40 CFR 180.284(c) for zinc phosphide residues in or on globe artichokes (0.01 ppm), sugar beet (roots) (0.04 ppm), and sugar beet tops (0.02 ppm). Section 18 tolerances at 40 CFR 180.284(b) currently exist for zinc phosphide residues in or on: Alfalfa forage, alfalfa hay, barley grain, barley hay, barley straw, sugar beets (tops), sugar beet roots, timothy, hay, timothy, forage, potato, wheat grain, wheat hay, and wheat straw.

Based on residue data from field trials conducted in support of the subject tolerances, EPA concludes that acute and chronic dietary exposure associated with the proposed uses of zinc phoshide is unlikely. Residues were below the Level of Quantitation (LOQ) (<0.05 or <0.1 ppm) in crops, except for the livestock feed items alfalfa forage, sugar beet tops, and timothy forage. Alfalfa forage, sugar beet tops, and timothy hay are not direct human food items; rather, they are used as animal feeds. Because residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorus compounds, residues of zinc phosphide in livestock feeds are not expected to result in residues of zinc phosphide in livestock commodities. Also, the act of processing and washing will not allow for unreacted zinc phosphide to remain in or on food items. In addition, residues are not expected in wheat and barley grain since zinc phosphide will be applied to barley and wheat prior to the formation of seed heads.

2. *Dietary exposure from drinking water.* No drinking water risk assessment was performed for zinc phosphide because no residues are expected in either ground water or surface water.

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

Zinc phosphide is currently registered in pellet and bait form for use on residential non-food sites to control mammals (primarily rodents) in areas such as commercial establishments, public areas (parks), dumps, and homes. A detailed residential exposure assessment is contained in the Reregistration Eligibility Decision (RED) Document, EPA 738–R–98–006, July 1998, for zinc phosphide.

There were no endpoints identified for zinc phosphide use in a residential assessment except for accidental ingestion. The residential exposure assessment evaluated exposure from accidental ingestion of zinc phosphide. No other residential exposure assessment was either expected or, if expected, found to have any hazard potential.

Although having considered that accidental ingestion of zinc phosphide baits may occur with respect to a very small number of children, EPA has concluded that this potential exposure is not appropriate for inclusion in evaluating the safety of aggregate exposure of consumers and major identifiable subgroups of consumers to zinc phosphide. Unlike other residential uses (such as a turf use) that potentially may result in exposures to significant groups of children, the subgroup of children that may consume baits in childproof bait stations is very tiny. This small subgroup of children would not qualify as a major identifiable subgroup of consumers.

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

pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether zinc phosphide has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to zinc phosphide and any other substances, and zinc phosphide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that zinc phosphide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

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

3. *Conclusion*. EPA has waived a significant portion of the data normally required in establishing a tolerance for a pesticide chemical, in evaluating the petitions for zinc phosphide. This data waiver is based on data showing that dietary exposure is unlikely to result from agricultural uses of zinc phosphide. Based on these exposure data, EPA concludes there are reliable data supporting a conclusion that no additional safety factor is necessary to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Zinc phosphide has both food and non-occupational uses; therefore, the considerations for aggregate exposure are those from food, drinking water, and residential (non-occupational) sources.

The Agency has concluded that there will be no human dietary exposure from the proposed or registered uses of zinc phosphide. Thus, exposure to zinc phosphide from food is not a component of the acute and chronic aggregate exposure assessment.

1. *Acute risk*. The Agency has concluded that there will be no human dietary exposure from the proposed or registered uses of zinc phosphide. Thus, exposure to zinc phosphide from food is not a component of the acute and chronic aggregate exposure assessment.

2. *Chronic risk*. The Agency has concluded that there will be no human dietary exposure from the proposed or registered uses of zinc phosphide. Exposure to zinc phosphide from food and water is not a component of the acute and chronic aggregate exposure assessment.

There are no residential uses for zinc phosphide that result in chronic residential exposure to zinc phosphide. Based on the use pattern, chronic residential exposure to residues of zinc phosphide is not expected. There is no potential for chronic dietary exposure to zinc phosphide in food and drinking water.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure levels) plus indoor and outdoor residential exposure. No short-term or intermediate-term dermal, oral or inhalation toxicological endpoints were identified for zinc phosphide.

Further, no incidental oral exposure is expected given the conditions of use. Although potentially accidental ingestion of zinc phosphide bait may occur in rare instances, the subgroup of children that are exposed in such a manner is not a major identifiable subgroup of consumers.

4. *Aggregate cancer risk for U.S. population*. Since chronic exposure and risk associated with the use of zinc phosphide is negligible, no risk of cancer is expected from the use of zinc phosphide.

5. *Determination of safety*. There is no drinking water, residential, nor dietary component to acute and chronic aggregate exposure to zinc phosphide residues. Based on these exposure assessments, EPA concludes that there is a reasonable certainty that no harm will result to adults, infants and children from aggregate exposure to zinc phosphide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Acceptable methods are available for enforcement and data collection purposes for plant commodities. The Pesticide Analytical Manual (PAM), Vol. II lists, under aluminum phosphide, a colorimetric method and a gas liquid chromatography with flame photometric detection (GLC/FPD) method as Methods A and B, respectively. Both methods determine the level of phosphine liberated when zinc phosphide is exposed to dilute acid solutions. EPA has determined that Method A is acceptable for enforcement. Data submitted in support of the established tolerances were collected by one of these two methods. Data submitted in support of the proposed tolerances were collected by the GLC/FPD method or a similar method

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no international harmonization issues associated with this action since there are no Codex, Mexican or Canadian maximum residue levels (MRLs) or tolerances for zinc phosphide on any crop.

V. Conclusion

Therefore, the tolerances are established for residues of phosphine resulting from the use of zinc phosphide in or on alfalfa, forage and alfalfa, hay at 0.2 ppm; barley, grain, at 0.05 ppm, barley, hay and barley, straw at 0.2 ppm; bean, dry, seed at 0.05 ppm; beet, sugar, roots at 0.05 ppm and beet, sugar, tops at 0.2 ppm; potato at 0.05 ppm; timothy, forage and timothy, hay at 0.5 ppm; and wheat, forage, wheat, grain, wheat hay, and wheat, straw at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue

to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0319 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 1, 2003.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0319, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 25, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

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

■ 2. Section 180.284 is amended by adding commodities to the table in paragraph (a) and removing the following entries from the table in paragraph (b): ''barley, grain,'' ''barley, hay,'' ''barley, straw,'' ''beet, sugar, roots,'' ''beet, sugar, tops,'' ''potato,'' ''timothy, forage,'' ''timothy, hay,'' ''wheat, grain,'' ''wheat, hay,'' and ''wheat, straw'' to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

(a) General. * * *

Commodity	Parts per million
Alfalfa, forage	0.2
Alfalfa, hay	0.2
Barley, grain	0.05
Barley, hay	0.2
Barley, straw	0.2
Bean, dry, seed	0.05
Beet, sugar, roots	0.05
Beet, sugar, tops	0.2
* * * * *	
Potato	0.05
* * * * *	
Timothy, hay	0.5
Timothy, forage	0.5
Wheat, forage	0.05
Wheat, grain	0.05
Wheat, hay	0.05
Wheat, straw	0.05

* * * * *

[FR Doc. 03–24844 Filed 9–26–03; 11:11 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7564–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Celtor Chemical Works Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX is issuing a Notice of Deletion for the Celtor Chemical Works Superfund Site (Site) located in Hoopa, California, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA, Hoopa Valley Tribe and the State of California, through the California Department of Toxic Substances Control, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

EFFECTIVE DATE: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Debbie Schechter, Section Chief, U.S. EPA, Region IX, SFD–7–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3230 or (800) 231–3075.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is the Celtor Chemical Works Superfund Site, in Hoopa, California.

A Notice of Intent to Delete for this Site was published in the **Federal Register** on August 18, 2003 (68 FR 49406). The closing date for comments on the Notice of Intent to Delete was September 17, 2003. A Responsiveness Summary was prepared for comments received regarding delisting of the site; those responses are part of the NOD below. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those

sites. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at these sites warrant such actions. Deletion of a site from the NPL does not affect responsible party liability or impede EPA's efforts to recover costs associated with response efforts.

Public Comments Received During August 13, 2003 Public Meeting on Proposed De-listing

Question: What was the basis for the cleanup levels in the 1985 Record of Decision?

Response: The Maximum Contaminant Levels (MCLs) or the Drinking Water Regulations (DWRs) are the basis for the water quality criteria for the gully, the surface water running into the gully, and the ground water. Action levels for the Trinity River were based upon Water Quality Criteria for the Protection of Freshwater Aquatic Life (WQCAL). Action levels for contaminants in soil were primarily based on the acceptable range of contaminant levels in soil as derived from the EPA National Ambient Water Quality Criteria for Protection of Human Health (WQCHH). An acceptable daily dose was computed by multiplying the WQCHH or MCL for a given contaminant by two liters, which is the maximum daily ingestion rate for the WQCHH or MCL to protect human health. This computed dose was then divided by 10 grams or 0.1 grams, which is the United States Center for Disease Control's (CDC) maximum estimated ingestion rate of soil for a child or an adult, respectively. The result is a range of contaminant concentrations in soil which will fully protect human health. Other considerations were also evaluated in setting the action levels. The action level for arsenic was based upon an advisory from the CDC. In our most recent comprehensive sampling, we compared the results to the Primary Remediation Goals for residential non-cancer standards. The action level for cadmium was based upon a cleanup level for unrestricted residential use. The action levels for copper and zinc were established at the California Assessment Manual Total Threshold Limit Concentrations (CAM TTLC).

Question: After de-listing, would Celtor Chemical be put back on the National Priorities List if contaminants were found?

Response: Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed remedial action. If future conditions warrant, the NCP (40 CFR 300.425(e)(3)) provides that Fund-financed remedial actions may be taken at sites deleted from the NPL. When there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without rescoring the site.

Question: Orange-colored soil has been seen on the gravel bar. Is this contamination from the Site?

Response: Orange stained sediments appear on the Trinity River's gravel bar on occasion. It is unknown whether these stained sediments are associated with the Celtor Site. No visible connection to a source has been identified. Stains were sampled by EPA in 1996, but the stains were not present during the 1998, 2001 and 2003 site visits. Some samples of the 1996 orange colored sediments had elevated levels of contaminants. Other samples did not show elevated levels of contaminants. Areas of the gravel bar were sampled to determine if contamination was present in the absence of the orange stains, and no elevated levels of contaminants were found. The Trinity River flows through a highly mineralized area, and there are upstream mining operations that could be the source of the stains. The orange color is also an indication of oxidation (rusting) and is not necessarily associated with contamination. No orange colored sediments have been seen on the gravel bar by EPA or the Tribe since 1996.

Question: Has the contamination affected the river water?

Response: When the processor was operating, there were large quantities of tailings released to the Trinity River that caused fish kills. Current samples of surface water do not show elevated levels of contaminants entering the river.

Question: Is it safe to grow a garden in the pasture?

Response: The pasture was sampled for site related contamination. There were no elevated levels of contaminants found in the soil. There is no unacceptable risk from growing a garden in the pasture with respect to site related contamination.

Question: There is a concern that fill from an area by the gravel bar of the Trinity River near the site was used as fill for yards. Is there a potential health risk for the people who live in these houses?

Response: According to sources from the Tribal Environmental Protection Agency (TEPA), it is not known if this fill was actually used in the yards of homes, or if it was, in what houses it may have been used. There is no reason to suspect that fill used in yards taken from near the gravel bar had elevated levels of site related contaminants. The area where the fill is located was not at the site of the remedial action, but further down the river access road behind the gravel bar.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 19, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for the Celtor Chemical Works Superfund Site in Hoopa, California.

[FR Doc. 03–24775 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 374, 387, 391, 393, and 396

Motor Carrier Safety Regulations; Miscellaneous Technical Amendments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; miscellaneous technical amendments.

SUMMARY: This rule makes technical amendments to the Federal Motor Carrier Safety Regulations (FMCSRs). These technical amendments were needed to correct inadvertent errors and omissions, update mailing addresses, remove obsolete references, and make minor editorial changes to improve clarity and consistency. No substantive changes have been made to the FMCSRs. The corrections are minor and will not have a significant impact on a substantial number of small entities.

DATE: The technical amendments in this final rule are effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Nunn, Office of Policy Plans and

Regulations (MC–PRR), U.S. Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–2797, or e-mail *janet.nunn@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Rule Technical Amendments

You can view, print, and download an electronic copy of this document in PDF or HTML formats through FMCSA's Web site: *http://www.fmcsa.dot.gov/rulesregs,* or the Federal Register's Web site at *http://www.gpoaccess.gov.*

Summary of Technical Amendments

FMCSA has made the following technical corrections to the Federal Motor Carrier Safety Regulations (FMCSRs) contained in Title 49 of the Code of Federal Regulations (CFR), chapter III, subchapter B.

Section 365.405(a): ''Federal Motor Carrier Safety Administration, Licensing Division'' is corrected to read ''FMCSA, Licensing Team;'' ''Regional Director for the Region(s)'' is corrected to read ''Field Administrator for the Service Center(s);'' and ''1002.2(f)(25)'' is corrected to read ''360.3(f)(8).'' Section 365.411(b), ''Division'' is corrected to read ''Team.'' Section 365.413(b), ''Office of Data Analysis and Information Systems'' is corrected to read ''Licensing Team.'' Section 365.505(b)(3), ''unbvtil'' is corrected to read ''until.''

Section 374.303(a), ''carriers'' is corrected to read ''carrier.''

Section 387.303, paragraph (b)(2) table, column 1, paragraph (d), ''10,000'' is corrected to read ''10,001'' to be consistent with other sections in the table. In § 387.309, ''B.M.C.'' is corrected to read ''BMC.'' In § 387.311(b), ''B.M.C. 83'' and ''B.M.C. 34'' are corrected to read ''BMC 83'' and ''BMC 34.''

In § 391.43(f), the date on which existing physical examination forms may no longer be used ''November 6, 2001'' has been updated. In the ''Instructions For Performing and Recording Physical Examinations'' and the ''Medical Examination Report for Commercial Driver Fitness Determination,'' both codified after § 391.43(f), the information on blood pressure has been revised to incorporate the recommendations on hypertension included in a report prepared for FMCSA, entitled *Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers* (October 2002). The report, which has been posted on the FMCSA website for several months, represents the current medical consensus and state of the art in evaluating and treating hypertension.

In § 393.5, definition of ''*g,*'' the figure ''9.823'' is corrected to read ''9.81.'' In § 393.106(a), the reference to ''§ 393.122 through § 393.142'' is corrected to read §§ 393.116 through 393.136.''

Section 396.9, paragraphs (b) and (c)(2), the report form ''Driver Equipment and Compliance Check'' has been renamed the ''Driver Vehicle Examination Report'' to conform with industry terminology and for uniformity in reporting.

Regulatory Analyses and Notices

Administrative Procedure Act (APA)

The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b). FMCSA has determined that notice and comment on these amendments are unnecessary.

The amendments to Part 365 involve four changes to the names of FMCSA offices; one change to replace an obsolete CFR citation which was recodified after the Interstate Commerce Commission's remaining functions were transferred to DOT; and one spelling correction. Because these changes make ministerial corrections or update references, but do not impose added burdens or alter any rights or obligations, the agency has determined that notice and comment are unnecessary.

The definition of ''Carrier'' in § 374.303(a) now reads: ''a motor passenger common carriers.'' The plural ''carriers'' is changed to the singular ''carrier'' to match the term being defined. This has no effect on the underlying rule, and FMCSA has determined that notice and comment are therefore unnecessary.

In part 387, three references to ''B.M.C.,'' meaning Bureau of Motor Carriers, are changed to ''BMC,'' the current preferred abbreviation of that term. The underlying rule is unchanged, and the agency has determined that notice and comment are unnecessary.

In § 391.43(f), the date after which existing physical examination forms could no longer be used (November 6, 2001) has been extended to September 2004. This is being done because it came to the agency's attention that stocks of the previous forms still exist. Allowing their continued use will save the expense of discarding these forms and buying new ones. The medical examination itself is the same, whatever the form used to record the results. FMCSA has therefore determined that notice and comment are not required.

In the ''Instructions For Performing and Recording Physical Examinations'' and the ''Medical Examination Report for Commercial Driver Fitness Determination,'' both codified after § 391.43(f), the information on blood pressure has been revised to incorporate the recommendations on hypertension included in a report prepared for FMCSA, entitled *Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers* (October 2002). The report, which has been posted on the FMCSA website for several months, represents the current medical consensus and state of the art in evaluating and treating hypertension. FMCSA has determined that notice and comment on these changes are unnecessary, because both the ''Instructions'' for dealing with high blood pressure and the corresponding ''Guidelines'' printed on the exam form are simply recommendations to the medical examiner. They represent the agency's summary of current medical thinking, but are neither part of the medical standard for blood pressure [*see* § 391.41(b)(6)] nor binding on the medical examiner.

In Part 393.5, the definition of ''g,'' the symbol for the acceleration of gravity, is corrected from 9.823 meters per second squared to 9.81 meters per second squared. FMCSA finds that notice and comment are unnecessary to correct this error. The reference in § 393.106(a) to ''the commodity-specific rules of § 393.122 through § 393.142'' is erroneous because it refers to section numbers used in a previous draft of Subpart I (Protection Against Shifting and Falling Cargo). The final rule codified the commodity-specific regulations at § 393.116 through § 393.136, and § 393.106(a) is therefore changed accordingly. Because this amendment clarifies a cross-reference but does not change any regulatory requirement, FMCSA finds that notice and comment are unnecessary.

In § 396.9(b) and (c)(2), the inspection report entitled ''Driver Equipment Compliance Check'' has been renamed the ''Driver Vehicle Examination Report.'' Because the substance of the inspection report has not been changed, FMCSA has determined that notice and comment are unnecessary.

These technical amendments have no significant impact on a substantial number of small entities. The amendments merely correct inadvertent errors and omissions, update mailing addresses, remove obsolete references,

and make minor editorial changes to improve clarity and consistency. They do not impose new requirements. As explained above, FMCSA has determined that prior notice and opportunity for comment on these changes are unnecessary. For the same reasons, the agency finds good cause under 5 U.S.C. 553(d)(3) to make these amendments effective upon publication.

Executive Order 12866 and DOT Regulatory Policies and Procedures

FMCSA does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, or within the meaning of DOT regulatory policies and procedures. Therefore, it does not require review by the Office of Management and Budget.

Regulatory Flexibility Act of 1980 (RFA)

FMCSA has reviewed the technical amendments rule, and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

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

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this rule does not have federalism implications.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in section 3 of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Intergovernmental Review

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Information Collection

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

Environment

We have analyzed this action for purposes of the National Environmental Policy Act (NEPA) and have determined that this action does not have any effect on the quality of the environment.

Energy Impact

We have determined that this rule is not a major regulatory action under the provisions of the Energy Policy and Conservation Act (EPCA).

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This final rule is not a major rule as defined by section 804 of SBREFA. This rule will not result in annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation. This rule is also exempt from congressional review under 5 U.S.C. 801 *et seq.*, as added by SBREFA, since it involves ministerial technical corrections to existing regulations.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods.

49 CFR Part 374

Aged, Blind, Buses, Civil rights, Freight, Individuals with disabilities, Motor Carriers, Smoking.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, FMCSA amends 49 CFR chapter III, subchapter B, as set forth below.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 1. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

§ 365.405 [Amended]

■ 2. Amend § 365.405(a)(1) by removing ''Federal Motor Carrier Safety Administration, Licensing Division'' and add, in its place, ''FMCSA, Licensing Team;''

§ 365.411 [Amended]

■ 3. Amend § 365.411(b) by removing ''Division'' and add, in its place, ''Team.''

§ 365.413 [Amended]

■ 4. Amend § 365.413(b) by removing ''Office of Data Analysis and Information'' and add, in its place, ''Licensing Team.''

§ 365.505 [Amended]

■ 5. Amend § 365.505(b)(3) by removing ''unbvtil'' and add, in its place, ''until.''

PART 374—PASSENGER CARRIER REGULATIONS

■ 6. The authority citation for part 374 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14101; 49 CFR 1.73.

§ 374.303 [Amended]

■ 7. Amend § 374.303(a) by removing the word ''carriers'' and add, in its place, ''carrier.''

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 8. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13906, 14701, 31138, and 31139; 49 CFR 1.73.

§ 387.303 [Amended]

■ 9. Amend § 387.303, paragraph (b)(2) table, column 1, in paragraph (d), by removing ''10,000'' and add, in its place, ''10,001.''

§ 387.309 [Amended]

■ 10. Amend § 387.309(a) by removing ''B.M.C.'' and add, in its place, ''BMC.''

§ 387.311 [Amended]

■ 11. Amend § 387.311(b) by removing ''B.M.C.'' wherever it appears and add, in its place, ''BMC.''

PART 391—QUALIFICATIONS OF DRIVERS

■ 12. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 31133, 31136, and 31502; 49 CFR 1.73.

§ 391.43 [Amended]

■ 13. Amend § 391.43 as follows:
■ a. Amend § 391.43(f) by removing ''November 6, 2001'' and add, in its place, ''September 30, 2004.''
■ b. In the Instructions immediately following § 391.43(f), revise ''*Blood pressure (BP)*'' to read as follows:

Instructions for Performing and Recording Physical Examinations

* * * * *

Blood pressure (BP). If a driver has hypertension and/or is being medicated for hypertension, he or she should be recertified more frequently. An individual diagnosed with Stage 1 hypertension (BP is 140/90–159/99) may be certified for one year. At recertification, an individual with a BP equal to or less than 140/90 may be certified for one year; however, if his or her BP is greater than 140/90 but less than 160/100, a one-time certificate for 3 months can be issued. An individual diagnosed with Stage 2 (BP is 160/100–179/109) should be treated and a one-time certificate for 3-month certification can be issued. Once the driver has reduced his or her BP to equal to or less than 140/90, he or she may be recertified annually thereafter. An individual diagnosed with Stage 3 hypertension (BP equal to or greater than 180/110) should not be certified until his or her BP is reduced to 140/90 or less, and may be recertified every 6 months.

* * * * *

c. Revise the form entitled ''Medical Examination Report for Commercial Driver Fitness Determination'' to read as follows:

BILLING CODE 4910–EX–P

Medical Examination Report
FOR COMMERCIAL DRIVER FITNESS DETERMINATION

649-F (6045)

1. DRIVER'S INFORMATION Driver completes this section

Driver's Name (Last, First, Middle)	Social Security No.	Birthdate	Age	Sex ☐ M ☐ F	New Certification ☐ Recertification ☐ Follow-up ☐	Date of Exam

Address	City, State, Zip Code	Work Tel: ( ) Home Tel: ( )	Driver License No.	License Class ☐ A ☐ B ☐ C ☐ D ☐ Other	State of Issue

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes No

- Any illness or injury in the last 5 years?
- Head/Brain injuries, disorders or illnesses
- Seizures, epilepsy ☐ medication_____
- Eye disorders or impaired vision (except corrective lenses)
- Ear disorders, loss of hearing or balance
- Heart disease or heart attack; other cardiovascular condition ☐ medication_____
- Heart surgery (valve replacement/bypass, angioplasty, pacemaker)
- High blood pressure ☐ medication_____
- Muscular disease
- Shortness of breath

Yes No

- Lung disease, emphysema, asthma, chronic bronchitis
- Kidney disease, dialysis
- Liver disease
- Digestive problems
- Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin
- Nervous or psychiatric disorders, e.g., severe depression medication_____
- Loss of, or altered consciousness

Yes No

- Fainting, dizziness
- Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring
- Stroke or paralysis
- Missing or impaired hand, arm, foot, leg, finger, toe
- Spinal injury or disease
- Chronic low back pain
- Regular, frequent alcohol use
- Narcotic or habit forming drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

_____

_____

_____

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature_____ Date_____

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

_____

_____

_____

_____

TESTING (Medical Examiner completes Section 3 through 7) Name: Last, First, Middle,

3. VISION

Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70 degrees peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. ***Monocular drivers are not qualified.***

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/	20/	Right Eye °
Left Eye	20/	20/	Left Eye °
Both Eyes	20/	20/	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:
☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an opthalmologist or optometrist

Date of Examination | Name of Ophthalmologist or Optometrist (print) | Tel. No. | License No./ State of Issue | Signature

4. HEARING

Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB
☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500Hz, -10dB for 1,000 Hz, -8.5 dB for 2000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard.	Right ear \ Feet	Left Ear \ Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)	Right Ear			Left Ear		
	500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
	Average:			Average:		

5. BLOOD PRESSURE/ PULSE RATE

Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic	Diastolic

Driver qualified if ≤140/90.

Pulse Rate: ☐ Regular ☐ Irregular

Record Pulse Rate:

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if ≤140/90. One-time certificate for 3 months if 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if ≤140/90
≥180/110	Stage 3	6 months from date of exam if ≤140/90	6 months if ≤ 140/90

6. LABORATORY AND OTHER TEST FINDINGS

Numerical readings must be recorded.

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.
Other Testing (Describe and record)

7. PHYSICAL EXAMINATION Height:_____ (in.) Weight:_____ (lbs.) Name: Last, First, Middle,

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. See *Instructions to the Medical Examiner* for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.	☐	☐
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos. Ask about retinopathy, cataracts, aphakia, glaucoma, macular degeneration and refer to a specialist if appropriate.	☐	☐
3. Ears	Scarring of tympanic membrane, occlusion of external canal, perforated eardrums.	☐	☐
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.	☐	☐
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker, implantable defibrillator.	☐	☐
6. Lungs and chest, not including breast examination	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/ or xray of chest.	☐	☐

BODY SYSTEM	CHECK FOR:	YES*	NO
7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.	☐	☐
8. Vascular System	Abnormal pulse and amplitude, cartoid or arterial bruits, varicose veins.	☐	☐
9. Genito-urinary System	Hernias.	☐	☐
10. Extremities- Limb impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger, Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficicent grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.	☐	☐
11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness.	☐	☐
12. Neurological	Impaired equilibrium, coordination or speech pattern; asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinki's reflexes, ataxia.	☐	☐

***COMMENTS:** _____

Note certification status here. See Instructions to the Medical Examiner for guidance.

☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
☐ Does not meet standards
☐ Meets standards, but periodic monitoring required due to _____.
Driver qualified only for: ☐ 3 months ☐ 6 months ☐ 1 year ☐ Other

Temporarily disqualified due to (condition or medication): _____

Return to medical examiner's office for follow up on _____

☐ Wearing corrective lense
☐ Wearing hearing aid
☐ Accompanied by a _____ waiver/ exemption. Driver must present exemption at time of certification.
☐ Skill Performance Evaluation (SPE) Certificate
☐ Driving within an exempt intracity zone (See 49 CFR 391.62)
☐ Qualified by operation of 49 CFR 391.64

Medical Examiner's signature _____
Medical Examiner's name _____
Address _____
Telephone Number _____

If meets standards, complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 9-11 hours and then have at least a 10-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 5-hour driving periods and 5-hour rest periods.)

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and/or trailer(s) before, during and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

§391.45 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing device when the audiometric device is calibrated to the American National Standard (formerly ASA Standard) Z24.5-1951;

(12) (i) Does not use a controlled substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. (ii) Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who: (A) Is familiar with the driver's medical history and assigned duties; and (B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, **The Driver's Role**.

In addition to reviewing the **Health History** section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects and hazards of these medications while driving. Educate the driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the conditions to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. **Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring.** In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (1) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and it's reference by section is highlighted.

Federal Motor Carrier Safety Regulations
-Advisory Criteria-

Loss of Limb:
§391.41(b)(1)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:
§391.41(b)(2)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a curent SPE certificate for his/her physical disability.

Diabetes
§391.41(b)(3)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. CMV drivers who do not meet the Federal diabetes standard may call (202) 366-1790 for an application for a diabetes exemption.
(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Cardiovascular Condition
§391.41(b)(4)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

The term "has no current clinical diagnosis of" is specifically designed to encompass: "*a clinical diagnosis of*" (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit The term "*known to be*

accompanied by" is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Cardiovasular Advisory Panel Guidelines for the Medical examination of Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Respiratory Dysfunction
§391.41(b)(5)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm

Hypertension
§391.41(b)(6)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiovascular Advisory Guidelines for the Examination of CMV Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

Stage 1 hypertension corresponds to a systolic BP of 140-159 mmHg and/or a diastolic BP of 90-99 mmHg. The driver with a BP in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a one-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

A blood pressure of 160-179 systolic and/or 100-109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a BP value of 140/90 or less, he or she may be certified for one year from date of the initial exam. The driver is certified annually thereafter.

A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute BP-related event. The driver may **not** be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck BP is 140/90 or less.

Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particulary undesirable in commercial drivers.

Secondary hypertension is based on the above stages. Evaluation is warranted if patient is persistently hypertensive on maximal or near-maximal doses of 2-3 pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic disease.

(See Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease §391.41(b)(7)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with the ability to control and operate a commercial motor vehicle safely.

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter period of time may be issued. (See Conference on Neurological Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Epilepsy
§391.41(b)(8)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (1) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

Drivers with a history of epilepsy/seizures off antiseizure medication **and** seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free **and** off antiseizure medication for a 5-year period or more.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Mental Disorders
§391.41(b)(9)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.

Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of medications and potential hazards for driving.
(See Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Vision
§391.41(b)(10)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses."

CMV drivers who do not meet the Federal vision standard may call (202) 366-1790 for an application for a vision exemption.
(See Visual Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hearing
§391.41(b)(11)
A person is physically qualified to drive a commercial motor vehicle if that person:
First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5-1951.

Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18,

23, etc. The examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid."

(See Hearing Disorders and Commercial Motor Vehicle Drivers at: http://www/fmcsa.dot.gov/rulesregs/medrports.htm)

Drug Use

§391.41(b)(12)

A person is physically qualified to drive a commercial motor vehicle if that person:

Does not use a controlled substance identified in 21 CFR 1308.II. *Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties; and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.*

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit-forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required.

(See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Alcoholism

§391.41(b)(13)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of alcoholism.

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

BILLING CODE 4910–EX–C

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 14. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 322, 31136, and 31502; sec. 104(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 CFR 1.73.

§ 393.5 [Amended]

■ 15. Amend § 393.5 in the definition of ''g'' by removing ''9.823'' and add, in its place, ''9.81.''

§ 393.106 [Amended]

■ 16. Amend § 393.106(a) by removing ''§ 393.122 through § 393.142'' and add, in its place, ''§§ 393.116 through 393.136.''

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 17. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.73.

§ 396.9 [Amended]

■ 18. In § 396.9, paragraphs (b) and (c)(2), remove ''Driver Equipment Compliance Check'' and add, in its place, ''Driver Vehicle Examination Report.''

Issued on: September 24, 2003.

Warren Hoemann,

Deputy Administrator.

[FR Doc. 03–24736 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA–97–2979]

RIN 2126–AA32

Transportation of Household Goods; Consumer Protection Regulations; Delay of Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; delay of compliance date.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) delays the compliance date for the new part 375, Transportation of Household Goods; Consumer Protection Regulations, which was published as an interim final rule on June 11, 2003. That rule amends regulations governing the interstate transportation of household goods. On August 25, 2003, FMCSA received two petitions for reconsideration of the rule. On the same date, one of the petitioners, the American Moving and Storage Association, submitted a separate Petition for Stay of Effective Date. The reconsideration petitions address a variety of issues, both substantive and technical. The interim final rule took effect on September 9, 2003, with mandatory compliance to begin March 1, 2004. As the rule's effective date has passed, we are delaying the compliance date to gain time to consider fully the petitioners' concerns.

DATES: The compliance date of the interim final rule amending 49 CFR part 375 published at 68 FR 35066 on June 11, 2003, is delayed indefinitely. The Administration will publish a document in the **Federal Register** announcing the new compliance date.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel Jackson, Household Goods Enforcement Team Leader, (MC–ECI), 202–366–6406, FMCSA, 400 Seventh Street, SW., Room 8310, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159), which established FMCSA as a separate agency within the U.S. Department of Transportation (DOT), Congress authorized FMCSA to regulate the interstate transportation of household goods. In earlier legislation, Congress abolished the Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to DOT (ICC Termination Act of 1995, Pub. L. 104–88). Prior to FMCSA's establishment, the Secretary of Transportation delegated this household goods jurisdiction to the Federal Highway Administration (FHWA).

In May 1998, FHWA published a notice of proposed rulemaking requesting comments on its proposal to amend the household goods regulations at 49 CFR part 375 and the credit regulations at part 377 (63 FR 27126, May 15, 1998). The public submitted more than 50 comments on the proposal. FMCSA modified the substance of the proposed rule in light of concerns raised by some of the commenters, including the American Moving and Storage Association, and published an interim final rule on June 11, 2003 (68 FR 35064), to become effective September 9, 2003, with mandatory compliance to begin March 1, 2004. We published an interim final rule rather than a final rule to allow the Office of Management and Budget additional time to complete its review of information collection requirements.

On August 25, 2003, FMCSA received two petitions for reconsideration of the interim final rule. The petitioners are (1) the American Moving and Storage Association and (2) United Van Lines, LLC and Mayflower Transit, LLC. On the same date, the American Moving and Storage Association submitted a separate Petition for Stay of Effective Date. The reconsideration petitions address a variety of issues, both substantive and technical. Certain of the substantive concerns will require the agency's careful analysis. The rule took effect on September 9, 2003, but compliance was not required until March 1, 2004. As the rule's effective date has passed, we are delaying the compliance date until further notice in order to consider fully the petitioners' concerns. FMCSA will publish a document in the **Federal Register** promulgating any necessary technical corrections and/or substantive changes, and announcing the new compliance date for the rule.

FMCSA recognizes that interstate household goods carriers will require sufficient time to prepare for compliance with this rule. Prior to the compliance date, carriers will need to conduct an educational process, make document changes, and revise operational procedures. In addition, the compliance date must precede the summer peak moving season, which begins May 15, 2004. FMCSA will ensure that the new compliance date provides the household goods transportation industry with this vital lead time.

Issued on: September 23, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–24499 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–97–2350]

RIN 2126–AA23

Hours of Service of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This rule makes technical amendments to the hours of service (HOS) regulations. These technical amendments are needed to correct inadvertent errors and omissions, and make minor editorial changes to improve clarity and consistency. The amendments do not make substantive changes. The corrections are minor and will not have a significant impact on a substantial number of small entities.

DATE: The technical amendments in this final rule are effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Moehring, Office of Bus and Truck Standards and Operations (MC–PSD), U.S. Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–4001.

SUPPLEMENTARY INFORMATION:

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.

Privacy Act: 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

The term ''current rules,'' as used in this document, refers to the HOS regulations in effect before April 28, 2003, and ''final rule'' means the HOS regulations adopted on April 28, 2003 (68 FR 22456).

Sleeper Berth Provisions Relating to the 14-Hour Limit

Confusion has arisen among motor carriers and enforcement officials over the provision of the final rule on hours of service (68 FR 22456, April 28, 2003) relating to the use of sleeper berths to accumulate 10 hours of off-duty time.

More specifically, the issue is how to apply the general prohibition on driving ''[f]or any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty * * *'' [49 CFR 395.3(a)(2)] in the context of the sleeper berth rule, which allows drivers to accumulate 10 hours off duty in two periods in the berth.

Under the current rule, off-duty time (including sleeper berth time) is not counted in calculating the 15-hour limit, thus allowing drivers to take for example, 2 hours off-duty during their work shift to drive up to the 17th hour after coming on duty. The new rule reduces the 15-hour limit to 14 hours, but it also adds a general prohibition on driving ''[f]or any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty * * *'' [49 CFR 395.3(a)(2)].

Under the new rule, off-duty time is included in calculating the 14th hour since coming on duty. The only exception is sleeper berth time. When taken in 2 periods, each of which must be at least 2 hours long, sleeper berth time does not count toward the 14-hour limit. The final rule, however, attempted to incorporate a modified 14-hour limit by providing that ''The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 14th hour'' [§ 395.1(g)(1)(iii)].

Although counting on-duty time toward the 14-hour limit is obviously consistent with the general principle of § 395.3(a)(2), the modified sleeper-berth provision inadvertently omitted reference to off-duty time not spent in a sleeper berth and sleeper berth time of less than 2 hours, neither of which qualifies for exclusion from the 14-hour limit. The agency is therefore amending § 395.1(g)(1)(iii) to clarify that drivers and motor carriers are required to count on-duty time, off-duty time not spent in a sleeper berth and sleeper berth time of less than two hours toward the 14-hour limit.

The final rule also overlooked the need to spell out the underlying principle for dealing with situations in which a driver takes more than 2 sleeper berth periods, all of which are more than 2 hours long. For example, after having been off-duty for 10 hours a driver drives for 4 hours, takes 2 hours in the sleeper berth, drives for another 3 hours, takes 3 more hours in the sleeper berth, drives for 5 hours, and then goes into the sleeper berth for 7 hours. In this case, the second and third sleeper-berth periods (3 hours plus 7 hours, respectively) meet the requirements of the rule (10 hours off duty in two periods, each at least 2 hours long), while the first and second (2 hours plus 3 hours, respectively) do not. Although the previous sentence suggests how this hypothetical should be treated, the amendment to § 395.1(g)(1)(iii) makes it explicit: any 2 sleeper-berth periods totaling 10 hours may be used in calculating the 10-hour limit, and sleeper-berth periods not used in calculating the 10-hour limit will be included in calculating the 14-hour limit.

Section 395.1(g)(2) restates the principle of § 395.1(g) of the current rule. Since 1963, that rule has allowed drivers who are off duty at a natural gas or oil well location to accumulate the then-required 8 hours off duty in two off-duty periods, each at least 2 hours long, in ''other sleeping accommodations at a natural gas or oil well location'' [49 CFR 195.3(a), 28 FR 2236, March 7, 1963]. State and Federal officials have understood and enforced that provision for 40 years. The agency is amending the introductory phrase of § 395.1(g)(2) to clarify that although drivers must now take 10 rather than 8 hours off duty, drivers at wellheads may continue to accumulate their off-duty time in two periods. The periods may be taken in sleeper berths, other sleeping accommodations, or both. This technical amendment imposes no added burdens, and simply clarifies the intent of the final rule.

Finally, while §§ 395.1(g)(1)(iv), 395.1(g)(2)(iv), and 395.1(g)(3)(iv) of the new rule provide that a combination of consecutive sleeper berth time and off-duty time totaling 10 hours satisfies the 10 hour-off-duty requirement when a driver changes from a sleeper berth mode of operation to a non-sleeper-berth mode, it inadvertently failed to provide the same option to drivers continuing in the sleeper berth mode. This amendment corrects that oversight.

In summary, the sleeper berth provision is clarified as follows:

For purposes of determining the 14-hour limit in a sleeper berth operation, the following are included in calculating that limit: on-duty time; non-sleeper-berth off-duty time; sleeper berth time of less than 2 hours; and sleeper berth time of 2 hours or more that is not used to accumulate 10 hours of off-duty time.

A combination of consecutive sleeper berth time and off-duty time totaling 8 for passenger-carrying operations or 10 hours for property-carrying and natural gas/oil well operations may be used to comply with either the 8-or the 10-hour off-duty requirement in sleeper berth operations, in addition to situations in which a driver moves from a sleeper berth to a non-sleeper berth operation.

Any two sleeper-berth periods (each at least two hours long) totaling 10 hours may be used in calculating the 10-hour limit, and sleeper-berth periods not used in calculating the 10-hour limit will be included in calculating the 14-hour limit.

Drivers of Oil Well Servicing Vehicles

Section 395.1(g) currently permits drivers with sleeper berths who are off duty at a natural gas or oil well location to accumulate the required 8 hours of off-duty time ''in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.'' These ''other sleeping accommodations'' are routinely provided at oil and gas well sites.

In the final rule adopted on April 28, 2003 [68 FR 22456 at 22515], the agency intended to continue to permit these drivers to accumulate the required off-duty time—extended from 8 hours to 10 hours—in 2 periods in either a sleeper berth or other sleeping accommodations. In fact, the new § 395.1(g)(2) specifically permits this conduct. The new rule, however, also included an additional provision [§ 395.1(g)(2)(iv)], relating to the off-duty requirements a driver must meet when going from sleeper berth to non-sleeper berth operations. This additional provision inadvertently omitted the specific reference to ''other sleeping accommodations'' for these drivers. FMCSA is therefore restoring this phrase to § 395.1(g)(2)(iv).

Also, § 395.1(g)(2)(iv) is being amended to match § 395.1(g)(1)(iv), again for the same reason. Because a combination of consecutive sleeper berth time, time in other sleeping accommodations, and off-duty time totaling 10 hours satisfies the 10 hour-off-duty requirement when a driver changes from a sleeper berth mode of operation to a non-sleeper berth mode, that same option should have been provided to a driver continuing in the sleeper berth mode. This amendment corrects the oversight.

Finally, like the general sleeper berth rule, the special provision for drivers of oil-well-servicing vehicles inadvertently omitted any reference to off-duty time not spent in a sleeper berth and sleeper berth time of less than 2 hours. The agency is therefore adopting the same language for § 395.1(g)(2)(iii) as for § 395.1(g)(1)(iii), and for the same reason.

16-Hour Short-Haul Exception

Section 395.1(o) of the April 28 final rule [68 FR 22456 at 22516] was intended to give short-haul drivers one 16-hour on-duty limit in a 7-day period. In describing this provision, the Executive Summary (page 1) to the Regulatory Impact Analysis prepared for the rule (item # 23302 in the docket) states ''This option allows short haul and local drivers (drivers who sleep at home all evenings and who have limited range of operations) the flexibility to work up to 16 hours up to one day per work week.'' Page 9–9 of the Regulatory Impact Analysis also describes § 395.1(o) as ''allowing one 16-hour shift per week.''

As published in the final rule, however, § 395.1(o)(3) provides that the driver may not have taken this exemption ''within the previous 7 consecutive days.'' The previous 7 days and the current day (when the exemption could again be used) constitute an 8-day cycle, not the 7-day cycle intended by the agency. FMCSA is correcting the erroneous reference to ''the previous 7 consecutive days'' to ''the previous 6 consecutive days.'' The exemption will therefore be available once a week, as originally intended.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have determined these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866 or within the meaning of DOT regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget.

Exception to Notice and Comment Rulemaking

The Administrative Procedure Act (APA) allows agencies to dispense with prior notice and an opportunity for comment if it finds them impracticable, unnecessary, or contrary to the public interest [5 U.S.C. 553(b)(B)]. FMCSA finds good cause to publish these technical amendments without prior notice. These amendments do not increase the regulatory burden on the motor carrier industry, nor do they alter the substantive rights or obligations of any party. They merely clarify the intent of the final rule.

Sleeper Berth Provisions

As indicated by the preamble to the final rule, ''[t]his rule requires that taking off-duty time, including meal stops and other rest breaks, of less than 10 hours duration, other than sleeper berth time, will not extend the work day.'' [68 FR 22504, April 28, 2003]. FMCSA inadvertently failed to articulate clearly in § 395.1(g)(1)(iii) the full implications of combining the sleeper-berth provisions with the 14-hour limit, and is therefore amending the provision to clarify that off-duty time and sleeper-berth time of less than two hours are counted toward the 14-hour limit. Because these requirements were spelled out in other portions of the final rule, FMCSA finds prior notice and opportunity for comment on this clarifying amendment unnecessary.

In finalizing the general sleeper berth provisions, FMCSA also failed to articulate with adequate specificity how the rule would work if a driver took not just 2 sleeper berth periods (each at least 2 hours long), but 3 or even more such periods. The agency is therefore amending § 395.1(g)(1)(iii) to make completely clear that any two sleeper berth periods totaling 10 hours will be counted, while any other sleeper berth periods (even those more than 2 hours long) will simply be treated as off-duty time for purposes of the 14-hour limit. The change merely states in detail a result already required by the final rule. Therefore, notice and comment are unnecessary.

The so-called ''oil well exception,'' which has been in effect for 40 years, allows drivers of trucks specially constructed to service oil and gas wells to cumulate the required 8 hours (now 10 hours) of off-duty time in two periods in ''other sleeping accommodations'' at oil and gas wells. That exception is embodied in § 395.1(g)(2) of the final rule. However, in the course of combining the ''oil well exception'' with the more detailed requirements of the sleeper-berth provisions for the final rule, the clarity of the exception was obscured. FMCSA has therefore clarified the wording of § 395.1(g)(2) to recapture the original and unchanged meaning of this provision and to ensure that both enforcement personnel and the regulated community understand the purpose and effect of this provision. Because the changes do not alter the meaning of the rule and impose no additional obligations on anyone, FMCSA has determined that these technical amendments do not require notice and comment.

For decades, FMCSA and State enforcement personnel treated the current sleeper berth rule as allowing a driver to satisfy the requirement for 8 hours off duty by taking either two sleeper berth periods totaling 8 hours, or a combination of consecutive sleeper berth time and other off-duty time totaling 8 hours. The agency intended to ratify this practice in the new rule, but failed to include the necessary text in all of the relevant places. Sections 395.1(g)(1)(iv), 395.1(g)(2)(iv), and 395.1(g)(3)(iv) were correctly drafted, and FMCSA is therefore inserting that language in the introductory phrase of §§ 395.1(g)(1), 395.1(g)(2), and 395.1(g)(3) as well. Because this

represents a corrected restatement of a principle already incorporated into the final rule, and long enforced by FMCSA and State officials, the agency has determined that notice and comment are unnecessary.

Drivers of Oil Well Servicing Vehicles

The current sleeper-berth rule allows drivers ''who are off duty at a natural gas or oil well location'' to rest ''in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty *in other sleeping accommodations* at a natural gas or oil well location.'' [§ 395.1(g) (emphasis added)]. The final rule was intended to retain the ''other sleeping accommodations'' option; as contained in § 395.1(g)(2). The agency is correcting an inadvertent omission by adding a reference to ''other sleeping accommodations'' to § 395.1(g)(2)(iv). Because this change merely applies a principle allowed for decades by the previous rule and explicitly endorsed by the new rule, to drivers leaving—in addition to those engaged in—sleeper berth operations, the agency has determined that notice and comment are unnecessary.

16-Hour Exception for Short-Haul Drivers

FMCSA decided short-haul operations should be granted a weekly exception to the prohibition on driving after the 14th hour after coming on duty. Page 9–9 of the Regulatory Impact Analysis clearly states that the analysis concerned ''the flexibility to work up to 16 hours up to one day per work week.'' The final rule, however, erroneously provided that the 16-hour exemption could not be taken ''within the previous 7 consecutive days'' [§ 395.1(o)(3)], which created an 8-day cycle. FMCSA has therefore determined that notice and comment are unnecessary to correct the drafting error and amend § 395.1(o) to allow the exception if not taken ''within the previous 6 consecutive days.''

Regulatory Flexibility Act of 1980 (RFA)

The RFA generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Since this rule is not subject to the notice and public comment requirements of 5 U.S.C. 553, it is not subject to the provisions of the RFA.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the regulatory actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any one year. There are no costs associated with this rule.

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This rule does not impose any new requirement that: (1) has substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. This rule does not have any federalism implications.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in section 3 of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Intergovernmental Review

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Collection of Information

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

Environmental Impact

We have analyzed this action for purposes of the National Environmental Policy Act and have determined that this action does not have any effect on the quality of the environment.

Submission to Congress and the Comptroller General

This final rule is also exempt from congressional review under 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, since it only makes minor technical corrections to existing regulations.

List of Subjects in 49 CFR part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FMCSA amends title 49 of the Code of Federal Regulations, chapter III, subchapter B, as set forth below.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 1. The authority citation for Part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 2. Section 395.1 is amended by revising paragraphs (g)(1), (g)(2), and (o)(3), and revising the introductory paragraph (g)(3) to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(g) * * *

(1) *General property-carrying commercial motor vehicle.* A driver who is driving a property-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 10 consecutive hours of off-duty time by taking a combination of at least 10 consecutive hours off-duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The driver does not drive after the 14th hour after coming on duty following 10 hours off duty, where the 14th hour is calculated:

(A) by excluding any sleeper berth period of at least 2 hours which, when added to a subsequent sleeper berth period, totals at least 10 hours, and

(B) by including all on-duty time, all off-duty time not spent in the sleeper berth, all sleeper berth periods of less than 2 hours, and any sleeper berth period not described in paragraph (g)(1)(iii)(A); and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth, or a combination of at least 10 consecutive hours off duty and sleeper berth time.

(2) *Specially trained driver of a specially constructed oil well servicing commercial motor vehicle at a natural gas or oil well location.* A specially trained driver who operates a commercial motor vehicle specially constructed to service natural gas or oil wells that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, or who is off duty at a natural gas or oil well location, may accumulate the equivalent of 10 consecutive hours off duty by taking a combination of at least 10 consecutive hours of off-duty time, sleeper-berth time, or time in other sleeping accommodations at a natural gas or oil well location; or by taking two periods of rest in a sleeper berth, or other sleeping accommodation at a natural gas or oil well location, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The driver does not drive after the 14th hour after coming on duty following 10 hours off duty, where the 14th hour is calculated:

(A) by excluding any sleeper berth or other sleeping accommodation period of at least 2 hours which, when added to a subsequent sleeper berth or other sleeping accommodation period, totals at least 10 hours, and

(B) by including all on-duty time, all off-duty time not spent in the sleeper berth or other sleeping accommodations, all such periods of less than 2 hours, and any period not described in paragraph (g)(2)(iii)(A); and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth or other sleeping accommodations, or a combination of at least 10 consecutive hours off duty, sleeper berth time, or time in other sleeping accommodations.

(3) *Passenger-carrying commercial motor vehicles.* A driver who is driving a passenger-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 8 consecutive hours of off-duty time by taking a combination of at least 8 consecutive hours off-duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

* * * * *

(o) * * *

(3) The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off duty period of 34 or more consecutive hours as allowed by § 395.3(c).

Issued on: September 25, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–24765 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

I.D. 092403C

Atlantic Highly Migratory Species Fisheries; Bluefin Tuna Retention Limit

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

ACTION: Atlantic bluefin tuna retention limit adjustment.

SUMMARY: This action adjusts the Atlantic bluefin tuna (BFT) General category daily retention limit to allow for maximum utilization of the proposed coastwide General category quota. NMFS increases the daily retention limit to three large medium or giant BFT. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of the General category quota.

DATES: Effective September 27, 2003, through October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2003 BFT Quota Specifications and General category effort controls were proposed on July 10, 2003 (68 FR 41103).

Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the month of October is appropriate and necessary to maximize use of the proposed coastwide General Category quota. Based on this seasons landings rates in June through September, it is highly unlikely that the proposed September subquota will be filled in the remaining fishing days. At current catch rates and a daily retention limit of two BFT per vessel, it is also unlikely that the proposed October through December subquota, will be attained in the October through December time-period. An adjustment to the General category daily retention limit will allow full use of the General category quota proposed for the 2003 fishing year, while preventing overharvest and ensuring reasonable fishing opportunities in all areas. Therefore, NMFS adjusts the General category daily retention limit to three large medium or giant BFT per vessel, effective September 27 through October 31, 2003.

The intent of this adjustment is to allow for maximum utilization by General category participants of the remaining General category quota (specified under 50 CFR 635.27(a)), (which has been adjusted by the quota carryover from the June through August and September time-period subquotas), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Catch rates for the 2003 BFT season have been extremely low and at the current rate of landings it is highly unlikely that the proposed quota will be harvested. Delay in increasing the retention limits would further exacerbate this problem. Large amounts of unharvested quota will have negative social and economic impacts to U.S. fishermen who depend upon catching the available quota within the time periods designated in the HMS FMP. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Substainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–24620 Filed 9–24–03; 3:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 092403B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 25, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 13,905 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003)

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,500 mt, and is setting aside the remaining 405 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–24731 Filed 9–25–03; 1:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 092403D]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 25, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone

according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2003 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI is 1,434 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the final 2003 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing Pacific cod by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–24732 Filed 9–25–03; 1:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 092403E]

Fisheries of the Exclusive Economic Zone off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 25, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 886 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the yellowfin sole fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the halibut bycatch allowance specified for the trawl yellowfin sole fishery, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–24733 Filed 9–25–03; 1:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 092403F]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 Atka mackerel total allowable catch (TAC) in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 25, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Atka mackerel in the Central Aleutian District of the BSAI was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 27,158 metric tons (mt). Regulations that are the basis for specifying this TAC are found at § 679.20(c)(3)(iii) and (c)(6).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Atka mackerel TAC in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 27,108 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the Atka mackerel TAC in the Central Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–24734 Filed 9–25–03; 1:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–43–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A–and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas transport category airplanes. For certain airplanes, this proposal would require a general visual inspection to detect cracking in the nuts on the lower attach bolt assemblies of the forward attach bracket of the inboard flap outboard hinge, replacement of both upper and lower attach bolt assemblies with new bolts and nuts made from Inconel material, and replacement of certain preload-indicating (PLI) washers with new washers. For certain other airplanes, this proposal would require replacement of the lower attach bolt assemblies of the inboard forward attach bracket of the inboard flap outboard hinge with new bolts and nuts made from Inconel material, and replacement of PLI washers with new washers. These actions are necessary to prevent separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–43–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from the Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report of an incident in June 2002, involving a McDonnell Douglas Model MD–11 airplane on which the left-hand inboard flap outboard hinge pulled away from the wing structure where a bracket attaches it with two upper and two lower bolts. Preliminary investigation indicated that the two lower attach bolt assemblies likely failed first. When the bracket separated, it caused an asymmetrical condition for the inboard flaps, additional structural damage to the wing, and loss of one hydraulic system. The flightcrew applied full right-hand aileron to level the wings, and during emergency landing, the tail of the airplane scraped the runway. The affected airplane had accumulated 37,439 flight-hours and 9,241 landings.

Following the incident reported above, on July 10, 2002, we issued AD 2002–14–03, amendment 39–12803 (67 FR 47254, July 18, 2002), which required, for certain MD–11 and MD–

11F airplanes, a one-time inspection to detect loose PLI washers or cracked or corroded nuts of the lower bolts of the inboard flap outboard hinge, and replacement with new parts if necessary. As a result of the reporting requirements in AD 2002–14–03, it was determined that the failure in the affected bolts was due to stress corrosion. This condition, if not corrected, could result in separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane.

The preamble to AD 2002–14–03, indicated that we consider the requirements ''interim action,'' and that we were considering further rulemaking. We have now determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Similar Models

The subject area on certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A- and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes is almost identical to that on the affected Model MD–11 and MD–11F airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–57A149, including Appendices A and B, dated January 7, 2003, which describes procedures for performing a general visual inspection of lower attach bolt assembly nuts on the forward attach bracket of the inboard flap outboard hinge to detect cracking in the nuts. This service bulletin also describes procedures for replacing the upper and lower attach bolt assemblies with new bolts and nuts made from Inconel material, and for replacing certain PLI washers with new PLI washers.

The FAA has also reviewed and approved Boeing Alert Service Bulletin MD11–57A068, including Appendix A, dated January 7, 2003, which describes procedures for replacing the lower attach bolt assemblies on the forward attach bracket of the inboard flap outboard hinge with new bolts and nuts made from Inconel material and replacing the PLI washers with new PLI washers.

If the steel attach bolts assemblies were replaced previously with new Inconel material bolt assemblies, no further action is specified in the service bulletin. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously. Although the Accomplishment Instructions in Boeing Alert Service Bulletin DC10–57A149, dated January 7, 2003, which is referenced in this proposed AD, specifies to submit information and discrepant parts to the manufacturer, this proposed AD does not include such a requirement.

Changes to 14 CFR part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 394 Model DC–10 and Model MD–10 airplanes, and approximately 192 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 252 DC–10 and Model MD–10 airplanes and 76 Model MD–11 and –11F airplanes of U.S. registry would be affected by this proposed AD, and that the average labor rate is $65 per hour.

The following table shows the estimated cost impact for airplanes affected by this proposed AD:

TABLE—COST IMPACT ESTIMATE

Model	Work hours	Labor cost per airplane	Parts cost per airplane	Fleet cost
DC–10 and MD–10 airplanes	25	$1,625	$4,139	$1,452,528
MD–11 and –11F airplanes	13	845	2,041	219,336

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2003–NM–43–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A- and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes as listed in Boeing Alert Service Bulletin DC10–57A149, dated January 7, 2003; and Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–57A068, dated January 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the inboard flap outboard hinge from the wing structure and consequent reduced controllability of the airplane, accomplish the following:

Replacements Accomplished Per Previous Service Bulletins

(a) Replacements of steel bolts and nuts with Inconel bolts and nuts accomplished before the effective date of this AD per Boeing Service Bulletin DC10–57–116, Revision 01, dated November 25, 1996; Boeing Service Bulletin DC10–57–116, Revision 02, dated December 22, 1998; Boeing Service Bulletin DC10–57–116, Revision 03, dated May 12, 1999; and per Condition 1, Group 1 or 2, Option 1 of Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

General Visual Inspection, Model DC–10 and MD–10 Airplanes

(b) Within six months after the effective date of this AD, for all affected Model DC–10 and MD–10 airplanes, remove the encapsulating sealant from the nut side only of both assemblies and do a general visual inspection of the inboard flap, outboard hinge, forward attach bracket, lower attach bolt assembly nuts to detect cracking in the nuts, in accordance with the Accomplishment Instructions in Boeing Alert Service Bulletin DC10–57A149, dated January 7, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Replacement, Model DC–10 and MD–10 Airplanes

(c) Following the general visual inspection described in paragraph (b) of this AD, for all affected Model DC–10 and MD–10 airplanes, accomplish the applicable action(s) described in Table 1 of this AD at the specified times, per the Accomplishment Instructions in Boeing Alert Service Bulletin DC10–57A149, dated January 7, 2003. Although the Accomplishment Instructions specify to submit certain information and discrepant parts to the manufacturer, this AD does not include such a requirement.

TABLE 1.—INSPECTION AND REPLACEMENT, MODEL DC–10 AND MD–10 AIRPLANES

Condition	Actions to accomplish
(1) Cracks in either nut	(i) Option 1 (Preferred): Prior to further flight, replace both upper and lower attach bolt assemblies with new bolts and nuts made from Inconel material. (ii) Option 2: Prior to further flight, replace both lower attach bolt assemblies with new bolts and nuts made from Inconel material, and replace the preload-indicating (PLI) washers with new washers. Within 24 months after the effective date of this AD, replace both upper attach bolt assemblies with new bolts and nuts made from Inconel material, and replace the preload-indicating (PLI) washers with new washers.
(2) No cracks in nuts	Within 24 months after the effective date of this AD, replace both upper and lower attach bolt assemblies with bolts and nuts made from Inconel material, and replace the PLI washers with new washers, as applicable.

Replacement, Model MD–11 and –11F Airplanes

(d) Replace the inboard flap, outboard hinge, forward attach bracket, lower attach bolt assemblies of the affect Model MD–11 and MD–11F airplanes with new bolts and nuts made from Inconel material and replace the PLI washers with new PLI washers within the compliance time for the applicable condition described in Table 2 of this AD. Accomplish all replacements per the Accomplishment Instructions in Boeing Alert Service Bulletin MD11–57A068, dated January 7, 2003.

TABLE 2.—CONDITION AND COMPLIANCE TIME, MODEL MD–11 AND –11F AIRPLANES

Condition	Compliance time
MD–11 and MD–11F airplanes that have not replaced steel bolts and nuts with new like parts or Inconel bolts per group 1 or 2, option 1 or 2 of Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002.	Within 18 months after the effective date of this AD.
MD–11 and MD–11F airplanes that have replaced steel bolts and nuts with new steel bolts and steel nuts per group 1 or 2, option 2, table 2, note 7 of Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002.	Within 36 months after the effective date of this AD.
MD–11 and MD–11F airplanes that have replaced steel bolts and nuts with new steel bolts and new Inconel nuts per Group 1 or 2, Option 2 of Boeing Alert Service Bulletin MD11–57A067, including Appendices A and B, dated July 10, 2002.	Within 60 months after the date of this effective AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on September 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24680 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 290–0419b; FRL–7565–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). The SJVUAPCD revision concerns the emission of particulate matter (PM–10) from wood burning fireplaces and wood burning heaters. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 30, 2003.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SJVUAPCD Rule 4901. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 18, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–24773 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 273–0408b; FRL–7562–7]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of sulfur oxides from the combustion of liquid and gaseous fuels. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 30, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MBUAPCD Rules 412 and 413. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 15, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–24556 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[TX–155–1–7591b; FRL–7564–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on January 3, 2003, to require that equipment associated with a new or relocated concrete crushing facility be located or operated at least 440 yards from any building used as a single or multi-family residence, school, or place of worship. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act, or CAA).

In the ''Rules and Regulations'' section of the **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency considers this as a noncontroversial revision and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based upon this proposed action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not subject of an adverse comment.

DATES: Written comments must be received on or before October 30, 2003.

ADDRESSES: Comments may be submitted to Mr. Guy Donaldson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions (Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell of the Air Permits Section at (214) 665–7212, or *spruiell.stanley@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**.

Dated: September 15, 2003.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–24554 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[OH 157–1 FRL –7566–5]

Clean Air Act Proposed Approval of Revisions to Operating Permits Program in Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as revisions to Ohio's operating permits program, proposed revisions to Ohio's regulations for insignificant emissions units (IEUs), Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's Title V regulations. In an April 18, 2002, Notice of Deficiency published in the **Federal Register**, EPA notified Ohio of EPA's finding that Ohio's provisions for IEUs and Ohio's monitoring and deviation reporting regulations did not meet minimum Federal requirements. These program revisions would resolve the deficiencies identified in the Notice of Deficiency.

Ohio published proposed revisions on June 18, 2003, for public comment through July 29, 2003. On July 17, 2003, Ohio submitted the proposed revisions to EPA for approval as revisions to Ohio's Title V program. EPA is proposing to approve Ohio's revisions at the same time that Ohio is completing the process of adopting final revisions to its regulations. EPA will only finalize its approval of Ohio's revisions after Ohio adopts final regulations consistent with the changes described in this action.

DATES: Written comments must be received on or before October 30, 2003.

ADDRESSES: Comments may be submitted by mail to Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–4761, *damico.genevieve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Air Docket Number OH157. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. EPA requests that if at all possible, you contact the contact listed in the ''For Further Information Contact'' section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:45 to 4:45 excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Ohio Environmental Protection Agency, Division of Air Pollution Control,

Lazarus Government Center, 122 South Front Street, Columbus, Ohio, 43215.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Air docket Number OH157'' 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 *blakley.pamela@epa.gov*, please include the text ''Public comment on proposed rulemaking Air Docket Number OH157'' in the subject line. 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 regulations.gov at *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 Section 2, directly below. 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.* Send your comments to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please include the text ''Public comment on proposed rulemaking Air Docket Number OH157'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Such deliveries are only accepted during the Regional Office's official hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:45 to 4:45 excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. Approval of Ohio's Title V Program

The Clean Air Act (CAA or Act) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of Title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70 (Part 70). Ohio submitted its operating permits program in response to this directive. EPA granted full approval to Ohio's Title V operating permits program on August 15, 1995 (60 FR 42045).

Ohio's Title V operating permits program is implemented by the Ohio Environmental Protection Agency (OEPA) and local air pollution control agencies.

B. Notice of Deficiency

Under section 502(i) of the Act and 40 CFR 70.10(b)(1), whenever the EPA Administrator makes a determination that a Title V permitting authority is not adequately administering and enforcing a program, or a portion thereof, in accordance with Title V's requirements, the Administrator shall notify the State by publishing a notice in the **Federal Register**. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after issuance of a notice of deficiency, EPA may withdraw approval of the State program or a portion thereof, apply any of the sanctions specified in section 179(b) of the Act (*i.e.*, loss of federal highway funds or application of strict emissions offset requirements for new sources in certain areas), or promulgate, administer, and enforce a Federal Title V program. 40 CFR 70.10(b)(2). If a State has not corrected the deficiency within 18 months of the notice of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. CAA 502(i)(2), 42 U.S.C. 7661a(i)(2); 40 CFR 70.10(b)(3). In addition, if the State has not corrected the deficiency with 18 months, EPA must promulgate, administer, and enforce a whole or partial federal Title V program within 2 years after the date of the finding of deficiency. CAA 502(i)(4), 42 U.S.C. 7661a(i)(4); 40 CFR 70.10(b)(4).

Pursuant to section 502(i) of the Act and 40 CFR 70.10(b)(1), EPA notified Ohio of EPA's finding that Ohio's regulations for IEUs and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations do not meet minimum Federal requirements in a Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175).

C. Exemption of IEUs From Permit Content Requirements

1. Background

Part 70 authorizes EPA to approve as part of a State program a list of IEUs which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in Part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Ohio's regulations contain criteria for identifying IEUs. *See* OAC 3745–77–01(U). Ohio's regulations require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. *See* OAC 3745–77–03(A). The Ohio program, however, specifically exempts from the federally enforceable section of its Title V permits federally enforceable applicable requirements to which IEUs are subject. *See* OAC 3745–77–02(E). Although the Part 70 regulations provide states some opportunity to exempt or limit the amount of information on IEUs required in a Title V application, the July 21, 1992, preamble to EPA's Title V regulations (57 FR 32250, 32273), 40 CFR part 70, makes it clear that this exemption does not apply to the permit content. Therefore, Ohio's regulations at OAC 3745–77–02(E) are inconsistent with part 70. For additional discussion on this issue, please see 67 FR 19175 (April 18, 2002) (Notice of Deficiency).

2. Proposed Changes to IEU Provisions

In response to the Notice of Deficiency, Ohio has proposed to revise its regulations so that applicable requirements for IEUs are included in the federally enforceable section of its Title V permits. Specifically, Ohio has proposed six regulatory changes relating to IEUs. First, proposed revisions to OAC 3745–77–02(E)(1), which provide in part that the ''federally enforceable portion of the [Title V] permit shall include all applicable requirements for all relevant emissions units at the major source,'' would remove language in the current rule which defines ''relevant emissions units'' to exclude IEUs. Thus, under the proposed revisions, applicable requirements for IEUs would need to be included in the federally enforceable portion of Ohio's Title V permits.

Second, a proposed new provision, OAC 3745–77–07(A)(13)(a), would require IEUs that are subject to one or more applicable requirements to be listed in the federally enforceable portion of Title V permits along with the applicable requirements or the identification number of each permit to install that establishes one or more applicable requirements for the IEUs.

Third, another proposed new provision, OAC 3745–77–07(A)(13)(B), would create a presumption that monitoring, recordkeeping, and reporting requirements established for IEUs in a permit to install or under applicable rules are presumed adequate to satisfy the Title V monitoring, recordkeeping and reporting requirements of OAC 3745–77–07(A)(3). Under proposed OAC 3745–77–07(A)(13)(B), however, that presumption could be overcome if OEPA determines that additional monitoring, recordkeeping or reporting requirements are necessary to assure compliance. This proposed provision is consistent with EPA's long-standing position that the permitting authority in general has broad discretion in determining the nature of any required monitoring and that the requirement to include in a permit testing, monitoring, recordkeeping, and reporting sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emission units. For example, it does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. Because IEUs are typically associated with lesser environmental impacts than other emission units and present little or no potential for violations of generally applicable requirements, EPA has stated that the permitting authority can provide in some cases that the status quo (*i.e.*, no monitoring) meets the requirements of Part 70.

Fourth, Ohio has proposed to add language to OAC 3745–77–08(C)(2) to indicate that group processing procedures may be used for changes to requirements for IEUs. Fifth, Ohio has proposed to revise OAC 3745–77–07(I)(2) to clarify that no contemporaneous written notification is required for ''off-permit'' changes involving IEUs that are not subject to one or more applicable requirements. (Contemporaneous written notification

would continue to be required for ''off-permit'' changes involving non-IEUs.)

Finally, Ohio proposed to revise OAC 3745–77–08(C)(3)(a) to clarify that significant permit modification procedures do not apply to IEUs. In particular, proposed OAC 3745–77–08(C)(3)(a) would provide that the minor permit modification procedures of OAC 3745–77–08(C)(1), rather than the significant permit modification procedures of OAC 3745–77–08(C)(3), would apply to the relaxation of reporting or recordkeeping permit terms or conditions relating to best available technology emission limitations, operational restrictions or other standards for IEUs.

Under Ohio's proposed regulations, any change to an IEU may use the minor permit modification procedures of OAC 3745–77–08(C)(1) if it meets the criteria applicable to all permit modifications. OAC 3745–77–08(C)(1)(a); *see* 40 CFR 70.7(e)(2)(i)(A). OEPA expressed concern that allowing changes to IEU's to utilize the minor permit modification procedures only if they meet the minor permit modification criteria set out in subparagraphs (i) through (vi) of OAC 3745–77–08(C) could mean that some changes to IEU's would be required to use the significant permit modification process. Specifically, Ohio is concerned that a change to the monitoring, recordkeeping or reporting for an IEU could be considered ''significant'' and therefore would require use of the significant permit modification process. Ohio is also concerned that a change to a best available technology (BAT) emission limit for an IEU created in a permit to install could require use of the significant permit modification process. Ohio has requested clarification from EPA on both of these outcomes. EPA believes that these two outcomes are not required under the revised Ohio rule that EPA is proposing to approve in this action.

EPA believes that 40 CFR part 70 does not require that all changes to the monitoring, recordkeeping or reporting for an IEU use the significant permit modification process for two reasons. First, while Part 70 does require ''significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit'' to use the significant modification process, it also gives Ohio flexibility to determine its own criteria governing which changes to monitoring are significant. *See* 40 CFR 70.7(e)(2)(i)(A)(2), 70.7(e)(4)(i). Section 70.7(e)(4)(i) provides that a ''State program shall contain criteria for determining whether a change is significant. At a minimum, every significant change in existing monitoring permit terms or conditions * * * shall be considered significant.'' Accordingly, Ohio has determined that the environmental consequences of monitoring changes is an important criterion and that monitoring changes to units smaller than 5 tons per year would not have significant environmental consequences. Therefore, Ohio has submitted proposed changes to its part 70 program providing that all changes to monitoring at IEUs are not significant because IEUs are limited to units less than 5 tons per year. Because of the size limitation, EPA believes that Part 70 allows Ohio to conclude that the environmental consequences of a change to monitoring at an IEU would be quite small, and to determine that such changes are not significant and therefore are eligible for minor modification procedures.

Second, EPA believes that Ohio may interpret its rules such that changes to recordkeeping and reporting for IEUs do not require use of the significant modification process, because under that interpretation, Ohio's permit modification procedures for IEUs would be ''substantially equivalent'' to those in section 70.7(e).[1] Section 70.7(e)(4)(i) provides that ''[a]t a minimum, * * * every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant.'' Unlike § 70.7(e)(4)(i)'s reference to changes in existing monitoring (discussed above), this phrase is not modified by the word ''significant'' and § 70.7(e)(4)(i) contains no express authority for permitting authorities to exempt relaxations of recordkeeping and reporting permit terms or conditions from use of the significant permit modification process based on their significance or any other grounds. Nonetheless, EPA believes that Ohio's rules, as interpreted by the State, are substantially equivalent to the permit revision process set forth in § 70.7(e). First, the relaxations allowed to use minor permit modification procedures are limited to the smallest units, and given their small size, EPA believes that a full, significant permit modification process is not warranted or practical. Ohio's rules define IEUs as units with a potential to emit no larger than 5 tons per year for nonhazardous air pollutants and no larger than 2 tons per year for hazardous air pollutants. Second, Ohio's rules allow minor permit modification procedures only for relaxations of recordkeeping or reporting permit terms for Ohio's BAT emission limits issued under the state minor new source review program. Relaxations of recordkeeping and reporting for other applicable requirements would require use of the significant permit modification process. EPA believes these limitations mean that any relaxations would be environmentally inconsequential. An example of a relaxation of recordkeeping or reporting provided by Ohio would be a change in the frequency of reporting for a BAT limit from semi-annual to annual. EPA is also relying on Ohio, as the creator of the BAT limits, to be in the best position to determine whether relaxations to recordkeeping or reporting for those limits would affect its ability to determine a source's compliance with the BAT limit. Accordingly, EPA finds the procedures under Ohio's rules, as interpreted by the State so as not to require relaxations in existing recordkeeping or reporting for IEUs to use the significant permit modification process, to be substantially equivalent to those required by Part 70. Ohio also sought clarification that changes to BAT emission limits that apply to IEUs will not require use of the significant permit modification process. EPA concurs that under Ohio's revised rules, for IEUs that are subject to BAT emission limits, changes to such limits that are accomplished through revisions to permits to install will not require use of the significant permit modification process.

EPA believes that the proposed revisions to OAC 3745–77–02(E), 3745–77–07(A)(13), 3745–77–07(I)(2), and 3745–77–08(C) meet the requirements of the CAA and Part 70. *See White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program,* pp. 30–31 (March 5, 1996). Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program if Ohio adopts the proposed changes as final regulations consistent with this notice. Final adoption of these changes by Ohio would adequately address the deficiencies identified in the Notice of Deficiency regarding Ohio's regulations for IEUs.

[1] Section 70.7(e)(1) authorizes EPA to approve Part 70 programs that include permit modification procedures that are ''substantially equivalent'' to those in § 70.7(e). Specifically, Section 70.7(e)(1) provides: ''The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. The State may meet this obligation by adopting the procedures set forth below or ones *substantially equivalent*'' (emphasis added).

D. Limitation of Deviation Reports to Deviations Detected by Compliance Methods Required by Permits

1. Background

OAC 3745–77–07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit. This limitation is contrary to the requirements of the Act and 40 CFR part 70. Specifically, section 70.6(a)(3)(iii)(A) requires that permittees submit reports of required monitoring at least every 6 months and that all instances of deviations from permit requirements be identified in these reports. Section 70.6(a)(3)(iii)(B) requires that permittees promptly report deviations from permitting requirements to the permitting authority. Section 70.6 does not provide for any exceptions to these requirements. Section 113(c)(2) of the Act, among other things, prohibits any person from knowingly making a false certification or omitting material information from any reports. Finally, 40 CFR 70.5(d) and 70.6(a)(3) require responsible officials to certify that all reports are true, accurate and complete. *See also* 62 FR 8314 (February 24, 1997) (final rule promulgating credible evidence revisions). Together these statutory and regulatory requirements obligate sources to consider all available material information in evaluating and reporting deviations for purposes of promptly reporting deviations and submitting reports of any required monitoring at least semi-annually. Because Ohio's rule, OAC 3745–77–07(A)(3)(c)(ii)-(iii), only requires permittees to consider compliance method test data when reporting deviations from permit requirements, Ohio's Title V program does not meet the minimum requirements of part 70.

2. Proposed Changes to Deviation Provisions

Ohio has proposed a number of changes to OAC 3745–77–07(A)(3)(c)(ii) and (iii). Under the proposal, the language in OAC 3745–77–07(A)(3)(c)(ii) requiring the permittee to include in its six-month monitoring reports only those deviations ''that have been detected by the compliance method required under the permit'' would be deleted. Clarifying language would be added requiring that the reports ''clearly identify'' deviations from ''the permit requirements that have occurred since the previous report has been submitted.''

Under the proposal, OAC 3745–77–07(A)(3)(c)(iii) would be changed to reflect that prompt reports of deviations required under this provision will include the written and verbal malfunction reports required by OAC 3745–15–06. Prompt reporting would be further defined by the proposed OAC 3745–77–07(A)(3)(c)(iii) to be quarterly for all deviations from emission limitations, operational restrictions, and control device operating parameter limitations (except as prescribed in OAC 3745–15–06) and semi-annually for all deviations from monitoring, recordkeeping, and reporting requirements unless otherwise stated in the permit. The requirement that only deviations detected by the compliance method required under the permit would be removed along with the requirements for verbal reports. The verbal report requirements are also included in OAC 3745–15–06 and would, therefore, be duplicative here.

EPA believes that the proposed revisions to OAC 3745–77–07(A)(3)(c)(ii) and (iii) meet the requirements of the CAA and Part 70 for reports of required monitoring at least every six months and prompt reports of deviations. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program if Ohio adopts in final regulations the proposed changes consistent with this notice. Final adoption of these changes by Ohio would adequately address the deficiencies in OAC 3745–77–07(A)(3)(c)(ii) and (iii) identified in the Notice of Deficiency.

D. Other Proposed Changes to Ohio's Title V Regulations

Ohio has also proposed other minor changes to its Title V operating permits program regulations, which EPA also proposes to approve.

1. Change to the Definition of Major Source

On November 29, 2002, Ohio changed its definition of major source in OAC 3754–77–01(W)(2)(aa) to make it consistent with the changes EPA made to Part 70 on November 27, 2001 (66FR 59161). As revised, the rule requires sources to consider all pollutants when counting fugitive emissions from facilities subject to Section 111 or 112 standards promulgated on or before August 7, 1980. Therefore, EPA proposes to approve these changes as revisions to Ohio's Title V program.

2. Addition of the Definition of Incorporation by Reference

Ohio proposes to add the definition of incorporation by reference in OAC 3745–77–01(NN), clarifying that referenced materials are made a part of the regulations. This definition is not required by part 70 but by Ohio law. EPA proposes to approve this language as part of Ohio's Title V program.

3. Addition of the Definition of Uncontrolled Potential Emissions

On November 30, 2001, Ohio added the definition of ''uncontrolled potential emissions'' to OAC 3745–77–01(MM). Ohio defined uncontrolled potential emissions as the calculated annual emissions rate without any air pollution controls assuming 24 hours per day and 365 days per year of operation. If the emission unit has an inherent physical limitation, then the number of hours per day and days per year can be restricted to the maximum possible under the inherent physical limitation. The term ''uncontrolled potential emissions'' is used in the definition of insignificant activities and emissions levels (OAC 3745–77–01(U)(3)). Ohio has changed OAC 3745–77–01(U)(3) to clarify that insignificant activities and emissions levels, in part, are emission units with uncontrolled potential emissions of five tons or less per year of any regulated air pollutant other than a hazardous air pollutant as opposed to emissions units with the potential to emit five tons or less per year. Potential to emit includes any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Uncontrolled potential emissions only considers inherent physical limitation. EPA proposes to approve this language as part of Ohio's Title V program.

III. Final Action

EPA is proposing to approve as revisions to Ohio's CAA Title V operating permits program proposed revisions to Ohio's regulations for IEUs, specifically, revisions to OAC 3745–77–02(E), 3745–77–07(A)(13), 3745–77–07(A)(3)(c)(ii) and (iii), 3745–77–07(I), and 3745–77–08(C). EPA has determined that the proposed changes meet the requirements of Title V and Part 70 relating to IEUs and reporting and adequately address the deficiencies identified in the Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175). EPA is also proposing to approve Ohio's new provisions at 3745–77–01(U), 3745–77–01(W)(2)(aa), 3745–77–01(MM) and 3745–77–01(NN). Because the proposed revisions apply throughout the State of Ohio, this proposed approval applies to all State and local agencies that implement Ohio's operating permits program.

IV. Statutory and Executive Order Requirements

Executive Order 12866; Regulatory Planning and Review

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

Executive Order 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

Because this action 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132 Federalism

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, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under executive order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

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

Congressional Review Act

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

In reviewing State operating permit programs submitted pursuant to Title V of the Act, EPA will approve State programs provided that they meet the requirements of the Act and EPA's regulations codified at Part 70. 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 State operating permit program for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 17, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–24776 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS–FRL–7561–7]

RIN 2060–AK01

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we are proposing to amend the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. Under the authority of section 231 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing new emission standards for oxides of nitrogen (NO_X) for newly certified commercial aircraft gas turbine engines with rated thrust greater than 26.7 kilonewtons (kN). This action proposes to adopt standards equivalent to the latest (effective in 2004) NO_X standards of the United Nations International Civil Aviation Organization (ICAO), and thereby bring the United States emission standards into alignment with the internationally adopted standards. In addition, today's action also would amend the test procedures for gaseous exhaust emissions to correspond to recent amendments to the ICAO test procedures for these emissions.

After December 31, 2003, the proposed NO_X standards would apply to newly certified gas turbine engines—those engines designed and certified after the effective date of the proposed regulations (for purposes of this action, the date of manufacture of the first individual production model means the date of type certification). Since the proposed NO_X standards would apply to only newly certified gas turbine engines, newly manufactured engines (those engines built after the effective date of the proposed regulations) would not have to meet these standards. Moreover, all engines currently being built would not have to comply with the NO_X emission standards that EPA is adopting today.

Today's proposed amendments to the emission test procedures are those recommended by ICAO and are widely used by the aircraft engine industry. Thus, today's action would establish consistency between U.S. and international standards, requirements, and test procedures. Since aircraft and aircraft engines are international commodities, there is significant commercial benefit to consistency between U.S. and international emission standards and control program requirements. In addition, today's action ensures that domestic commercial aircraft would meet the current international standards, and thus, the public can be assured they are receiving the air quality benefits of the international standards.

DATES: *Comments*: EPA requests comments on the proposed rulemaking by December 15, 2003. More information about commenting on this action may be found under Public Participation in the **SUPPLEMENTARY INFORMATION** section and section I.C.

Hearing: We will hold a public hearing on November 13, 2003. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak. If you want to testify at the hearing, notify the contact person listed below at least ten days before the hearing.

ADDRESSES: *Comments:* Comments may be submitted by mail to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR 2002–0030. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

Hearing: The public hearing will be held at the Environmental Protection Agency, EPA East Building, Room Number 1153, 1201 Constitution Avenue, NW., Washington, DC 20004, Telephone: (202) 564–1682. *See* section VIII for more information about public hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105. Telephone (734) 214–4832; Fax: (734) 214–4816, E-mail: *manning.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline of This Preamble

I. General Information
A. Regulated Entities
B. How Can I Get Copies of This Document and Other Related Information?
1. Docket
2. Electronic Access
C. How and To Whom Do I Submit Comments?
1. Electronically
a. EPA Dockets
b. E-mail
c. Disk or CD ROM
2. By Mail
3. By Hand Delivery or Courier
4. By Facsimile
D. How Should I Submit CBI to the Agency?
E. What Should I Consider as I Prepare My Comments for EPA?
II. Introduction
A. A Brief History of EPA's Regulation of Aircraft Engine Emissions
B. Interaction With the International Community
C. EPA's Responsibilities Under the Clean Air Act
III. Environmental Need for Control
A. Public Health Impacts
1. Ozone
a. What Are the Health Effects of Ozone Pollution?
b. Current and Projected 8-hour Ozone Levels
2. Particulate Matter
a. Health Effects of $PM_{2.5}$
b. Current and Projected Levels
B. Other Environmental Effects
1. Acid Deposition
2. Eutrophication and Nitrification
3. Plant Damage from Ozone
4. Visibility
C. Other Criteria Pollutants Affected by This Proposed Rule
IV. Description of Action
A. What Emission Standards Are Under Consideration?
1. Today's Proposed NO_X Standards
a. For Engines With a Pressure Ratio of 30 or less
i. For engines with a maximum rated output of more than 89.0 kN
ii. For engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN
b. For Engines With A Pressure Ratio of More Than 30 But Less than 62.5
i. For engines with a maximum rated output of more than 89.0 kN
ii. For engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN
c. For Engines With a Pressure Ratio of 62.5 or More
2. Proposed NO_X Standards of Newly Certified Mid- and High-Thrust Engines
3. Proposed NO_X Standards for Newly Certified Low-Thrust Engines
4. Rationale of Proposed NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines
5. Future NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines
B. Already Certified, Newly Manufactured Engines
1. Effect of Market Forces
2. Impact of Existing Fleet Aircraft
3. Request for Comment on Applying the Proposed NO_X Standards to Already Certified Engines
C. Amendments to Criteria on Calibration and Test Gases for Gaseous Emissions Test and Measurement Procedures
D. Correction of Exemptions for Very Low Production Models
V. Coordination with FAA

VI. Possible Future Aviation Emissions Reduction (EPA/FAA Voluntary Aviation Emissions Reduction Initiative)
VII. Regulatory Impacts
VIII. Public Participation
A. How Do I Submit Comments?
B. Will There Be a Public Hearing?
IX. Statutory Authority
X. Statutory and Executive Orders Review
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those that manufacture and sell commercial aircraft engines and aircraft in the United States, and the owners/operators of such aircraft (and accompanying engines) in the United States. Regulated categories include:

Category	NAICS [a] codes	SIC codes [b]	Examples of potentially affected entities
Industry	336412	3724	Manufacturers of new aircraft engines.
Industry	336411	3721	Manufacturers of new aircraft.
Industry	481	4512	Scheduled air carriers, passenger and freight.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in 40 CFR 87.20. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR 2002–0030. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room and the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

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

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact

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

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR 2002–0030. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to *aircraft@epa.gov,* Attention Docket ID No. OAR 2002–0030. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR 2002–0030.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. OAR 2002–0030. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR 2002–0030.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Introduction

A. Brief History of EPA's Regulation of Aircraft Engine Emissions

Section 231(a)(2)(A) of the Clean Air Act (CAA) directs the EPA Administrator to ''issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare'' (42 U.S.C. 7571(a)(2)(A)). Under this authority EPA has conducted several rulemakings since 1973 establishing emission standards and related requirements for several classes (commercial and general aviation engines) of aircraft and aircraft engines. Most recently, in 1997 EPA promulgated NO_X emission standards for newly manufactured gas turbine engines (those engines built after the effective date of the regulations or already certified engines) and for newly certified gas turbine engines (those engines designed and certified after the effective date of the regulations[1]).[2] In addition, EPA promulgated a carbon monoxide (CO) emission standard for newly manufactured gas turbine engines in this same 1997 rulemaking. At the time, the 1997 rulemaking established consistency between the U.S. and international standards. (*See* 40 CFR part 87 for a description of EPA's aircraft engine emission control requirements and 14 CFR part 34 for the Secretary of Transportation's regulations for ensuring compliance with these standards in accordance with section 232 of the Clean Air Act.)

[1] Throughout this notice, the date of manufacture of the first individual production model means the date of type certification.

[2] U.S. EPA, ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures;'' Final Rule, 62 FR 25356, May 8, 1997.

B. Interaction With the International Community

Since publication of the initial standards in 1973, EPA, together with the Federal Aviation Administration (FAA), has worked with the International Civil Aviation Organization (ICAO) on the development of international aircraft engine emission standards. ICAO was established in 1944 by the United Nations (by the Convention on International Civil Aviation, the ''Chicago Convention'') ''* * * in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [3] ICAO's responsibilities include developing aircraft technical and operating standards, recommending practices, and generally fostering the growth of international civil aviation.

In 1972 at the United Nations Conference on the Human Environment, ICAO's position on the human environment was developed to be the following: ''[i]n fulfilling this role ICAO is conscious of the adverse environmental impact that may be related to aircraft activity and its responsibility and that of its member States to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of the human environment.'' Also, in 1972 ICAO established the position to continue ''* * * with the assistance and cooperation of other bodies of the Organization and other international organizations * * * the work related to the development of Standards, Recommended Practices and Procedures and/or guidance material dealing with the quality of the human environment * * *.'' [4]

The United States is one of 188 participating member States of ICAO.[5] Under the basic ICAO treaty established in 1944 (the Chicago Convention), a participating nation which elects not to adopt the ICAO standards must provide a written explanation to ICAO describing why a given standard is impractical to comply with or not in their national interest.[6] ICAO has no punitive powers for states that elect not to adopt ICAO standards. ICAO standards require States to provide written notification and failure to provide such notification could have negative consequences as detailed below.

If a Contracting State files a written notification indicating that it does not meet ICAO standards, other Contracting States are absolved of their obligations to ''recognize as valid'' the certificate of airworthiness issued by that Contracting States, since that certificate will not have been issued under standards ''equal to or above'' ICAO standards. In other words, other Contracting States do not have to allow aircraft belonging to that Contracting State to travel through their airspace.[7] Further, if it fails to file a written notification, it will be in default of its obligations, and risks mandatory exclusion of its aircraft from the airspace of other Contracting States and the loss of its voting power in the Assembly and Council.[8]

The ICAO Council's Committee on Aviation Environmental Protection (CAEP) undertakes ICAO's technical work in the environmental field. The CAEP is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impact of international civil aviation. CAEP is composed of various Study Groups, Work Groups, Committees and other contributing memberships that include atmospheric, economic, aviation, environmental, and other professionals committed to ICAO's previously stated position regarding aviation and the environment. At CAEP meetings, the United States is represented by the FAA, which plays an active role at these meetings (see section V for further discussion of FAA's role). EPA is a principal participant in the development of U.S. policy in ICAO/CAEP and other international venues. (EPA assists and technically advises FAA on aviation emissions matters.) If the ICAO Council adopts a CAEP proposal to adopt a new environmental standard, it then becomes part of the ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[9]

On June 30, 1981, the ICAO Council adopted its first international standards and recommended practices covering aircraft engine emissions.[10] These standards limit aircraft engine emissions of NO_X, CO, and hydrocarbons (HC), in relation to other engine performance parameters, and are commonly known as stringency standards. On March 24, 1993, the ICAO Council approved a proposal adopted at the second meeting of the CAEP (CAEP/2) to tighten the original NO_X standard by 20 percent and amend the test procedures. At the next CAEP meeting (CAEP/3) in December 1995, the CAEP recommended a further tightening of 16 percent and additional test procedure amendments, but on March 20, 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At its next meeting (CAEP/4) in April 1998, the CAEP adopted a similar 16 percent NO_X reduction proposal, which the ICAO Council approved on February 26, 1999.[11] The CAEP/4 16 percent NO_X reduction standard applies to new engine designs certified after December 31, 2003 (applies only to newly certified engines).[12]

As discussed earlier, in 1997 EPA amended its regulations to adopt the

[3] ICAO, ''Convention on International Civil Aviation,'' Sixth Edition, Document 7300/6, 1980. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[4] International Civil Aviation Organization (ICAO), Foreword of ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[5] As of June 20, 2002 there were 188 Contracting States according to the ICAO Web site located at *http://www.icao.int.*

[6] *Text of Article 38 of Chicago Convention:* Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. * * * In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

[7] *Text of Article 33 of Chicago Convention:* Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

[8] *Articles 87 and 88 of Chicago Convention.*

[9] ICAO, ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[10] ICAO, Foreword of ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[11] International Civil Aviation Organization (ICAO), Aircraft Engine Emissions, Annex 16, Volume II, Second Edition, July 1993, Amendment 4 effective on July 19, 1999. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[12] These NO_X standards will be interchangeably be referred to as the 1998 CAEP/4 standards and the 1999 ICAO standards throughout this notice.

1981 ICAO NO_X and CO emission standards, as well as the NO_X emission standards and test procedures revised by ICAO in 1993. As discussed above, the U.S. has an obligation under the Convention on International Civil Aviation to notify ICAO regarding differences between U.S. standards and ICAO standards, and to provide notification on the date by which the program requirements will be consistent. In response to the recent actions by ICAO and for the reasons discussed below, EPA proposes to adopt standards equivalent to ICAO's 1999 amendment to the NO_X emission standard, the test procedure changes approved by ICAO in 1997, and other technical amendments to further align EPA and ICAO requirements.

C. EPA's Responsibilities Under the Clean Air Act

As discussed earlier, section 231 of the CAA directs EPA, from time to time, to propose aircraft engine emission standards for any air pollutant that could reasonably endanger public health and welfare. In addition, EPA is required to ensure such standards' effective dates permit the development of necessary technology, giving appropriate consideration to compliance cost. Also, EPA must consult with the FAA concerning aircraft safety before proposing or promulgating emission standards. (*See* section V of today's proposal for further discussion of EPA's coordination with FAA and FAA's responsibilities under the CAA.)

In addition, section 233 of the CAA vests authority to implement emission standards for aircraft engines only in EPA.[13] States are preempted from taking independent action. Thus, while many states are implementing control programs to reduce mobile source emissions, EPA has the authority to establish an emission control program for aircraft engines.

III. Environmental Need for Control

As mentioned above, section 231(a)(2)(A) of the CAA authorizes the EPA Administrator to, from time to time, revisit emission standards for aircraft engine emissions "* * * which in his judgment causes, or contributes to air pollution which may * * * endanger public health or welfare." In judging the need for the NO_X standard promulgated in today's action, the Administrator has determined (1) That the public health and welfare is endangered in several air quality regions by violation of the National Ambient Air Quality Standards (NAAQS) for ozone (NO_X contributes to the formation of ozone); and (2) that airports and aircraft are now or are projected to be, increasing sources of emissions of NO_X in some of the air quality control regions in which the NAAQS are being violated.

Nationwide, aircraft account for about 1 percent of the NO_X emissions from mobile sources.[14] Commercial aircraft emissions contribute from 74 to 99 percent of the NO_X aircraft emissions in the U.S. (Aircraft emissions sources include aircraft types used for public, private, and military purposes as follows: commercial aircraft, air taxis, general aviation, and military aircraft.[15] The current nationwide aircraft emission estimates have limitations for military aircraft emissions. Therefore, the estimated range of commercial aircraft's emissions contribution to nationwide aircraft NO_X described above is reflective of earlier and current estimates for military aircraft emissions).

Commercial aircraft emissions are projected to be a growing segment of the transportation sector's emission inventory. This growth in commercial aircraft emissions is expected to occur at a time when other significant mobile and stationary sources are drastically reducing emissions, thereby accentuating the growth in aircraft emissions. For instance, from a local/regional perspective the 1999 EPA study, *Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft*, reported that from 1990 to 2010 increases in commercial aircraft NO_X emissions for the ten cities studied (19 airport facilities with significant commercial jet aircraft activity were identified within these selected cities) are expected to range from 50 to 110 percent.[16] As an average for the ten cities, commercial aircraft's contribution to regional mobile source NO_X was anticipated to increase from about 2 percent in 1990 to about 5 percent in 2010. In addition, the study showed that in 2010 commercial aircraft are projected to contribute as much as 10 percent of total regional mobile source NO_X emissions in at least two of the cities studied.[17]

(The above projections were made prior to the tragic events of September 11, 2001, and the subsequent economic downturn. A January 2003 report by the Department of Transportation indicated that the combination of the September 11, 2001 terrorist attacks and a cut-back in business travel had a significant and perhaps long-lasting effect on air traffic demand.[18] However, the FAA expects the demand for air travel to recover, and then continue a long-term trend of annual growth in the United States.[19] Recently, FAA reported that flights of commercial air carriers will increase by 18 percent from 2002 to 2010 and 45 percent from 2002 to 2020.[20] For a

[13] CAA section 233 entitled "State Standards and Controls" states that "No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part."

[14] U.S. EPA, "Average Annual Emissions, All Criteria Pollutants Years Including 1980, 1985, 1989–2001," February 2003. This document is available at *http://www.epa.gov/ttnchie1/trends/*. A copy of this document can also be found in Docket No. OAR–2002–30. Documentation for these estimates can be accessed at *http://www.epa.gov/ttn/chief/net/index.html#1999:* U.S. EPA, "Documentation for Aircraft, Commercial Marine Vessel, Locomotive, and Other Nonroad Components of the National Emissions Inventory, Volume I—Methodology," November 11, 2002. A copy of this document can also be found in Docket No. OAR–2002–30.

[15] Commercial aircraft include those aircraft used for scheduled service transporting passengers, freight, or both. Air taxis also fly scheduled service carrying passengers, freight or both, but usually are smaller aircraft and operate on a more limited basis than commercial carriers. General aviation includes most other aircraft used for recreational flying and personal transportation. Aircraft that support business travel, usually on an unscheduled basis, are included in the category of general aviation. Military aircraft cover a wide range of sizes, uses, and operating missions. While they are often similar to civil aircraft, they are handled separately because they typically operate exclusively out of military bases and frequently have distinctive flight profiles.

[16] This study (EPA 420–R–99–013, April 1999) is available at *http://www.epa.gov/otaq/aviation.htm*. It can also be found in Docket No. OAR–2002–0030.

[17] Based on the one-hour ozone standard, nine of the ten metropolitan areas are currently not in attainment of NAAQS for ozone; the tenth city has attained the ozone standard and is considered an ozone "maintenance" area. See section III.A.1. of this proposal for further discussion on the ozone NAAQs. Also, for more detailed information on the 8-hour ozone standard, see the following EPA Web sites: *http://www.epa.gov/airlinks/ozpminfo.html, http://www.epa.gov/airlinks/airlinks4.html* or *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr*. EPA has not yet designated areas for the 8-hour standard.

[18] U.S. Department of Transportation, Office of Inspector General, "Airline Industry Metrics," CC–2203–007, January 7, 2003. A copy of this document can be found in Docket No. OAR–2002–0030.

[19] U.S. General Accounting Office, "Aviation and the Environment: Strategic Framework Needed to Address Challenges Posed by Aircraft Emissions," GAO–03–252, February 2003. This document is available at *www.gao.gov/cgi-bin/getrpt?GAO–03–252*, and it can also be found in the Docket No. OAR–2002–0030.

[20] The flight forecast data is based on FAA's Terminal Area Forecast System (TAFS). TAFs is the official forecast of aviation activity at FAA facilities. This includes FAA-towered airports, federally-contracted towered airports, nonfederal towered airports, and many non-towered airports. For detailed information on TAFS and the air carrier activity forecasts see the following FAA Web site: *http://www.apo.data.faa.gov/faatafall.HTM*. As of May 1, 2003, the aviation forecasts contained in TAFS for Fiscal Years 2002–2020 included the impact of the terrorists' attacks of September 11, 2001 and the recent economic downturn. However,

comparison of an earlier (pre-9/11) FAA activity forecast to a recent (post-9/11) forecast, see the below table. We request comment on the effect that September 11, 2001, and the subsequent economic downturn have had on the projected growth of commercial aircraft emissions. Your comments will be most useful if you include appropriate and detailed supporting data and analysis.)

TABLE III–1.—FAA TERMINAL AREA FORECAST SUMMARY REPORT OF NATIONWIDE AIR CARRIER OPERATIONS [21]

Year	Air carrier operations 12/14/00 forecast (pre-9/11)	Percent change 12/14/00 forecast between years listed	Air carrier operations 5/1/03 forecast (post-9/11)	Percent change 5/1/03 forecast between years listed
1999	15,127,419	.....	14,776,055	.....
2000	15,476,135	2.3	15,265,682	3.3
2001	15,819,505	2.2	14,807,303	−3.0
2002 [a]	16,210,777	2.5	13,255,837	−10
2005	17,455,705	7.6	13,918,058	5.0
2010	19,664,128	14	15,608,349	13
2015	22,004,067	12	17,372,200	11
2020	N/A [b]	—	19,249,778	11

[a] The change in operations from 2000 to 2002 was +4.7% for the 12/14/00 forecast, and it was –13% for the 5/1/03 forecast.
[b] N/A = Not available.

Air pollutants resulting from airport operations are emitted from several types of sources: aircraft main engines and auxiliary power units (APUs); ground support equipment (GSE), which include vehicles such as aircraft tugs, baggage tugs, fuel trucks, maintenance vehicles, and other miscellaneous vehicles used to support aircraft operations; ground access vehicles (GAV), which include vehicles from off-site used by passengers, employees, freight operators, and other persons utilizing an airport. EPA's previous estimates show aircraft engines comprise approximately 45 percent of total air pollutant emissions from airport operations; GAV account for another 45 percent, and APUs and GSE combined make up the remaining 10 percent.[22] Since EPA has established stringent emission standards for GAVs and other motor vehicles that will be manufactured and introduced into commerce in future years, overall emissions from these vehicles will continue to decline for many years.

The emissions from aircraft engines that are being directly controlled by the standards proposed in this rulemaking are NO_X. As discussed later in this section, NO_X emissions at low altitude also react in the atmosphere to form secondary particulate matter ($PM_{2.5}$),[23] which is namely ammonium nitrate, and thus, secondary PM would be effected as a consequence of the proposed standards. Adopting standards equivalent to the latest ICAO NO_X emission standards and the related ICAO test procedures would help in achieving and/or maintaining compliance with the NAAQS for ozone (O_3)and PM.

There are about 111 million people living in counties with monitored concentrations exceeding the 8-hour ozone NAAQS , and over 65 million people living in counties with monitored $PM_{2.5}$ levels exceeding the $PM_{2.5}$ NAAQS. Figure III.–1 illustrates the widespread nature of these problems. Shown in this figure are counties exceeding either or both of the two NAAQS plus mandatory Federal Class I areas, which have particular needs for reductions in atmospheric haze. A discussion of the adverse effects on public health and welfare associated with these pollutants is provided below.

these projections did not fully reflect the ongoing structural changes occurring within the aviation industry. A copy of the May 1, 2003 forecast summary report for air carrier activity can be found in Docket No. OAR–2002–0030.

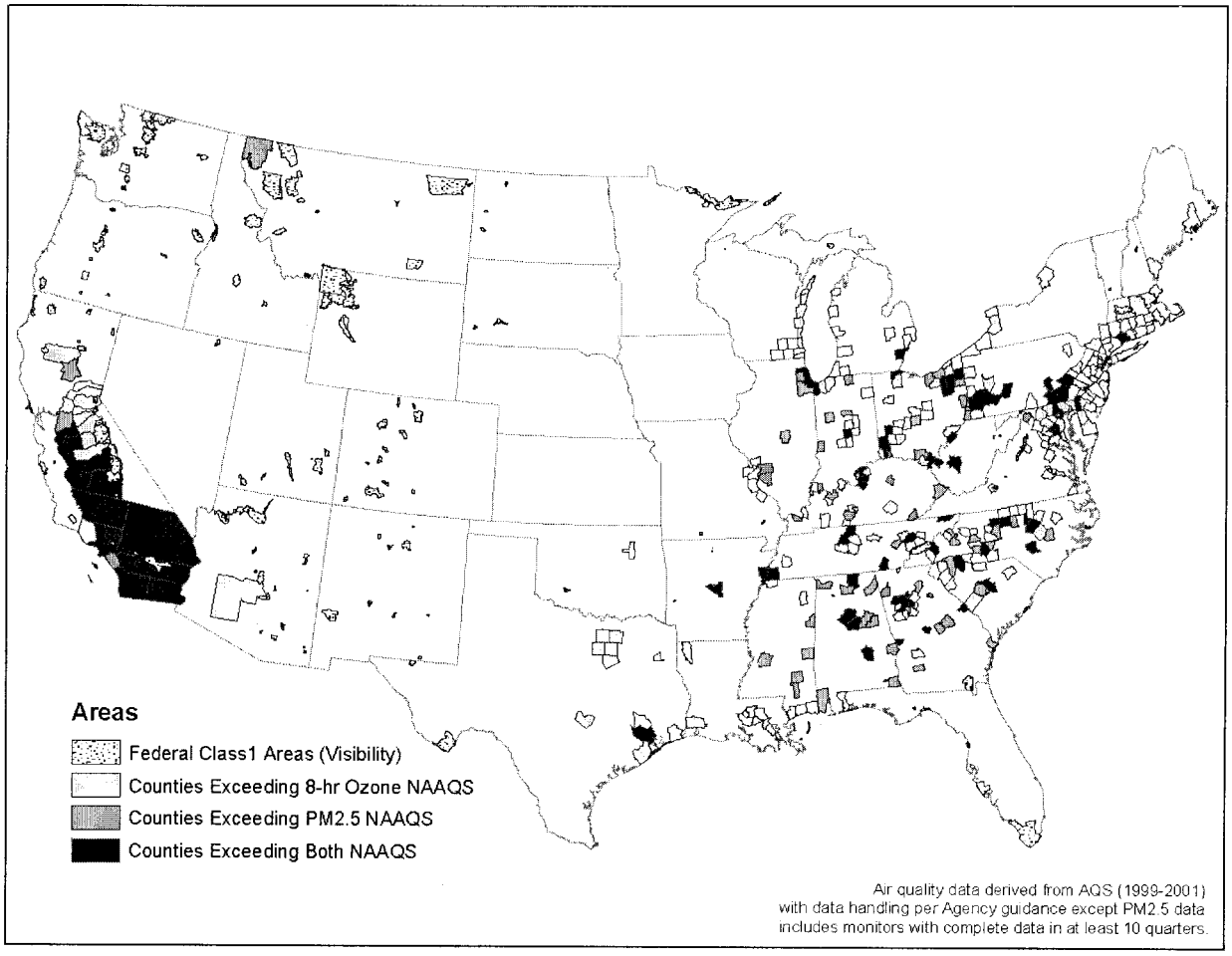
[21] A copy of FAA's 12/14/00 forecast summary report (from TAFS) for air carrier activity can be found in Docket No. OAR–2002–0030.

[22] The California FIP, signed by the Administrator 2/14/95, is located in EPA Air Docket A–94–09, item number V–A–1. The FIP was vacated by an act of Congress before it became effective.

In addition, the 1997 EPA Draft Final Report entitled, ''Analysis of Techniques to Reduce Air Emission at Airports'' (prepared by Energy and Environmental Analysis, Inc), it was estimated that for the four airports studied (which are large air traffic hubs) on average aircraft compromise approximately 35 percent of NO_X emissions from airport operations; GAV account for another 35 percent, and APUs and GSE contribute about 15 percent each for the remaining 30 percent. This document can be found in Docket No. OAR–2002–0030.

[23] As described later in section III.A.2., fine particles refer to those particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (also known as $PM_{2.5}$).

FIGURE III-1 -- AIR QUALITY PROBLEMS ARE WIDESPREAD



A. Public Health Impacts

1. Ozone

a. *What are the health effects of ozone pollution?* Ground-level ozone pollution (sometimes called ''smog'') is formed by the reaction of nitrogen oxides (NO_X) and volatile organic compounds (VOC) in the atmosphere in the presence of heat and sunlight.[24] Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest.[25,26] Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are of particular concern with respect to ozone exposures include children and adults who are active outdoors. Those people particularly susceptible to ozone effects are people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone, and children. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.[27,28]

The 8-hour ozone standard, established by EPA in 1997, is based on well-documented science demonstrating that more people are experiencing adverse health effects at lower levels of exertion, over longer periods, and at lower ozone concentrations than addressed by the one-hour ozone standard. (*See, e.g.,* 62 FR 38861–38862, July 18, 1997). The 8-hour standard addresses ozone exposures of concern for the general population and populations most at risk, including

[24] U.S. EPA, ''Nitrogen Oxides: Impacts on Public Health and the Environment,'' EPA 452/R–97–002, August 1997. A copy of this document is available in Docket No. OAR 2002–0030.

[25] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. Docket No. A–99–06. Document Nos. II-A–15 to 17.

[26] U.S. EPA. (1996). Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007. Docket No. A–99–06. Document No. II–A–22.

[27] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. Docket No. A–99–06. Document Nos. II–A–15 to 17.

[28] U.S. EPA. (1996). Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007. Docket No. A–99–06. Document No. II–A–22.

children active outdoors, outdoor workers, and individuals with pre-existing respiratory disease, such as asthma.

There has been new research that suggests additional serious health effects beyond those that had been known when the 8-hour ozone health standard was set. Since 1997, over 1,700 new health and welfare studies relating to ozone have been published in peer-reviewed journals.[29] Many of these studies have investigated the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital and emergency room visits for asthma and other respiratory causes, and premature mortality. EPA is currently in the process of evaluating these and other studies as part of the ongoing review of the air quality criteria and NAAQS for ozone. A revised Air Quality Criteria Document for Ozone and Other Photochemical Oxidants will be prepared in consultation with EPA's Clean Air Science Advisory Committee (CASAC). Key new health information falls into four general areas: development of new-onset asthma, hospital admissions for young children, school absence rate, and premature mortality.

Aggravation of existing asthma resulting from short-term ambient ozone exposure was reported prior to the 1997 decision and has been observed in studies published subsequently.[30,31] In particular, a relationship between long-term ambient ozone concentrations and the incidence of new-onset asthma in adult males (but not in females) was reported by McDonnell *et al.* (1999).[32] Subsequently, an additional study suggests that incidence of new diagnoses of asthma in children is associated with heavy exercise in communities with high concentrations (*i.e.*, mean 8-hour concentration of 59.6 ppb) of ozone.[33] This relationship was documented in children who played 3 or more sports and thus had higher exposures and was not documented in those children who played one or two sports. The larger effect of high activity sports than low activity sports and an independent effect of time spent outdoors also in the higher ozone communities strengthened the inference that exposure to ozone may modify the effect of sports on the development of asthma in some children.

Previous studies have shown relationships between ozone and hospital admissions in the general population. A study in Toronto reported a significant relationship between 1-hour maximum ozone concentrations and respiratory hospital admissions in children under the age of two.[34] Given the relative vulnerability of children in this age category, we are particularly concerned about the findings.

Increased respiratory diseases that are serious enough to cause school absences have been associated with 1-hour daily maximum and 8-hour average ozone concentrations in studies conducted in Nevada [35] in kindergarten to 6th grade and in Southern California in grades 4 through 6.[36] These studies suggest that higher ambient ozone levels may result in increased school absenteeism.

The air pollutant most clearly associated with premature mortality is PM, with dozens of studies reporting such an association. However, repeated ozone exposure is a possible contributing factor for premature mortality, causing an inflammatory response in the lungs which may predispose elderly and other sensitive individuals to become more susceptible to other stressors, such as PM.[37,38,39] Although the findings have been mixed, the findings of three recent analyses suggest that ozone exposure is associated with increased mortality. Although the National Morbidity, Mortality, and Air Pollution Study (NMMAPS) did not report an effect of ozone on total mortality across the full year, the investigators who conducted the NMMAPS study did observe an effect after limiting the analysis to summer when ozone levels are highest.[40,41] Similarly, other studies have shown associations between ozone and mortality.[42,43] Specifically, Toulomi *et al.* (1997) found that 1-hour maximum ozone levels were associated with daily numbers of deaths in 4 cities (London, Athens, Barcelona, and Paris), and a quantitatively similar effect was found in a group of four additional cities (Amsterdam, Basel, Geneva, and Zurich).

In all, the new studies that have become available since the 8-hour ozone standard was adopted in 1997 continue to demonstrate the harmful effects of ozone on public health, and the need to attain and maintain the NAAQS.

b. *Current and projected 8-hour ozone levels.* The current primary and secondary ozone NAAQS is 0.12 ppm daily maximum 1-hour concentration, not to be exceeded more than once per year on average. EPA is replacing the previous 1-hour ozone standard with a new 8-hour standard. The new standard

[29] New Ozone Health and Environmental Effects References, Published Since Completion of the Previous Ozone AQCD, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (7/2002). A copy of this document is available in Docket No. OAR 2002–0030.

[30] Thurston, G.D., M.L. Lippman, M.B. Scott, and J.M. Fine. 1997. Summertime Haze Air Pollution and Children with Asthma. *American Journal of Respiratory Critical Care Medicine,* 155: 654–660.

[31] Ostro, B., M. Lipsett, J. Mann, H. Braxton-Owens, and M. White (2001) Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology* 12(2): 200–208.

[32] McDonnell, W.F., D.E. Abbey, N. Nishino and M.D. Lebowitz. 1999. ''Long-term ambient ozone concentration and the incidence of asthma in nonsmoking adults: the ahsmog study.'' *Environmental Research.* 80(2 Pt 1): 110–121.

[33] McConnell, R.; Berhane, K.; Gilliland, F.; London, S. J.; Islam, T.; Gauderman, W. J.; Avol, E.; Margolis, H. G.; Peters, J. M. (2002) Asthma in exercising children exposed to ozone: a cohort study. Lancet 359: 386–391.

[34] Burnett, R. T.; Smith_Doiron, M.; Stieb, D.; Raizenne, M. E.; Brook, J. R.; Dales, R. E.; Leech, J. A.; Cakmak, S.; Krewski, D. (2001) Association between ozone and hospitalization for acute respiratory diseases in children less than 2 years of age. Am. J. Epidemiol. 153: 444–452.

[35] Chen, L.; Jennison, B. L.; Yang, W.; Omaye, S. T. (2000) Elementary school absenteeism and air pollution. Inhalation Toxicol. 12:997–1016.

[36] Gilliland, FD, K Berhane, EB Rappaport, DC Thomas, E Avol, WJ Gauderman, SJ London, HG Margolis, R McConnell, KT Islam, JM Peters (2001) The effects of ambient air pollution on school absenteeism due to respiratory illnesses *Epidemiology* 12:43–54.

[37] Samet JM, Zeger SL, Dominici F, Curriero F, Coursac I, Dockery DW, Schwartz J, Zanobetti A. 2000. The National Morbidity, Mortality and Air Pollution Study: Part II: Morbidity, Mortality and Air Pollution in the United States. Research Report No. 94, Part II. Health Effects Institute, Cambridge, MA, June 2000. (Docket Number A–2000–01, Document Nos. IV–A–208 and 209).

[38] Devlin, R. B.; Folinsbee, L. J.; Biscardi, F.; Hatch, G.; Becker, S.; Madden, M. C.; Robbins, M.; Koren, H. S. (1997) Inflammation and cell damage induced by repeated exposure of humans to ozone. Inhalation Toxicol. 9: 211–235.

[39] Koren HS, Devlin RB, Graham DE, Mann R, McGee MP, Horstman DH, Kozumbo WJ, Becker S, House DE, McDonnell SF, Bromberg, PA. 1989. Ozone-induced inflammation in the lower airways of human subjects. Am. Rev. Respir. Dies. 139:407–415.

[40] Samet JM, Zeger SL, Dominici F, Curriero F, Coursac I, Dockery DW, Schwartz J, Zanobetti A. 2000. The National Morbidity, Mortality and Air Pollution Study: Part II: Morbidity, Mortality and Air Pollution in the United States. Research Report No. 94, Part II. Health Effects Institute, Cambridge MA, June 2000. (Docket Number A–2000–01, Documents No. IV–A–208 and 209)

[41] Samet JM, Zeger SL, Dominici F, Curriero F, Coursac I, Zeger, S. Fine Particulate Air Pollution and Mortality in 20 U.S. Cities, 1987–1994. The New England Journal of Medicine. Vol. 343, No. 24, December 14, 2000. P. 1742–1749.

[42] Thurston, G. D.; Ito, K. (2001) Epidemiological studies of acute ozone exposures and mortality. J. Exposure Anal. Environ. Epidemiol. 11: 286–294.

[43] Touloumi, G.; Katsouyanni, K.; Zmirou, D.; Schwartz, J.; Spix, C.; Ponce de Leon, A.; Tobias, A.; Quennel, P.; Rabczenko, D.; Bacharova, L.; Bisanti, L.; Vonk, J. M.; Ponka, A. (1997) Short-term effects of ambient oxidant exposure on mortality: a combined analysis within the APHEA project. Am. J. Epidemiol. 146: 177–185.

is set at a concentration of 0.08 parts per million (ppm), and the measurement period is 8 hours. Areas are allowed to disregard their three worst measurements every year and average performance over three years to determine if they meet the standard. That is, the standard is set by the 4th highest maximum 8-hour concentration.

As shown earlier (Figure III–1) unhealthy ozone concentrations exceeding the level of the 8-hour standard (*i.e.*, not requisite to protect the public health with an adequate margin of safety) occur over wide geographic areas, including most of the nation's major population centers. These monitored areas include much of the eastern half of the U.S. and large areas of California.

Based upon data from 1999–2001, there are 291 counties where 111 million people live that are measuring values that violate the 8-hour ozone NAAQS.[44] An additional 37 million people live in 155 counties that have air quality measurements within 10 percent of the level of the standard.[45] These areas, though currently not violating the standard, would also benefit from the additional emission reductions from this proposed rule.

From air quality modeling performed for the recent Nonroad Diesel Engines and Fuel Control proposed rule,[46] we anticipate that without emission reductions beyond those already required under promulgated regulation and approved State Implementation Plans (SIPs), ozone nonattainment will likely persist into the future. With reductions from programs already in place, the number of counties violating the ozone 8-hour standard is expected to decrease in 2020 to 30 counties where 43 million people are projected to live. Thereafter, exposure to unhealthy levels of ozone is expected to begin to increase again. In 2030 the number of counties violating the ozone 8-hour NAAQS is projected to increase to 32 counties where 47 million people are projected to live. In addition, in 2030, 82 counties where 44 million people are projected to live will be within 10 percent of violating the ozone 8-hour NAAQS.

EPA is still developing the implementation process for bringing the nation's air into attainment with the ozone 8-hour NAAQS. On June 2, 2003 (68 FR 32802), EPA issued a proposal for the implementation process to bring the nation's air into attainment with the 8-hour ozone NAAQS.[47] The proposal seeks comment on options for planning and control requirements, along with options for making the transition from the 1-hour ozone standard to the 8-hour ozone standard. The proposal does not designate nonattainment area for the 8-hour ozone NAAQS; EPA's current plans calls for designating 8-hour ozone nonattainment areas in April 2004, under a separate process. EPA has proposed that States submit SIPs that address how areas will attain the 8-hour ozone standard within 3 years after nonattainment designation for moderate and above areas classified under subpart 2 and for some areas classified under subpart 1. EPA is also proposing that marginal areas and some areas designated under subpart 1 (*i.e.,* those with early attainment dates) will not be required to submit attainment demonstrations for the 8-hour ozone standard. We therefore anticipate that States will submit their attainment demonstration SIPs by April 2007.

The Act contains two sets of requirements—subpart 1 and subpart 2—that establish requirements for State plans implementing the national ozone air quality standards in nonattainment areas. (Both are found in title I, part D.) Subpart 1 contains general requirements for SIPs for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs. Under subpart 1 of part D, title I of the Act demonstrate that the nonattainment areas will attain the ozone 8-hour standard as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Based on these provisions, we expect that most or all areas covered under subpart 1 will attain the ozone standard in the 2007 to 2014 time frame. For areas covered under subpart 2, the maximum attainment dates provided under the Act range from 3 to 20 years after designation, depending on an area's classification. Thus, we anticipate that areas covered by subpart 2 will attain in the 2007 to 2024 time period.

Since the emission reductions expected from this proposed rule would occur during the time period when areas will need to attain the standard under either option, projected reductions in aircraft engine emissions would assist States in their effort to meet the new NAAQS. Such reductions would help them attain and maintain the 8-hour NAAQS.

2. Particulate Matter

NO_X emitted at low altitude is also a precursor in the formation of some nitrate particulate matter (PM) in the atmosphere (mostly ammonium nitrate).[48,49] Essentially all nitrate PM is of such a diameter that it is respirable in humans. As discussed earlier, aircraft account for over 1 percent of the total U.S. mobile source NO_X emissions, and aircraft's contribution to nationwide secondary PM from U.S. mobile source NO_X is expected to relatively similar.[50]

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. PM_{10} refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. Fine particles refer to those particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but less than or equal to a nominal 10 micrometers. Ultrafine PM refers to particles with diameters of less than 100 nanometers (0.1 micrometers). The health and environmental effects of PM are associated with fine PM fraction and, in some cases, to the size of the particles.

[44] Additional counties may have levels above the NAAQS but do not currently have monitors.

[45] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, ''Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter,'' December 3, 2002. A copy of this document is available in Docket No. OAR 2002–0030.

[46] See the Regulatory Impact Analysis: ''Draft Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines,'' EPA420–R–03–008, April 2003. This document is available at *http://www.epa.gov/nonroad/*. A copy of this document can also be found in Docket No. A–2001–28.

[47] A copy of this proposed rule entitled, ''Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.'' is available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.*

[48] Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate.

[49] U.S. EPA, ''Nitrogen Oxides: Impacts on Public Health and the Environment,'' EPA 452/R–97–002, August 1997. A copy of this document is available in Docket No. OAR 2002–0030.

[50] ''Benefits of Mobile Source NO_X Related Particulate Matter Reductions,'' Systems Applications International, EPA Contract No. 68–C5–0010, WAN 1–8, October 1996. A copy of this document is available in Docket No. OAR–2002–0030. This report concluded that, as a national average, each 100 tons of NO_X emissions will result in about 4 tons of secondary PM (conversion rate was about 0.04). This conversion rate varies from region to region, and is greatest in the West.

Specifically, larger particles (>10 μm) tend to be removed by the respiratory clearance mechanisms whereas smaller particles are deposited deeper in the lungs. Also, particles scatter light obstructing visibility.

The emission sources, formation processes, chemical composition, atmospheric residence times, transport distances and other parameters of fine and coarse particles are distinct. Fine particles are directly emitted from combustion sources and are formed secondarily from gaseous precursors such as oxides of nitrogen (NO_X). Fine particles are generally composed of sulfate, nitrate, chloride, ammonium compounds, organic carbon, elemental carbon, and metals. Aircraft engines emit NO_X which react in the atmosphere to form secondary $PM_{2.5}$ (namely ammonium nitrate). Combustion of coal, oil, diesel, gasoline, and wood, as well as high temperature process sources such as smelters and steel mills, produce emissions that contribute to fine particle formation. In contrast, coarse particles are typically mechanically generated by crushing or grinding. They include resuspended dusts and crustal material from paved roads, unpaved roads, construction, farming, and mining activities. These coarse particles can be either natural in source such as road dust or anthropogenic. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers, while coarse particles deposit to the earth within minutes to hours and within tens of kilometers from the emission source.

The relative contribution of various chemical components to $PM_{2.5}$ varies by region of the country. Data on $PM_{2.5}$ composition are available from the EPA Speciation Trends Network in 2001 and the *I*nteragency *M*onitoring of *PRO*tected *V*isual *E*nvironments (IMPROVE) network in 1999 covering both urban and rural areas in numerous regions of the U.S. These data show that nitrates formed from NO_X also play a major role in the western U.S., especially in the California area where it is responsible for about a quarter of the ambient $PM_{2.5}$ concentrations.

a. Health Effects of PM $_{2.5}$

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in the EPA Criteria Document for PM as well as the draft updates of this document released in the past year.[51,52]

As described in these documents, health effects associated with short-term variation in ambient particulate matter (PM) have been indicated by epidemiologic studies showing associations between exposure and increased hospital admissions for ischemic heart disease, heart failure, respiratory disease, including chronic obstructive pulmonary disease (COPD) and pneumonia. Short-term elevations in ambient PM have also been associated with increased cough, lower respiratory symptoms, and decrements in lung function. Short-term variations in ambient PM have also been associated with increases in total and cardiorespiratory daily mortality. Studies examining populations exposed to different levels of air pollution over a number of years, including the Harvard Six Cities Study and the American Cancer Society Study suggest an association between exposure to ambient $PM_{2.5}$ and premature mortality, including deaths attributed to lung cancer.[53,54] Two studies further analyzing the Harvard Six Cities Study's air quality data have also established a specific influence of mobile source-related $PM_{2.5}$ on daily mortality [55] and a concentration-response function for mobile source-associated $PM_{2.5}$ and daily mortality.[56]

b. Current and Projected Levels

There are NAAQS for both PM_{10} and $PM_{2.5}$. Violations of the annual $PM_{2.5}$ standard are much more widespread than are violations of the PM_{10} standards. Figure III–1 at the beginning of this air quality section highlighted monitor locations measuring concentrations above the level of the NAAQS. As can be seen from that figure, high ambient levels are widespread throughout the country. Today's proposed aircraft NO_X standards should contribute to attainment and maintenance of the existing PM NAAQS since NO_X contributes to the secondary formation of $PM_{2.5}$.

The NAAQS for $PM_{2.5}$ were established by EPA in 1997 (62 FR 38651, July 18, 1997). The short term (24-hour) standard is set at a level of 65 μg/m^3 based on the 98th percentile concentration averaged over three years. (This air quality statistic compared to the standard is referred to as the ''design value.'') The long-term standard specifies an expected annual arithmetic mean not to exceed 15 μg/m^3 averaged over three years.

Current $PM_{2.5}$ monitored values for 1999–2001, which cover counties having about 75 percent of the country's population, indicate that at least 65 million people in 129 counties live in areas where annual design values of ambient fine PM violate the $PM_{2.5}$ NAAQS. There are an additional 9 million people in 20 counties where levels above the NAAQS are being measured, but there are insufficient data at this time to calculate a design value in accordance with the standard, and thus determine whether these areas are violating the $PM_{2.5}$ NAAQS. In total, this represents 37 percent of the counties and 64 percent of the population in the areas with monitors with levels above the NAAQS.[57] Furthermore, an additional 14 million people live in 41 counties that have air quality measurements within 10 percent of the level of the standard. These areas, although not currently violating the standard, would also benefit from the additional reductions from this proposed rule in order to help ensure long term maintenance.

The air quality modeling performed for the recent Nonroad Diesel Engines and Fuel Control proposed rule also indicates that similar conditions are likely to continue to exist in the future

[51] U.S. EPA (1996.) Air Quality Criteria for Particulate Matter—Volumes I, II, and III, EPA, Office of Research and Development. Report No. EPA/600/P–95/001a–cF. This material is available electronically at *http://www.epa.gov/ttn/oarpg/ticd.html.* Available in Docket A–99–06, Document Nos. IV–A–30, IV–A–31, and IV–A–32.

[52] U.S. EPA (2002). Air Quality Criteria for Particulate Matter—Volumes I and II (Third External Review Draft) This material is available electronically at *http://cfpub.epa.gov/ncea/cfm/partmatt.cfm.* Available in Docket A–2001–28, Document Nos. II–A–98 and II–A–71.

[53] Dockery, DW; Pope, CA, III; Xu, X; *et al.* (1993) An association between air pollution and mortality in six U.S. cities. N Engl J Med 329:1753–1759.

[54] Pope, CA, III; Thun, MJ; Namboordiri, MM; *et al.* (1995) Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. Am J Respir Crit Care Med 151:669–674.

[55] Laden F; Neas LM; Dockery DW; *et al.* (2000) Association of fine particulate matter from different sources with daily mortality in six U.S. cities. Environ Health Perspect 108(10):941–947.

[56] Schwartz J; Laden F; Zanobetti A. (2002) The concentration-response relation between PM(2.5) and daily deaths. Environ Health Perspect 110(10): 1025–1029.

[57] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, ''Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter,'' December 3, 2002. A copy of this document is available in Docket No. OAR 2002–0030.

in the absence of additional controls.[58] For example, in 2020 based on emission controls currently adopted, we project that 66 million people will live in 79 counties with average $PM_{2.5}$ levels above 15 μg/m^3. In 2030, the number of people projected to live in areas exceeding the $PM_{2.5}$ standard is expected to increase to 85 million in 107 counties. An additional 24 million people are projected to live in counties within 10 percent of the standard in 2020, which will increase to 64 million people in 2030.

While the final implementation process for bringing the nation's air into attainment with the $PM_{2.5}$ NAAQS is still being completed in a separate rulemaking action, the basic framework is well defined by the statute. EPA's current plans call for designating $PM_{2.5}$ nonattainment areas in late 2004. Following designation, section 172(b) of the Clean Air Act allows states up to three years to submit a revision to their state implementation plan (SIP) that provides for the attainment of the $PM_{2.5}$ standard. Based on this provision, states could submit these SIPs as late as the end of 2007. Section 172(a)(2) of the Clean Air Act requires that these SIP revisions demonstrate that the nonattainment areas will attain the $PM_{2.5}$ standard as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Therefore, based on this information, we expect that most or all areas will need to attain the $PM_{2.5}$ NAAQS in the 2009 to 2014 time frame, and then be required to maintain the NAAQS thereafter.

B. Other Environmental Effects

The following section presents information on four categories of public welfare and environmental impacts related to NO_X and fine PM emissions: acid deposition, eutrophication of water bodies, plant damage from ozone, and visibility impairment.

1. Acid Deposition

Acid deposition, or acid rain as it is commonly known, occurs when NO_X and SO_2 react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles.[59] It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $80–85 million per year when applied to all new cars and trucks sold in the U.S.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

A study of emissions trends and acidity of water bodies in the Eastern U.S. by the General Accounting Office (GAO) found that from 1992 to 1999 sulfates declined in 92 percent of a representative sample of lakes, and nitrate levels increased in 48 percent of the lakes sampled.[60] The decrease in sulfates is consistent with emissions trends, but the increase in nitrates is inconsistent with the stable levels of nitrogen emissions and deposition. The study suggests that the vegetation and land surrounding these lakes have lost some of their previous capacity to use nitrogen, thus allowing more of the nitrogen to flow into the lakes and increase their acidity. Recovery of acidified lakes is expected to take a number of years, even where soil and vegetation have not been ''nitrogen saturated,'' as EPA called the phenomenon in a 1995 study.[61] This situation places a premium on reductions of NO_X (and SO_X) from all sources, including aircraft engines, in order to reduce the extent and severity of nitrogen saturation and acidification of lakes in the Adirondacks and throughout the U.S.

The NO_X reductions from today's action would help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the country and help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition also will be reduced, and the costs borne to prevent acid-related damage may also decline. While the reduction in nitrogen acid deposition would be roughly proportional to the reduction in NO_X emissions the precise impact of today's action would differ across different areas.

2. Eutrophication and Nitrification

Eutrophication is the accelerated production of organic matter, particularly algae, in a water body. This

[58] See the Regulatory Impact Analysis: ''Draft Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines,'' EPA420–R–03–008, April 2003. This document is available at *http://www.epa.gov/nonroad/*. A copy of this document can also be found in Docket No. A–2001–28.

[59] Much of the information in this subsection was excerpted from the EPA document, *Human Health Benefits from Sulfate Reduction,* written under Title IV of the 1990 Clean Air Act Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995. A copy of this document is available in Docket No. OAR 2002–0030.

[60] *Acid Rain: Emissions Trends and Effects in the Eastern United States, U.S. General Accounting Office,* March, 2000 (GAO/RCED–00–47). A copy of this document is available in Docket No. OAR 2002–0030.

[61] *Acid Deposition Standard Feasibility Study: Report to Congress,* EPA 430R–95–001a, October, 1995. A copy of this document is available in Docket No. OAR–2002–0030.

increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations.

In 1999, NOAA published the results of a five year national assessment of the severity and extent of estuarine eutrophication. An estuary is defined as the inland arm of the sea that meets the mouth of a river. The 138 estuaries characterized in the study represent more than 90 percent of total estuarine water surface area and the total number of U.S. estuaries. The study found that estuaries with moderate to high eutrophication conditions represented 65 percent of the estuarine surface area. Eutrophication is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the ''overproduced'' algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Severe and persistent eutrophication often directly impacts human activities. For example, losses in the nation's fishery resources may be directly caused by fish kills associated with low dissolved oxygen and toxic blooms. Declines in tourism occur when low dissolved oxygen causes noxious smells and floating mats of algal blooms create unfavorable aesthetic conditions. Risks to human health increase when the toxins from algal blooms accumulate in edible fish and shellfish, and when toxins become airborne, causing respiratory problems due to inhalation. According to the NOAA report, more than half of the nation's estuaries have moderate to high expressions of at least one of these symptoms—an indication that eutrophication is well developed in more than half of U.S. estuaries.

In recent decades, human activities have greatly accelerated nutrient inputs, such as nitrogen and phosphorous, causing excessive growth of algae and leading to degraded water quality and associated impairments of freshwater and estuarine resources for human uses.[62] Since 1970, eutrophic conditions worsened in 48 estuaries and improved in 14. In 26 systems, there was no trend in overall eutrophication conditions since 1970.[63] On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Long-term monitoring in the U.S., Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds.

Between 1992 and 1997, experts surveyed by National Oceanic and Atmospheric Administration (NOAA) most frequently recommended that control strategies be developed for agriculture, wastewater treatment, urban runoff, and atmospheric deposition.[64] In its Third Report to Congress on the Great Waters, EPA reported that atmospheric deposition contributes from 2 to 38 percent of the nitrogen load to certain coastal waters.[65] A review of peer reviewed literature in 1995 on the subject of air deposition suggests a typical contribution of 20 percent or higher.[66] Human-caused nitrogen loading to the Long Island Sound from the atmosphere was estimated at 14 percent by a collaboration of Federal and State air and water agencies in 1997.[67] The National Exposure Research Laboratory, U.S. EPA, estimated based on prior studies that 20 to 35 percent of the nitrogen loading to the Chesapeake Bay is attributable to atmospheric deposition.[68] The mobile source portion of atmospheric NO_X contribution to the Chesapeake Bay was modeled at about 30 percent of total air deposition.[69]

Deposition of nitrogen from aircraft engines contributes to elevated nitrogen levels in waterbodies. The NO_X reductions from the proposed standards would help reduce the airborne nitrogen deposition that contributes to eutrophication of watersheds, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings.

3. Plant Damage From Ozone

Ground-level ozone can also cause adverse welfare effects. Specifically, ozone enters the leaves of plants where it interferes with cellular metabolic processes. This interference can be manifest either as visible foliar injury from cell injury or death, and/or as decreased plant growth and yield due to a reduced ability to produce food. With fewer resources, the plant reallocates existing resources away from root storage, growth and reproduction toward leaf repair and maintenance. Plants that are stressed in these ways become more susceptible to disease, insect attack, harsh weather and other environmental stresses. Because not all plants are equally sensitive to ozone, ozone pollution can also exert a selective pressure that leads to changes in plant community composition.

Since plants are at the center of the food web in many ecosystems, changes to the plant community can affect associated organisms and ecosystems (including the suitability of habitats that support threatened or endangered species and below ground organisms living in the root zone). Given the range of plant sensitivities and the fact that numerous other environmental factors modify plant uptake and response to ozone, it is not possible to identify threshold values above which ozone is toxic and below which it is safe for all plants. However, in general, the science suggests that ozone concentrations of 0.10 ppm or greater can be phytotoxic to a large number of plant species, and can produce acute foliar injury responses, crop yield loss and reduced biomass production. Ozone concentrations below 0.10 ppm (0.05 to 0.09 ppm) can produce these effects in more sensitive plant species, and have the potential over a longer duration of

[62] *Deposition of Air Pollutants to the Great Waters, Third Report to Congress,* June, 2000. A copy of this document is available in Docket No. OAR 2002–0030.

[63] *Deposition of Air Pollutants to the Great Waters, Third Report to Congress,* June, 2000. Great Waters are defined as the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters. The first report to Congress was delivered in May, 1994; the second report to Congress in June, 1997. A copy of this document is available in Docket No. OAR 2002–0030.

[64] Bricker, Suzanne B., *et al., National Estuarine Eutrophication Assessment, Effects of Nutrient Enrichment in the Nation's Estuaries,* National Ocean Service, National Oceanic and Atmospheric Administration, September, 1999. A copy of this document is available in Docket No. OAR 2002–0030.

[65] *Deposition of Air Pollutants to the Great Waters, Third Report to Congress,* June, 2000. A copy of this document is available in Docket No. OAR 2002–0030.

[66] Valigura, Richard, *et al., Airsheds and Watersheds II: A Shared Resources Workshop,* Air Subcommittee of the Chesapeake Bay Program, March, 1997. Available in Docket A–99–06, Document No. IV–G–144.

[67] *The Impact of Atmospheric Nitrogen Deposition on Long Island Sound,* The Long Island Sound Study, September, 1997. A copy of this document is available in Docket No. OAR–2002–0030.

[68] Dennis, Robin L., *Using the Regional Acid Deposition Model to Determine the Nitrogen Deposition Airshed of the Chesapeake Bay Watershed,* SETAC Technical Publications Series, 1997.

[69] *Ibid.*

creating chronic stress on vegetation that can lead to effects of concern such as reduced plant growth and yield, shifts in competitive advantages in mixed populations, and decreased vigor leading to diminished resistance to pests, pathogens, and injury from other environmental stresses.

Studies indicate that these effects described here are still occurring in the field under ambient levels of ozone. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production (*e.g.,* soybean) and visible injury to some leaf crops (*e.g.,* lettuce, spinach, tobacco) and visible injury to ornamental plants (*i.e.,* grass, flowers, shrubs), while other types of welfare loss may not be fully quantifiable in economic terms (*e.g.,* reduced aesthetic value of trees growing in Class I areas).

As discussed earlier, aircraft engine emissions of NO_X contribute to ozone. The proposed standards would aid in the reduction of ozone and, therefore, help reduce crop damage and stress from ozone on vegetation.

4. Visibility

The secondary PM NAAQS is designed to protect against adverse welfare effects which includes visibility impairment. In 1997, EPA established the secondary $PM_{2.5}$ NAAQS as equal to the primary (health-based) NAAQS of 15 ug/m^3 (based on a 3-year average of the annual mean) and 65 ug/m^3 (based on a 3-year average of the 98th percentile of the 24-hour average value) (62 FR 38669, July 18, 1997). EPA concluded that $PM_{2.5}$ causes adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. In 1997, EPA demonstrated that visibility impairment is an important effect on public welfare and that unacceptable visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote federal Class I areas. In many cities having annual mean $PM_{2.5}$ concentrations exceeding annual standard, improvements in annual average visibility resulting from the attainment of the annual $PM_{2.5}$ standard are expected to be perceptible to the general population. Based on annual mean monitored $PM_{2.5}$ data, many cities in the Northeast, Midwest, and Southeast as well as Los Angeles would be expected to experience perceptible improvements in visibility if the $PM_{2.5}$ annual standard were attained.

Furthermore, in setting the $PM_{2.5}$ NAAQS, EPA acknowledged that levels of fine particles below the NAAQS may also contribute to unacceptable visibility impairment and regional haze problems in some areas, and section 169 of the Act provides additional authorities to remedy existing impairment and prevent future impairment in the 156 national parks, forests and wilderness areas labeled as mandatory Federal Class I areas (62 FR 38680–81, July 18, 1997).

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.[70] Fine particles with significant light-extinction efficiencies include organic matter, sulfates, nitrates, elemental carbon (soot), and soil. Size and chemical composition of particles strongly affects their ability to scatter or absorb light. Nitrates typically contribute 1 to 6 percent of average light extinction on haziest days in rural Eastern U.S. locations.[71]

Visibility is important because it directly affects people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, both in where they live and work, and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas such as national parks and wilderness areas, because of the special emphasis given to protecting these lands now and for future generations.

To quantify changes in visibility, we compute a light-extinction coefficient, which shows the total fraction of light that is decreased per unit distance. Visibility can be described in terms of visual range or light extinction and is reported using an indicator called deciview.[72] In addition to limiting the distance that one can see, the scattering and absorption of light caused by air pollution can also degrade the color, clarity, and contrast of scenes.

In addition, visibility impairment can be described by its impact over various periods of time, by its source, and the physical conditions in various regions of the country. Visibility impairment can be said to have a time dimension in that it might relate to short-term excursions or to longer periods (*e.g.,* worst 20 percent of days and annual average levels). Anthropogenic contributions account for about one-third of the average extinction coefficient in the rural West and more than 80 percent in the rural East. In the Eastern U.S., reduced visibility is mainly attributable to secondarily formed particles, particularly those less than a few micrometers in diameter. While secondarily formed particles still account for a significant amount in the West, primary emissions contribute a larger percentage of the total particulate load than in the East.

Furthermore, it is important to note that even in those areas with relatively low concentrations of anthropogenic fine particles, such as the Colorado Plateau, small increases in anthropogenic fine particulate concentrations can lead to significant decreases in visual range. This is one of the reasons mandatory Federal Class I areas have been given special consideration under the Clean Air Act.[73]

Taken together with other programs, reductions from this proposal would help to improve visibility across the nation, including mandatory Federal Class I areas.

C. Other Criteria Pollutants Affected by This Proposed Rule

The standards being proposed today would also help reduce levels of nitrogen dioxide (NO_2), for which NAAQS have been established. Currently, every area in the United States has been designated to be in attainment with the NO_2 NAAQS.

IV. Description of Action

Under the authority of section 231 of the CAA, EPA today proposes to adopt standards equivalent to ICAO's February 1999 NO_X emission standards (these NO_X standards were adopted at CAEP/4 in 1998 and approved by the ICAO Council in 1999) and March 1997 test

[70] National Research Council, 1993. Protecting Visibility in National Parks and Wilderness Areas. National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas. National Academy Press, Washington, DC. This book can be viewed on the National Academy Press Website at *http://www.nap.edu/books/0309048443/html/. See also* U.S. EPA Air Quality Criteria Document for Particulate Matter (1996) (available on the internet at *http://cfpub.epa.gov/ncea/cfm/partmatt.cfm*) and Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information. These documents can be found in Docket A–99–06, Documents No. II–A–23 and IV–A–130–32.

[71] US EPA Trends Report 2001. This document is available on the internet at *http://www.epa.gov/airtrends/*. A copy of this document is available in Docket No. OAR 2002–0030.

[72] Visual range can be defined as the maximum distance at which one can identify a black object against the horizon sky. It is typically described in miles or kilometers. Light extinction is the sum of light scattering and absorption by particles and gases in the atmosphere. It is typically expressed in terms of inverse megameters (Mm^{-1}), with larger values representing worse visibility. The deciview metric describes perceived visual changes in a linear fashion over its entire range, analogous to the decibel scale for sound. A deciview of 0 represents pristine conditions. Under many scenic conditions, a change of 1 deciview is considered perceptible by the average person.

[73] The Clean Air Act designates 156 national parks and wilderness areas as mandatory Federal Class I areas for visibility protection.

procedure amendments. Today's proposed emission standards and test procedure amendments apply to commercial aircraft engines; no general aviation or military engines are covered by today's proposal. The commercial aircraft engines subject to today's proposed NO_X standards are those gas turbine engines that are newly certified (and designed) after the effective date of the proposed regulations. (Newly manufactured or already certified engines built after the effective date of the proposed regulations would not have to meet these standards.) For the sake of consistency and harmonization, the effective dates below for the proposed NO_X standards are identical with those of the ICAO 1999 NO_X standards. The proposed NO_X emission standards, test procedure amendments, and their effective dates are described below.

A. What Emission Standards Are Under Consideration?

As discussed earlier in sections II and III of today's notice, section 231(a)(2)(A) of the CAA authorizes EPA to establish emission standards for aircraft engine emissions'' * * * which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' The Administrator may revise such standards from ''time to time.'' CAA section 231(b) requires that any emission standards provide sufficient lead time ''to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.''

Today's rule proposes near-term standards that would go into effect in 2004 to ensure future engines do not jeopardize recent or past technology gains. These standards are equivalent to the CAEP/4 NO_X international consensus emissions standards for aircraft engines adopted by ICAO's CAEP in 1998.[74] EPA intends to promulgate these standards by January 2004 in order to be consistent with U.S. obligations under ICAO. At the same time, EPA anticipates establishing more stringent NO_X standards in the future. EPA will participate at CAEP/6 (sixth meeting of CAEP), which is scheduled in February 2004, to establish more stringent international consensus emission standards for aircraft engines. Such standards would likely be a central consideration in a future EPA regulation of aircraft engine emissions.

We believe this two-step approach is the most appropriate means to address emissions from aircraft engines in this rulemaking. It would codify current practice, with no significant lead time, as a near-term approach.[75] EPA has authority to revise emission standards from ''time to time''. EPA intends to address more stringent emission standards requiring more lead time in a future rulemaking (see section IV.A.5. for further discussion of future standards).

1. Today's Proposed NO_X Standards

EPA proposes to adopt standards equivalent to ICAO's 1999 NO_X emission standards for newly certified aircraft gas turbine engines (turbofan and turbojet engines) of rated thrust or output greater than 26.7 kilonewtons (kN) with compliance dates as follows:[76]

For engines of a type or model of which that date of manufacture of the first individual production model was after December 31, 2003:

(a) for engines with a pressure ratio of 30 or less:

(i) for engines with a maximum rated output of more than 89.0 kN:

NO_X = (19 + 1.6(rated pressure ratio))g/kN(rated output)

(ii) for engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN:

NO_X = (37.572 + 1.6(rated pressure ratio) − 0.2087(rated output))g/kN(rated output)

(b) for engines with a pressure ratio of more than 30 but less than 62.5:

(i) for engines with a maximum rated output of more than 89.0 kN:

NO_X = (7 + 2.0(rated pressure ratio))g/kN(rated output)

(ii) for engines with a maximum rated output of more than 26.7 kN but not more than 89.0 kN:

NO_X = (42.71 + 1.4286(rated pressure ratio)—0.4013(rated output) + 0.00642(rated pressure ratio × rated output))g/kN(rated output)

(c) for engines with a pressure ratio of 62.5 or more:

NO_X = (32 + 1.6(rated pressure ratio))g/kN(rated output).

The NO_X emission standards presented above are equivalent to the ICAO NO_X standards that have an implementation date of December 31, 2003.[77]

2. Proposed NO_X Standards for Newly Certified Mid- and High-Thrust Engines

EPA is proposing to adopt NO_X standards for newly certified mid- and high-thrust engines (those engines designed and certified after the effective date of the proposed regulations, which have a rated output or thrust greater than 89 kN) that generally represent about a 16 percent reduction (or increase in stringency) from the existing standard. (*See* section IV.A.1(a)(i) and IV.A.1(b)(i) above for the standards for mid- and high-thrust engines.) More specifically, at a rated pressure ratio of 30 the proposed NO_X standards represent a 16 percent reduction from the existing standard. At rated pressure ratios of 10 and 20, the proposed standards correspond to 27 and 20 percent reductions, respectively. In addition, at rated pressure ratios of 40 and 50, the proposed NO_X standards signify 9 and 4 percent reductions, respectively. Also, the proposed and existing standards are equivalent at a rated pressure ratio of 62.5. *See* Figure IV.B–1 in section IV.B. for a comparison of the proposed NO_X standards (equivalent to CAEP/4 standards) to the existing standards (equivalent to CAEP/2 standards) .

3. Proposed NO_X Standards for Newly Certified Low-Thrust Engines

For newly certified low-thrust engines (engines with a thrust or rated output of more than 26.7 kN but not more than 89.0 kN), EPA is today proposing to adopt near-term NO_X standards that are different than the standards proposed for mid- and high-thrust engines (engines with thrust greater than 89.0 kN).[78] In addition to rated pressure ratio, the proposed standards for low-

[74] ICAO, CAEP, Fourth Meeting, Montreal, Quebec, April 6–8, 1998, Report, Document 9720, CAEP/4. Copies of this document can be obtained from the ICAO Web site located at http://www.icao.int.

[75] As described later, more information and greater lead time would be necessary to require more stringent standards.

[76] This proposal includes standards for low-, mid, and high-thrust engines (see below for further discussion of the different standards based on the thrust of the engines).

[77] ICAO's CAEP/4 NO_X standards became effective July 19, 1999, and applicable as of November 4, 1999. December 31, 2003 is the implementation date for these standards. However, for the purpose of this Notice the effective date is considered the implementation date. (ICAO, ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 1993—Amendment 4, July 19, 1999.)

[78] Today's proposed NO_X standards for low thrust or small engines specify that engines with a rated output or thrust at 26.7 kN meet the existing standard, and engines with a rated output at 89 kN meet the proposed (or CAEP/4) standards. For engines with rated outputs or thrust levels between 26.7 and 89 kN, a linear interpolation was made between the low range of the existing standard and the high range of the proposed standard based upon the rated output to determine the proposed NO_X limits for such engines. Thus, thrust dependent standards are being proposed for engines with rated output or thrust between 26.7 kN and 89 kN.

thrust engines would also be dependent on an engine's thrust or rated output.[79] (*See* section IV.A.1(a)(ii) and IV.A.1(b)(ii) for a description of these different standards.) For example, at a rated pressure ratio of 30 and a thrust of 58 kN (thrust level in the middle of 26.7 kN and 89 kN), these proposed standards are an 8 percent reduction (or increase in stringency) from the existing standard compared to a 16 percent reduction for the proposed standards for mid- and high-thrust engines.[80]

The existing standards were not set at a stringency level that created a need for low-thrust engines to have different requirements, but at the level of NO_X stringency proposed today different requirements are considered necessary for such engines. Due to their physical size, it is difficult to apply the best NO_X reduction technology to low thrust or small engines. The difficulty increases progressively as size is reduced (from around 89 kN).[81] For example, the relatively small combustor space and section height of these engines creates constraints on the use of low NO_X fuel staged combustor concepts which inherently require the availability of greater flow path cross-sectional area than conventional combustors.[82] Also, fuel staged combustors need more fuel injectors, and this need is not compatible with the relatively lower total fuel flows of lower thrust engines. (Reductions in fuel flow per nozzle are difficult to attain without having clogging problems due to the small sizes of the fuel metering ports.) In addition, lower thrust engine combustors have an inherently greater liner surface-to-combustion volume ratio, and this requires increased wall cooling air flow. Thus, less air would be available to obtain acceptable turbine inlet temperature distribution and for emissions control.[83] Since the difficulties increase progressively as engine thrust size is reduced, EPA believes it would be appropriate to make a graded change in stringency of the proposed NO_X standards for low-thrust engines.

4. Rationale of Proposed NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines

The proposed standards for low-, mid-, and high-thrust engines, which are equivalent to the CAEP/4 standards, ensure that new engine designs would incorporate the existing combustor technology and would not perform worse than today's current engines. EPA intends to promulgate these standards by January 2004 in order to be consistent with U.S. obligations under ICAO. (*See* section II.B for a discussion of the obligation of ICAO's participating nations). At this time, there is not sufficient lead time to require more stringent emission standards than the CAEP/4 NO_X emission standards by January 2004. As discussed later in section IV.A.5 for future standards, we are deferring action on more stringent NO_X standards because pursuant to section 231(b) of the CAA we need more time to better understand the cost of compliance with such standards, and additional cost data is expected to be available from CAEP/6 in February 2004 (*see* section IV.A.5 for further discussion regarding lead time).

EPA believes that the proposed standards would not impose any additional burden on manufacturers, because manufacturers are already designing new engines to meet the ICAO international consensus standards by 2004 (*see* section VII of today's action for further discussion of regulatory impact). Even though the U.S. did not immediately adopt the ICAO NO_X standards after 1999, engine manufacturers have continued to make progress in reducing these emissions. Today's proposed standards are aimed at assuring that this progress is not reversed in the future.

5. Future NO_X Standards for Newly Certified Low-, Mid-, and High-Thrust Engines

More stringent standards for low-, mid-, and high-thrust engines will be necessary in the future. As discussed earlier in section III, the growth in aircraft emissions is projected to occur at a time when other mobile source categories are reducing emissions.[84] The 1999 EPA study of commercial aircraft activity in ten cities projected that the aircraft NO_X emissions would double in some of these cities by 2010, and the aircraft component of the regional mobile source NO_X emissions in the ten cities would grow from a range of 1 to 4 percent that existed in 1990 to a range of 2 to 10 percent in 2010.[85] (As indicated earlier, the above projections were made prior to the tragic events of September 11, 2001, and the subsequent economic downturn. A January 2003 report by the Department of Transportation indicated that the combination of the September 11, 2001 terrorist attacks and a cut-back in business travel had a significant and perhaps long-lasting effect on air traffic demand. However, the FAA expects the demand for air travel to recover, and then continue a long-term trend of annual growth in the United States.) More recently, as discussed earlier FAA reports that flights (or activity) of commercial air carriers will increase by 18 percent by 2010 and 45 percent by 2020.[86] Thus, based on these trends

[79] The proposed standards for mid- and high-thrust engines are dependent only on an engine's rated pressure ratio.

[80] Additional examples of the proposed standards for low-thrust engines in comparison to the proposed standards for mid- and high-thrust engines are provided below. At rated pressure ratios of 10 and 20 with a thrust of 58 kN, the proposed low-thrust engine standards are a 14 and 10 percent reduction from the existing standard, respectively. Whereas, at these same rated pressure ratios, the proposed standards for mid- and high-thrust engines are 27 and 20 percent reductions.

In addition, at rated pressure ratios of 40 and 50 with a thrust of 58 kN, these low-thrust engine standards signify a 5 and 2 percent reduction from the existing standard, respectively. In comparison, at these same rated pressure ratios, the proposed standards for mid- and high-thrust engines are 9 and 4 percent reductions.

[81] ICAO/CAEP, Report of Third Meeting, Montreal, Quebec, December 5–15, 1995, Document 9675, CAEP/3.

[82] ''The burner section of an aircraft engine, which contains the combustion chamber, burns a mixture of fuel and air, and delivers the resulting gases to the turbine at a temperature which will not exceed the allowable limit at the turbine inlet.'' (United Technologies Pratt and Whitney, ''The Aircraft Gas Turbine Engine and Its Operation,'' August 1998.)

[83] ICAO/CAEP Working Group 3 (Emissions), ''Combined Report of the Certification and Technology Subgroups,'' section 2.3.6.1, Presented by the Chairman of the Technology Subgroup, Third Meeting, Bonn, Germany, June 1995. A copy of this paper can be found in Docket OAR–2002–0030.

[84] The projected growth in aircraft emissions is not simply from the number of operations, but it could also be attributed to the change in the types of aircraft being operated. For example, regional aircraft activity is growing (regional aircraft are generally referred to as those aircraft with more than 19 but fewer than 100 seats—regional jets and turboprops). In the U.S., traffic flown by regional airlines increased about 20 percent in 1999 and is expected to grow approximately 7 percent annually during the next ten years, compared to 4 to 6 percent for the major airlines. In addition, regional jets comprised about 25 percent of the regional aircraft fleet in 2000, up from only 4.2 percent in 1996, and their fraction of the fleet is expected to increase to nearly 50 percent by 2011. Regional aircraft are 40 to 60 percent less fuel efficient compared to larger narrow- and wide-body aircraft, and regional jets are 10 to 60 percent less fuel efficient than turboprop aircraft. However, fuel costs have less of an effect on the operating costs of regional aircraft compared to large aircraft. In addition, regional jets have historically operated at higher load factors than turboprops due to their popularity with travelers. (R. Babikian, S. P. Lukachko and I. A. Waitz, ''Historical Fuel Efficiency Characteristics of Regional Aircraft from Technological, Operational, and Cost Perspectives,'' *Journal of Air Transport Management,* Volume 8, No. 6, pp. 389–400, Nov. 2002).

[85] U.S. EPA, ''Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft,'' April 1999, EPA420–R–99–013. This study is available at *http://www.epa.gov/otaq/aviation.htm.* It can also be found in Docket No. OAR–2002–0030.

[86] The flight forecast data is based on FAA's Terminal Area Forecast System (TAFS). TAFs is the

more stringent NO_X standards than the proposed standards are needed in the future to reduce aircraft NO_X emissions in nonattainment areas.

Further stringency of the NO_X standards would reduce the expected growth in commercial aircraft emissions. The importance of controlling aircraft emissions has grown in many areas (especially areas not meeting the 1-hour and 8-hour ozone NAAQS) as controls on other sources become more stringent and attainment of the NAAQS's has still not been achieved. (Many airports in the U.S. are located in nonattainment areas.[87]) As activity increases, aircraft would emit increasing amounts of NO_X in many nonattainment areas, and thus, aircraft emissions would further aggravate the problems in these areas (either by emitting pollutants directly within a nonattainment area or by contributing to regional transport emissions in an area upwind of a nonattainment area). More stringent aircraft engine NO_X standards would assist in alleviating these problems in nonattainment areas, and they would aid in preventing future concerns in areas currently designated as attainment (or maintenance) areas. In addition, attainment or maintenance of the NAAQS requires that aircraft engines be subject to a program of control compatible with their significance as pollution sources.

EPA, therefore, is considering more stringent future standards, beyond today's proposed standards. Leading up to CAEP/6 in February 2004, one of the objectives of CAEP (and/or the international aviation community) is to consider more stringent aircraft engine standards than CAEP/4 standards for all gaseous emissions, especially NO_X.[88] ICAO CAEP working groups are currently assessing the technological feasibility, economic reasonableness, and environmental benefit of imposing more stringent NO_X emissions standards for aircraft engines beyond that which will become effective in 2004 (CAEP/4 standards). Options being considered range from 5 to 30 percent more stringent with an effective date as early as 2008 to 2012 (these options are accompanied by more stringent standards for low-thrust engines).[89] Based on the results of this assessment, a proposal for more stringent NO_X standards is expected to be made at CAEP/6.[90] (No changes to the standards of other pollutants, hydrocarbons and carbon monoxide, are anticipated.) Activity is also underway to identify and assess the potential for long-term technology goals to be established for further emissions reductions.[91] [92] The aim of the goal setting activity is to complement the ICAO CAEP standard setting process with information to aid the engine and airframe manufacturer's design process. The goals are expected to take into account the results of recently completed emissions reduction technology programs such as those conducted by National Aeronautics and Space Administration (NASA) and the European Commission and the timeline necessary to carry those technologies from the research phase through commercialization.[93] EPA is currently working with FAA and CAEP working groups (as described in section V) in the evaluation of NO_X stringency options for CAEP/6 and the potential for long-term technology goals.

Manufacturers should be able to achieve additional reductions with more lead time than is provided by today's proposal. After CAEP/6, we would assess whether or not the new international consensus and longer-term standards (which are expected to be adopted) would be stringent enough to protect the U.S. public health and welfare. If so, we would propose to adopt the CAEP/6 NO_X standards soon thereafter. EPA (or the U.S.) retains the discretion to adopt more stringent standards in the future if the international consensus standards ultimately prove insufficient to protect U.S. air quality.

Deferring consideration of more stringent future standards until after CAEP/6 would allow us to obtain important additional information on the costs of such standards.[94] As described earlier in this notice, section 231 of the CAA authorizes EPA from ''time to time'' to revisit emission standards, and it requires that any standards' effective dates permit the development of necessary technology, giving appropriate consideration to the cost. We are not proposing more stringent NO_X standards today primarily because we need more time to better understand the cost of compliance of such standards, and additional cost data is expected to be available from CAEP/6 in February 2004. Producing (and/or developing) new engines or engine technologies requires significant financial investments from engine manufacturers, which takes time to recoup (the amount of time depends upon sales of engines, replacement parts, etc.). As discussed earlier, CAEP working groups are currently analyzing the costs and emission benefits (taking into account lead time) for the options of further NO_X stringency (beyond the CAEP/4 standards) being considered for CAEP/6.[95] After evaluating such

official forecast of aviation activity at FAA facilities. This includes FAA-towered airports, federally-contracted towered airports, nonfederal towered airports, and many non-towered airports. For detailed information on TAFS and the air carrier activity forecasts see the following FAA Web site: *http://www.apo.data.faa.gov/faatafall.HTM.* As of May 1, 2003, the aviation forecasts contained in TAFS for Fiscal Years 2002–2020 included the impact of the terrorists' attacks of September 11, 2001 and the recent economic downturn. However, these projections did not fully reflect the ongoing structural changes occurring within the aviation industry. A copy of the May 1, 2003 forecast summary report for air carrier activity can be found in Docket No. OAR–2002–0030.

[87] For information on the geographic location of airports, see the following U.S. Department of Transportation (Bureau of Transportation Statistics) Web site: *http://www.bts.gov/oai.* The report or database provided on the website entitled, ''Airport Activity Statistics of Certificated Air Carriers: Summary Tables 2000,'' lists airports by community. In addition, *see* the following EPA website for information on nonattainment areas for criteria pollutants: *http://www.epa.gov/oar/oaqps/greenbk.*

[88] ICAO, CAEP, Fifth Meeting, Montreal, Quebec, January 1–17, 2001, ''Report on Agenda Item 4,'' CAEP/5–WP/86, January 17, 2001. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[89] ICAO, CAEP, Steering Group Meeting, Paris, France, September 10–13, 2002, ''Summary of Discussions and Decisions of the Second Meeting of the Steering Group,'' September 11, 2002, CAEP–SG20022–SD/2. A copy of this paper can be found in Docket OAR–2002–0030. Since this paper was written, the working groups have also decided to consider the range of stringency options for an effective date of 2008.

[90] ICAO, CAEP, Steering Group Meeting, Paris, France, September 10–13, 2002, ''Summary of Discussions and Decisions of the First Meeting of the Steering Group,'' September 10, 2002, CAEP–SG20022–SD/1. A copy of this paper can be found in Docket OAR–2002–0030.

[91] ICAO, CAEP, Fifth Meeting, Montreal, Quebec, January 1–17, 2001, ''Report on Agenda Item 4,'' CAEP/5–WP/86, January 17, 2001. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[92] For the purpose of setting long-term technology goals, activity on the below tasks was initiated after CAEP/5 in 2001, and it is expected to continue beyond CAEP/6.

(a) characterize emissions performance of future technologies being pursued under national and international research programs, including technology readiness;

(b) develop methodologies for quantifying aviation emissions inventories;

(c) develop forecasts of emission trends both locally and globally; and

(d) examine how such goals might be applied within the current regulatory regime.

[93] ICAO, CAEP, Fourth Meeting, Montreal, Quebec, April 6–8, 1998, Report, Document 9720, CAEP/4, see Appendix A to the Report on Agenda Item 4 (page 4–A–1). Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[94] For low-thrust engines, deferring regulatory action on more stringent future standards until after CAEP/6 would also enable us to obtain additional information on the technological feasibility of such standards.

[95] Specifically, the Forecasting and Economic Analysis Support Group (FESG) is conducting an

Continued

information, we would then be better situated to make decisions on an appropriate level of stringency and implementation timing that maximizes emission reductions from aircraft engines, taking into consideration cost.

In addition, if we address more stringent future standards in accordance with CAEP/6 action, we would have the benefits of harmonizing with international standards.[96] Due to the international nature of the aviation industry, setting NO_X standards at the appropriate level to meet U.S. air quality needs through international consensus provides the potential for greater environmental benefits. Aircraft and aircraft engines are international commodities, and they are designed and built to meet international standards. Adoption of international standards ensures emission reductions from domestic and foreign aircraft in the U.S. In addition, international consensus standards lead to air quality benefits in the U.S. and throughout the world.

B. Already Certified, Newly Manufactured Engines

Under current rules, the proposed NO_X standards would not apply to already certified, newly manufactured engines (in-production engines or engines built after the effective date of the proposed standards), and the rationale for not applying these standards to already certified low-, mid-, and high-thrust engines is discussed below. Nearly all already certified engines (94 percent of in-production engine models in the ICAO Aircraft Engine Exhaust Emissions Data Bank [97]) currently meet or perform better than the standards we are proposing to adopt today.[98] (*See* Figure IV.B–1 below for a comparison of the NO_X emission levels of current in-production engines to the CAEP/4 NO_X standards.) [99] At the time the CAEP/4 NO_X standards were adopted in 1998, all but 11 in-production engines and 5 newly designed engine models (these 5 engines were in the design and development process in 1998) had NO_X emission levels that would perform better than the CAEP/4 standards.[100] Based on a recent CAEP working group (specifically, the Forecasting and Economic Analysis Support Group—FESG) analysis of applying the CAEP/4 standards to already certified engines (at dates 2, 4, and 6 years after the implementation date for newly certified engines), from those 16 engine models identified in 1998 today there are only 4 already certified engine models or two engine families remaining that would not meet the CAEP/4 standards.[101] The other engine models have either, through additional testing or modifications, been improved to meet the standards or the engines are no longer in-production.[102] (There is only one remaining newly designed engine model—out of the five identified in 1998—that may be certified after 2003, and thus, it would need to meet the CAEP/4 or proposed standards for newly certified engines, which are effective beginning in 2004.)[103]

analysis of the costs and emission benefits for the further stringency options.

[96] As discussed earlier, the U.S. has an obligation to be compatible with the ICAO program if deemed appropriate.

[97] International Civil Aviation Organization (ICAO), Aircraft Engine Exhaust Emissions Data Bank, July 2002. This data bank is available at *http://www.qinetiq.com/aircraft.html.* In addition, a copy of a table including data of engine NO_X emissions from the ICAO data bank and their margin to the proposed NO_X standards can be found in Docket OAR–2002–0030.

[98] 116 out of 124 (94 percent) engine models that are currently in production perform better than the CAEP/4 NO_X standards. The 8 engine models (which are mid- and high-thrust engines) that are not achieving the CAEP/4 NO_X standards are from three different Pratt and Whitney (PW) engine types or families (engines and their thrust variants with the same build standard). These engines are the following: (1) JT8D–217C E-kit and JT8D–219 E-kit; (2) PW4077D, PW4084D, and PW4090; and (3) PW4164, PW4168, and PW4168A. (*See* Figure IV.B–1 below that specifically shows these 8 in-production models in relation to the CAEP/4 or proposed NO_X standards.) For the year 2000, these 8 engine models were found on approximately 751 out of 20,137 (3.7 percent) aircraft owned by U.S. carriers and accounted for approximately 1,541,172 out of 11,505,063 (13.4 percent) of U.S. domestic flights.

(The above reference for the fleet fraction is BACK Aviation Solutions, *http://www.backaviation.com/Information_Services/default.htm.*

The domestic flight information is based on SAGE, the System for Assessing Aviation Emissions. SAGE is an FAA model that estimates aircraft emissions through the full flight profile using non-proprietary input data, such as BACK, FAA's Enhanced Traffic Management System (ETMS), and the Official Airline Guide (OAG). The year 2000 air traffic movements database portion of SAGE was used to estimate the number of flights using the subject engines.)

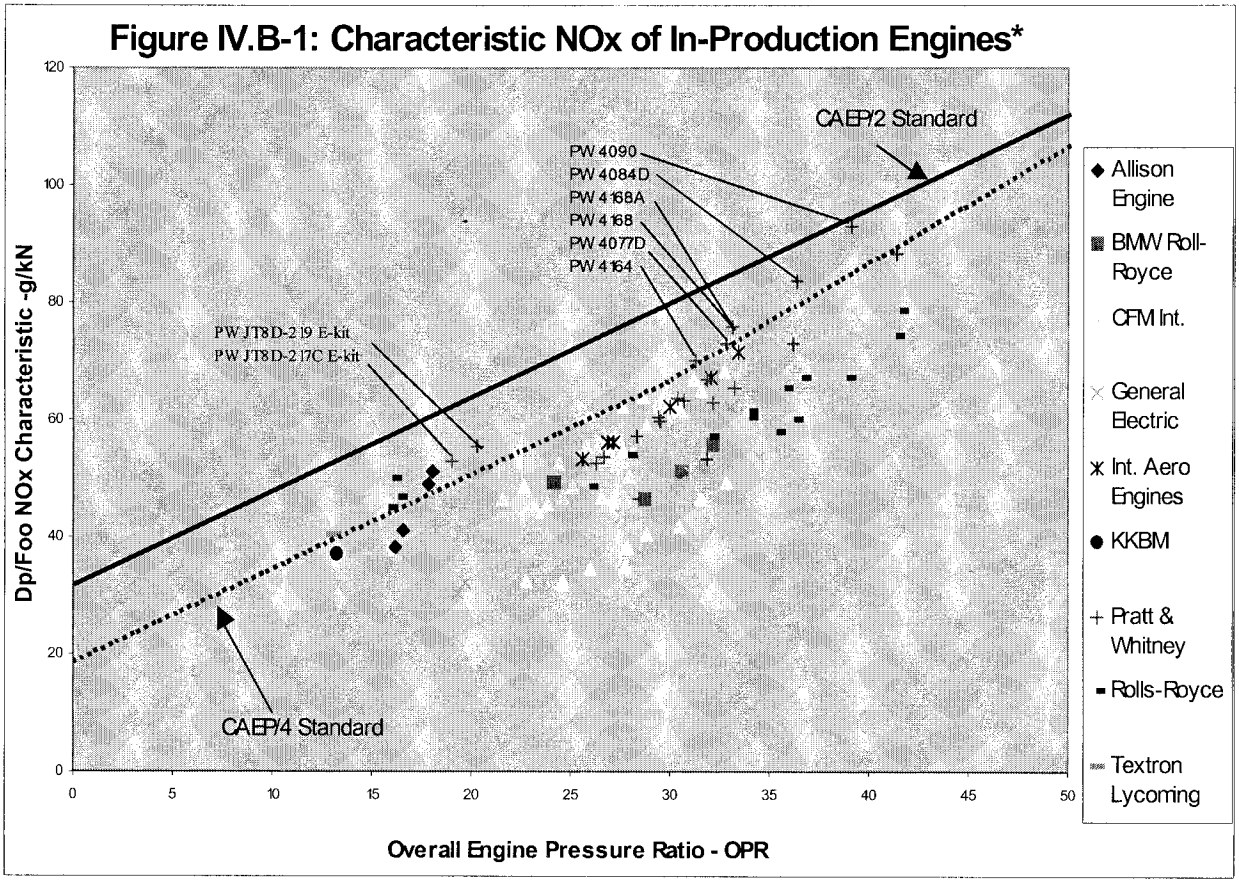
[99] For Figure IV.B–1, the Allison, Rolls-Royce, and Textron Lycoming engines with rated pressure ratios less than 20 and NO_X perform better than the standards, since there are different CAEP/4 NO_X standards for these low-thrust engines (see section IV.A.3 for further discussion of NO_X standards for low thrust engines). (16 of the 124 engines, 13 percent of engine models in production, in Figure IV.B–1 and the ICAO Aircraft Engine Exhaust Emissions Data Bank are low—thrust engines—engines with thrust greater than 26.7 kN but not more than 89 kN.)

[100] ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of Forecasting and Economic Analysis Support Group (FESG), Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II, *See* Table 3.1 of paper. A copy of this paper can be found in Docket OAR–2002–0030.

[101] CAEP Steering Group Meeting, ''FESG Economic Assessment of Applying a Production Cut-Off To the CAEP/4 NO_X Standard'', Presented by the FESG Co-Rapporteurs, Paris, September 10–13, 2002 (CAEP–SG20022–WP/20, September 12, 2002). The remaining already certified engine models are the JT8D–217C, JT8D–219, PW4084D, and PW4090. A copy of this paper can be found in Docket OAR–2002–0030.

[102] Only the first and second engine types of the three PW types described earlier would not meet the CAEP/4 NO_X standards if they were applied to newly manufactured or already certified engines. The PW4077D is a derated version of the PW4084D, and it is essentially considered the same engine. In addition, the PW4077D has a NO_X level that is 0.2 percent greater than the CAEP/4 standards. FESG rounded this margin to zero and considered the PW4077D to be meeting the NO_X levels of the CAEP/4 standards. The third engine type—PW4164, PW4168 and PW4168A engines—are now certified with the PW 4168 Technologically Affordable Low NO_X (Talon) II engine combustor technology, which performs significantly better than the CAEP/4 standards.

[103] The PW Canada growth engine is the one remaining newly designed engine model. The ICAO Aircraft Engine Exhaust Emissions Data Bank currently does not have emissions certification data for such an engine, and thus, we anticipate that the PW Canada growth engine would still be affected by the proposed standards. Yet, due to the CAEP/4 standards already established, we expect that PW Canada has already planned modifications for this engine or any other newly certified engines to meet today's proposed standards.



*89 out of 124 (72 percent) of the in-production engines have greater than 10 percent margin to the proposed (or CAEP/4) NO_X standards. 56 (45 percent) of the engines have more than 20 percent margin. 18 (15 percent) of the engines have greater than 30 percent margin.

The recent FESG analysis indicates that the environmental benefit (or NO_X emissions reduction) of applying the CAEP/4 NO_X standards to already certified engines, which would only affect these 4 remaining engines, would be very small. As mentioned earlier, the remaining four already certified (or in-production) engines that perform worse than the CAEP/4 or proposed standards are the following Pratt and Whitney (PW) mid- and high-thrust engines: JT8D–217C, JT8D–219, PW4084D, and PW4090. The in-production JT8D–217C and JT8D–219 engines could potentially apply to future supersonic business jets, and the aircraft application for PW4084D and 4090 engines would be the Boeing 777–200s and –300s. Since business jets have a very low utilization (about 100 to 200 annual departures per aircraft), the emission reductions from potential new JT8D–217C and JT8D–219 applications would be very small irregardless of the size of the supersonic business jet market. If the potential JT8D–217C and JT8D–219 supersonic business jets were to capture the entire projected supersonic business jet market (200 to 400 aircraft over a 10 year period or 20 to 40 aircraft per year), the total estimated annual departures would be about 2,000 to 8,000. For the years 2005 and 2010, there are estimated to be from 23 to 27 million departures from the global passenger aircraft fleet (the potential supersonic business jet market could potentially be about .01 to .03 percent of these global fleet departures), so the resulting NO_X emission benefits would be very small.[104] In regard to Boeing 777 aircraft with PW4084D/4090 engines, the incremental departures for such aircraft are projected to be no greater than 0.1 percent per year (up to 25,500 departures in 2010); therefore, the resulting NO_X emissions reductions would also be considered very small. (The FESG assessment also showed that the costs of applying the CAEP/4 standards to already certified engines would be relatively small on an industry wide basis.)[105] Consequently, we would expect there to be minimal environmental benefit to also apply the proposed and CAEP/4 NO_X standards for newly certified engines to already certified, newly manufactured engines for an effective date after 2003 (the implementation date of today's proposed standards is December 31, 2003).

Also, if an already certified engine design meets the standards that we are proposing today, then it is unlikely that either existing or future engine designs built to that design or type (derivatives or thrust variants with the same build standard) would not meet these standards. When design modifications are made to an existing engine type, then this engine type would likely need to be re-certified. A re-certified engine type would be required to comply with the CAEP/4 and new proposed NO_X standards.

For the remaining 4 engines (or two engine families) being built that do not meet the CAEP/4 standards, Pratt and Whitney has other in-production engine models (potentially derived versions or thrust variants of engines with the same

[104] CAEP Steering Group Meeting, "FESG Economic Assessment of Applying a Production Cut-Off To the CAEP/4 NO_X Standard", Presented by the FESG Co-Rapporteurs, Paris, September 10–13, 2002 (CAEP–SG20022–WP/20, September 12, 2002). In particular, see Table 5.1 entitled, "Excerpt from FESG CAEP/5 Traffic and Fleet Mix Forecast." A copy of this paper can be found in Docket OAR–2002–0030.

[105] The costs of applying CAEP/4 standards to already certified engines would impact just one engine manufacturer.

build standard) or replacement/alternative engines that perform better than the proposed NO_X standards and that are also similar in size and aircraft application.[106] For example, the PW 4098 engine would achieve the NO_X levels of the proposed standards, and similar to the PW4090 it is utilized on the Boeing 777–200 and 777–300. Due to the 1998 CAEP/4 NO_X standards, Pratt and Whitney has recently certified and manufactured these other or replacement engines. Also, based upon the CAEP/4 standards, they have already targeted future (after 2003) engine designs for modification so that newly certified or designed engines would meet today's proposed NO_X standards. Therefore, it appears unlikely that a substantial number of the 4 remaining engines would be built or sold in the future, unless they were produced as spare engines (replacement engines for existing aircraft instead of newly manufactured aircraft).

1. Effect of Market Forces

In 1998, FESG indicated at CAEP/4 that ''* * * market forces and potential local/regional operating restrictions might encourage the manufacturers to modify their existing products, so that they, too, comply with the proposed stringency.''[107] These modifications to in-production engines would be considered ''voluntary environmental enhancement.''[108] Thus, there was significant consideration at CAEP/4 given to the effect that new NO_X standards for newly certified engines would potentially have on in-production or already certified engines. Many parties within CAEP and its working groups consider market forces to have a real and tangible effect on newly manufactured or already certified engines, even though such engines are not required to comply with the new standards. We are unaware of any new local/regional operating restrictions being implemented throughout the world due to the CAEP/4 NO_X standards. However, it seems some market forces from the CAEP/4 newly certified engine standards have affected production engines since there are now only four in-production engine models remaining from 1998 that would not meet the CAEP/4 standards. The Agency solicits comment on the effect market forces and potential local/regional operating restrictions might have on manufacturers to modify in-production or already certified engines.

2. Impact of Existing Fleet Aircraft

An element of the emissions proposals made at CAEP/4 was to increase NO_X stringency as far as possible without affecting the existing fleet aircraft asset values, and this was proposed to be achieved by applying the new stringency to new engine designs only (newly certified engines).[109] Two studies on whether the financial value of existing aircraft assets were affected by the CAEP/2 NO_X standards were reviewed for CAEP/4, and the studies did not reveal any correlation between approval of the CAEP/2 emissions standards and aircraft values. Thus, FESG was unable to definitively assess the effect CAEP/4 NO_X standards would have on fleet aircraft values.[110] (The scope of the two studies and their ground rules were set by FESG.) These studies showed that a large number of factors impact aircraft asset values.

3. Request for Comment on Applying the Proposed NO_X standards to Already Certified Engines

As discussed earlier, FESG and CAEP working groups (specifically, Working Group 3—Emissions Technical Issues Working Group) are currently considering applying the 1998 CAEP/4 NO_X standards to engines built to already certified engine designs. Today, we are requesting comment on whether to apply the proposed NO_X standards, which are equivalent to the CAEP/4 NO_X standards, to already certified engines.[111] Historically, EPA and ICAO have applied aircraft engine emission standards to already certified engines (or newly manufactured engines).[112] Although there is expected to be minimal environmental benefits (as well as relatively small costs) from such a requirement, it would ensure that manufacturers could not indefinitely produce existing engines that do not meet these standards (four such in-production or already certified engines models exist today).[113]

The implementation dates being analyzed by FESG and Working Group 3 for applying CAEP/4 standards to already certified engines are 2, 4, and 6 years after December 31, 2003 (the implementation date for newly certified engines). Based on the results of the complete assessment (which are not yet available), FESG and Working Group 3 are expected to recommend an implementation date for applying the CAEP/4 standards to already certified engines at CAEP/6 in February 2004 (a decision on this date is also expected at CAEP/6).[114] If this requirement and date is accepted at CAEP/6, EPA would plan to propose the new requirement soon thereafter (*see* section IV.B. above for a discussion of the emission benefit of applying the proposed standards to already certified engines). We request comment on applying standards for already certified engines at a date 2, 4, and 6 years after the implementation date for new designs (2006, 2008, and 2010). Commenters suggesting different dates should specify the date(s) they prefer and, to the extent possible,

[106] Although the remaining 4 engines (or two engine families) currently being built are expected to still be in production in year 2004, they would not be required to meet the proposed standards.

[107] ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of FESG, Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II, section 3.3.2 of the paper. A copy of this paper can be found in Docket OAR–2002–0030.

[108] However, FESG indicated that the ''* * * the development of production engine emissions enhancements would only occur if the market place showed enough interest in the enhancements or if the failure to meet the proposed stringency became a competitive disadvantage.'' (ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of FESG, Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II, section 5.6.2 of the paper. A copy of this paper can be found in Docket OAR–2002–0030.

[109] ICAO, CAEP, Fourth Meeting, Montreal, Quebec, April 6–8, 1998, Report, Document 9720, CAEP/4. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

[110] ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of FESG, Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II, section 4 of the paper. A copy of this paper can be found in Docket OAR–2002–0030.

[111] Spare engines for existing aircraft would not be covered by such a requirement.

[112] EPA promulgated a HC standard in 1982 that applied to newly manufactured engines beginning in 1984. Also, the original ICAO NO_X, HC, and CO standards approved in 1981 applied to newly manufactured engines starting in 1986. In 1997, EPA adopted this CO standard, which was to be implemented later that same year for newly manufactured engines. In addition, the March 24, 1993 ICAO amendment to tighten the original NO_X standard by 20 percent (CAEP/2 standards), which EPA adopted in 1997, applied to newly certified engines beginning in 1996 and newly manufactured engines in 2000.

[113] Nearly all engines built to already certified engine designs are likely to be in compliance with the proposed NO_X standards.

[114] The FESG analysis mentioned earlier (CAEP–SG20022–WP/20, September 12, 2002) addresses the impact of applying the CAEP/4 NO_X standards to already certified engines at 2, 4, and 6 years after the implementation date of the CAEP/4 standards for newly certified engines. Yet, further assessment of the NO_X emission reductions was requested by the Steering Group for the next meeting in mid-2003. (ICAO, CAEP, Steering Group Meeting, Paris, France, September 10–13, 2002, ''Summary of Discussions and Decisions of the First Meeting of the Steering Group,'' September 10, 2002, CAEP–SG20022–SD/1. *See* page 3. A copy of this paper can be found in Docket OAR–2002–0030.

provide technical and other justification for such suggested dates.

In addition, at this time the mobile sources (including aircraft engines) regulated under the authority of the Clean Air Act (Title II—Emission Standards for Moving Sources) have emission standards for newly manufactured engines or vehicles. However, except for aircraft engines, all current CAA mobile source programs involving new emission standards apply to newly manufactured engines or vehicles based on the certification model year (new standards apply to newly and already certified engines or vehicles in the same year). In these programs, EPA has incorporated emission averaging programs to make a more orderly product phase-in and phase-out (the average emissions within a manufacturer's product line is required to meet the applicable standard, which allows a manufacturer to produce some engine families with emission levels above the standard).[115] However, averaging is not part of the ICAO protocol, and it is not clear that it is of any value here since most in-production engines already meet the proposed standards. Nonetheless, we solicit comment on whether an emission averaging program for such engines would be useful.

C. Amendments to Criteria on Calibration and Test Gases for Gaseous Emissions Test and Measurement Procedures

In today's proposed rule, EPA proposes to incorporate by reference ICAO's 1997 amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993; Amendment 3, March 20, 1997, Appendices 3 and 5) in 40 CFR 87.64. ICAO's amendments, which became effective on March 20, 1997, apply to subsonic (newly certified and newly manufactured or already certified engines) and supersonic gas turbine engines. The proposed technical changes would correct a few inconsistencies between the specifications for carbon dioxide (CO_2) analyzers (Attachment B of Appendices 3 and 5) and the calibration and test gases (Attachment D of Appendices 3 and 5) of gaseous emissions. The test procedure amendments incorporated by reference would be effective 60 days after the publication of the final rule.

For CAEP/3 in 1995, the Russian Federation presented a working paper entitled, ''Corrections to Annex 16, Volume II,'' that stated the following:[116]

According to CAEP/2 recommendations, in the list of calibration and test gases (*see* the table in Attachment of Appendices 3 and 5) ''CO_2 in N_2'' was replaced with ''CO_2 in air'' gas. At the same time the following sub-paragraph was newly introduced into Attachment B (Appendices 3 and 5) :

(g) The effect of oxygen (O_2) on the CO_2 analyzer response shall be checked. For a change from 0 percent O_2 to 21 percent O_2 the response of a given CO_2 concentration shall not change by more than 2 percent of reading. If this limit cannot be met and appropriate correction factor shall be applied.

Since the best way to carry out this checking procedure is to calibrate the analyzer first with CO_2 in nitrogen and then with CO_2 in air, both ''CO_2 in N_2'' and ''CO_2 in air'' gases have to be retained in the list. It seems then that ''CO in air,'' ''CO_2 in air,'' ''NO in N_2'' and now ''CO_2 in N_2'' have to be replaced with ''CO in zero air,'' ''CO_2 in zero air,'' ''CO_2 in zero nitrogen'' and ''NO in zero nitrogen'' just by analogy with the gaseous mixtures of different hydrocarbons diluted by zero air and listed in the same table.

In addition, at CAEP/3 the United Kingdom then presented a working paper on this same issue.[117] They indicated that CAEP's Working Group 3 (Emissions Working Group) had accepted the above proposals of the Russian Federation paper on correcting inconsistencies in the list of calibration and test gases specified in Annex 16, Volume II, Attachment D to Appendices 3 and 5, and Working Group 3 had recommended that these proposals be presented at CAEP/3. The United Kingdom also recommended the adoption of these Russian Federation proposals—to utilize CO_2 in nitrogen gas mixture to check the effect of oxygen on CO_2 analyzers. In addition, they recommended the specification of all calibration and test gases required for all the gaseous emissions tests required in Annex 16.

At CAEP/3, the CAEP members agreed that the above amendments to the calibration and test gases were justified, and thus, these amendments were then adopted.[118] In today's notice, EPA proposes to incorporate by reference the amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions, because the changes improve the test procedures by correcting inconsistencies and distinguishing between calibration and test gases. The amendments would include the following: (1) Listing all calibration gases separately from test gases for HC, CO_2, CO and NO_X analyzers, (2) changing ''N_2'' to ''zero nitrogen'' in relation to the test gases for the HC and NO_X analyzers, (3) adding ''CO_2 in zero nitrogen'' as a test gas for CO2 analyzer, (4) changing ''air'' to ''zero air'' in relation to the test gas for CO and CO_2 analyzers, (5) revising the accuracy to ''± 1 percent'' for the ''propane in zero air'' test gas of HC analyzer, (6) amending the accuracy to ''± 1 percent'' for the ''CO_2 in zero air'' test gas of CO_2 analyzer, (7) adding the accuracy ''± 1 percent'' for the ''CO_2 in zero nitrogen'' test gas of CO_2 analyzer, (8) changing accuracy to ''± 1 percent'' for test gas of CO analyzer, and (9) revising accuracy to ''± 1 percent'' for test gas of NO_X analyzer.

Manufacturers are already voluntarily complying with ICAO's 1997 amendments to the criteria on calibration and test gases for the test procedures of gaseous emissions. Thus, formal adoption of these ICAO test procedure amendments would require no new action by manufacturers. In addition, the existence of ICAO's requirements would ensure that the costs of compliance (as well as the air quality impact) with these test procedures would be minimal. (In the 1982 and 1997 final rules on aircraft engine emissions (47 FR 58462, December 30, 1982 and 62 FR 25356, May 8, 1997, respectively), EPA incorporated by reference the then-existing ICAO testing and measurement procedures for aircraft engine emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' First and Second Editions, Appendices 3 and 5 were incorporated by reference in 40 CFR 87.64) in order to eliminate confusion over minor differences in

[115] Typically, the calculations used for averaging are based upon an engine families yearly production or sales (among other characteristics—*e.g.*, average power rating of engines families).

[116] Russian Federation, ''Corrections to Annex 16, Volume II,'' Agenda Item 2: Review of reports of working groups relating to engine emissions and the development of recommendations to the Council thereon, Working Paper 19, Presented by A.A. Gorbatko, November 11, 1995 (distributed November 30, 1995), CAEP/3, Montreal, December 5 to 15, 1995. A copy of this paper can be found in Docket OAR–2002–0030.

[117] United Kingdom, ''Amendments to Annex 16, Volume II, Attachment D to Appendices 3 and 5 (Calibration and Test Gases),'' Agenda Item 2: Review of reports of working groups relating to engine emissions and the development of recommendations to the Council thereon, Working Paper 20, Presented by M.E. Wright, November 14, 1995 (distributed November 30, 1995), CAEP/3, Montreal, December 5 to 15, 1995. A copy of this paper can be found in Docket OAR–2002–0030.

[118] ICAO/CAEP, Report of Third Meeting, Montreal, Quebec, December 5–15, 1995, Document 9675, CAEP/3.

procedures for demonstrating compliance with the U.S. and ICAO standards.)

D. Correction of Exemptions for Very Low Production Models

Because of an editorial error, the section in the aircraft engine emission regulations regarding exemptions for very low production models is incorrectly specified (*see* section 40 CFR 87.7(b)(1) and (2)). In the October 18, 1984 final rulemaking (49 FR 41000), EPA intended to amend the low production engine provisions of the aircraft regulations by revising paragraph (b) and deleting paragraphs (b)(1) and (b)(2) in order to eliminate the maximum annual production limit of 20 engines per year. In the revisions to paragraph (b), EPA retained the maximum total production limit of 200 units for aircraft models certified after January 1, 1984.[119] For § 87.7(b), EPA today proposes to correct this editorial error by eliminating paragraph (b)(1) and (b)(2).

As discussed further in the 1984 final rulemaking, this proposed action would provide more flexibility for engine manufacturers in scheduling during the last few engine production years. Also, the air quality impact of eliminating the annual production limit would be very small.

V. Coordination with FAA

The requirements contained in the notice are being proposed after consultation with the Secretary of Transportation in order to assure appropriate consideration of aircraft safety. Under section 232 of the CAA, the Secretary of Transportation (DOT) has the responsibility to enforce the aircraft emission standards established by EPA under section 231.[120] In addition, section 231(b) of the CAA states that ''[a]ny regulation prescribed under this section * * * shall take effect (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance * * *.'' As in past rulemakings and pursuant to the above referenced sections of the CAA, EPA has coordinated with the Federal Aviation Administration (FAA) of the DOT with respect to today's proposal.

Moreover, FAA is the official U.S. delegate to ICAO. FAA agreed to the 1997 and 1999 amendments at ICAO's Third and Fourth Meetings of the Committee on Aviation Environmental Protection (CAEP 3 and 4) after advisement from EPA.[121] FAA and EPA are both members of the CAEP's Working Group 3 (among others), whose objective was to evaluate emissions technical issues and develop recommendations on such issues for CAEP 3 and 4. After assessing emissions test procedure amendments and new NO_X standards, Working Group 3 made recommendations to CAEP on these elements. These recommendations were then considered at the CAEP 3 and 4 meetings, respectively, prior to their adoption by ICAO in 1997 and 1999.

In addition, as discussed above, FAA would have the responsibility to enforce today's proposed requirements. As a part of its compliance responsibilities, FAA conducts the emission tests or delegates that responsibility to the engine manufacturer, which is then monitored by the FAA. Since the FAA does not have the resources or the funding to test engines themselves, FAA selects engineers at each plant to serve as representatives (called designated engineering representatives (DERs)) for the FAA while the manufacturer performs the test procedures. DERs' responsibilities include evaluating the test plan, the test engine, the test equipment, and the final testing report sent to FAA. DERs' responsibilities are determined by the FAA and today's proposal would not affect their duties.

VI. Possible Future Aviation Emission Reductions (EPA/FAA Voluntary Aviation Emissions Reduction Initiative)

There is growing interest, particularly at the state and local level, in addressing emissions from aircraft and other aviation-related sources. Such interest is often related to plans for airport expansion which is occurring across the country. It is possible that other approaches may provide effective avenues to achieve additional aviation emission reductions, beyond EPA establishing aircraft engine emission standards. The Agency invites comment on the potential approach for additional reductions discussed below and any other approaches.

Concerns by state and local air agencies and environmental and public health organizations about aviation emissions, led to EPA and FAA signing a memorandum of understanding (MOU) in March 1998 agreeing to work to identify efforts that could reduce aviation emissions.[122] Since that time FAA and EPA have jointly chaired a national stakeholder initiative whose goal is to develop a voluntary program to reduce pollutants from aircraft and other aviation sources that contribute to local and regional air pollution in the United States. The major stakeholders participating in this initiative include representatives of the aviation industry (passenger and cargo airlines and engine manufacturers), airports, state and local air pollution control officials, environmental organizations, and NASA.

Initially, the discussions with stakeholders focused on the prospect of aircraft engine emission reduction retrofit kits, which might be applied to certain existing aircraft engines.[123] However, as the initiative evolved, the focus was expanded by the stakeholders to identify strategies for various types of ground service equipment (GSE) in use at airports (*e.g.*, baggage tugs and fuel trucks),[124] in addition to strategies to reduce aircraft emissions.[125] Due to the differences in time and technology that it takes to reduce aircraft emissions versus that for GSE, the stakeholders are seeking to reach a consensus on a distinctly two-step program to voluntarily achieve wide-scale emissions reductions from GSE and aircraft. Near term efforts will focus on emissions reductions from GSE, and long term efforts will focus on reductions from aircraft.[126]

The stakeholders are currently discussing a framework for reaching

[119] This action was taken in 1984 to provide greater flexibility to manufacturers for scheduling engine production rates during the final years.

[120] Specifically, the FAA of the DOT has the responsibility to enforce the aircraft emission standards established by EPA.

[121] The Third Meeting of CAEP (CAEP/3) occurred in Montreal, Quebec from December 5 through 15 in 1995. CAEP/4 took place in Montreal from April 6 through 8, 1998.

[122] FAA and EPA, ''Agreement Between Federal Aviation Administration and Environmental Protection Agency Regarding Environmental Matters Relating to Aviation,'' signed on March 24, 1998 by FAA's Acting Assistant Administrator for Policy, Planning, and International Aviation, Louise Maillet, and EPA's Acting Assistant Administrator for Air and Radiation, Richard Wilson. A copy of this document can be found in Docket OAR–2002–0030.

[123] Two engine models were indeed certificated with emissions retrofit kits, and a number of these engines have been purchased for aircraft with the retrofit kits installed in their stock configuration. However, retrofit kits have not to date provided widescale emissions improvements because it seems they may have limited applicability to certain engine types, small emission benefits, and cost issues.

[124] The stakeholders are now considering the impact, operation and design of GSE at airports, with projects being undertaken at several airports to reduce overall emissions.

[125] Operational strategies, such as reducing the time in which aircraft are in idle and taxi modes and the impact of auxiliary power units (APUs) have also been considered.

[126] The stakeholder program for aircraft emissions reductions is viewed as a supplement to the traditional regulatory approach of establishing engine emission standards.

consensus on the goals or targets for emissions reductions, timing, accountability, State Implementation Plan implications (including general conformity), and numerous other issues that have been raised for GSE and aircraft emission reductions. If this initiative is successful, an agreement would be reached among all the stakeholders on a national voluntary aviation emissions reduction program. The mechanism that could be used to codify or enforce an eventual agreement has yet to be determined. The overall goal of the EPA/FAA voluntary initiative is to develop a program that will achieve significant national emission reductions.

VII. Regulatory Impacts

Aircraft engines are international commodities, and thus, they are designed to meet international standards. Today's proposal would have the benefit of establishing consistency between U.S. and international emission standards and test procedures. Thus, an emission certification test which meets U.S. requirements would also be applicable to all ICAO requirements. Engine manufacturers are already developing improved technology in response to the ICAO standards that match the standards proposed here, and EPA does not believe that the costs incurred by the aircraft industry as a result of the existing ICAO standards should be attributed to today's proposed regulations (as discussed above, these standards only apply to newly certified or designed engines, but not already certified, newly manufactured or in-production engines). Also, the test procedure amendments (revisions to criteria on calibration and test gases) necessary to determine compliance are already being adhered to by manufacturers during current engine certification tests. Therefore, EPA believes that the proposed regulations would impose no additional burden on manufacturers.

The existence of ICAO's requirements results in minimal cost as well as air quality benefits from today's proposed requirements.[127] Since aircraft and aircraft engines are international commodities, there is significant commercial benefit to consistency between U.S. and international emission standards and control program requirements. Also, EPA's proposed adoption of the ICAO standards and related test procedures would be consistent with our treaty obligations and strengthen the U.S. position in future ICAO/CAEP processes related to emission standards.

VIII. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under **DATES** above. If you have an interest in the proposed emission control program described in this document, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. You should send all comments, except those containing proprietary information, to our Air Docket (*see* section I.C under **SUPPLEMENTARY INFORMATION** before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it ''Confidential Business Information.'' You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of to the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a nonconfidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you don't identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will There Be a Public Hearing?

We will hold a public hearing on November 13, 2003 at the Environmental Protection Agency, EPA East Building, Room Number 1153, 1201 Constitution Avenue, NW., Washington, DC 20004, Telephone: (202) 564–1682. The hearing will start at 10 a.m. local time and continue until everyone has had a chance to speak.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

IX. Statutory Authority

The statutory authority for today's proposal is provided by sections 231 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7571 and 7601. *See* section III of today's NPRM for discussion of how EPA meets the CAA's statutory requirements.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

[127] CAEP's Forecasting and Economic Analysis Support Group (FESG) concluded at CAEP/4 that their assessment of these new NO_X standards indicates that the direct costs of the standards would be minimal, and the benefits would be modest. (ICAO, CAEP/4, Working Paper 4, ''Economic Assessment of the EPG NO_X Stringency Proposal,'' March 12, 1998, Presented by the Chairman of FESG, Agenda Item 1: Review of proposals relating to NO_X emissions, including the amendment of Annex 16, Volume II. A copy of this paper can be found in Docket OAR–2002–0030.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's action would codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). The proposed standards are equivalent to the ICAO international consensus standards. These proposed standards would not impose any additional burden on manufacturers because they are already designing new engines to meet the ICAO standards. Thus, the annual effect on the economy of today's proposed standards would be minimal, and none of the other thresholds identified in the executive order would be triggered by this action.

B. Paperwork Reduction Act

This action does not impose any information collection burden under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any reporting and recordkeeping requirements associated with these standards would be defined by the Secretary of Transportation in enforcement regulations issued later under the provisions of section 232 of the Clean Air Act. Since most if not all manufacturers already measure NO_X and report the results to the FAA, any additional reporting and record keeping requirements associated with FAA enforcement of these proposed regulations would likely be very small.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table 1 provides an overview of the primary SBA small business categories potentially affected by this proposed regulation.

TABLE X.C–1—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS [a] codes	Defined by SBA as a small business if: [b]
Manufacturers of new aircraft engines	336412	<1,000 employees
Manufacturers of new aircraft	336411	<1,500 employees
Scheduled air carriers, passenger and freight	481	<1,500 employees

[a] North American Industry Classification System (NAICS)

[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Because of the limited classes of aircraft engines to which today's proposed regulations apply, no small entities would be affected. Our review of the list of manufacturers of commercial aircraft gas turbine engines with rated thrust greater than 26.7 kN indicates that there are no U.S. manufacturers of these engines that qualify as small businesses. We are unaware of any foreign manufacturers with a U.S.-based facility that would qualify as a small business. In addition, the proposed rule will not impose significant economic impacts on engine manufacturers. As discussed earlier, today's action would codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). The proposed standards are equivalent to the ICAO international consensus standards. These proposed standards would not impose any additional burden on manufacturers because they are already designing new engines to meet the ICAO standards. Also, the test procedure amendments (revisions to criteria on calibration and test gases) necessary to determine compliance are already being adhered to by manufacturers during current engine certification tests. Therefore, EPA believes that the proposed regulations would impose no additional burden on manufacturers. The existence of ICAO's requirements results in minimal cost from today's proposed requirements. We invite comments on all aspects of the proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local, or tribal governments, in the aggregate or the private sector in any one year. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Today's action would codify emission standards that manufacturers currently adhere to (nearly all in-production engines already meet the standards). The proposed standards are equivalent to the ICAO international consensus standards. These proposed standards would not impose any additional burden on manufacturers because they are already designing new engines to meet the ICAO standards. Thus, the annual effect on the economy of today's proposed standards will be minimal. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As discussed earlier, section 233 of the CAA preempts states from adopting or enforcing aircraft engine emission standards. This proposed rule merely modifies existing EPA aircraft engine emission standards and test procedures and therefore will merely continue an existing preemption of State and local law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. The proposed emission standards and other related requirements for private industry in this rule have national applicability and therefore do not uniquely affect the communities of Indian Tribal Governments. As discussed earlier, section 233 of the CAA preempts states from adopting or enforcing aircraft engine emission standards. This proposed rule merely modifies existing EPA aircraft engine emission standards and test procedures and therefore will merely continue an existing preemption of State and local law. In addition, this rule will be implemented at the Federal level and impose compliance obligations only on engine manufacturers. 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 & Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to Executive Order 13045 because it is not economically significant under the terms of Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions (NO_X and secondary PM) from this rulemaking will further reduce ozone and PM and the related adverse impacts on children's health.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to ozone and PM.

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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

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

This proposed rulemaking involves technical standards for testing emissions for commercial aircraft gas turbine engines. EPA proposes to use test procedures contained in ICAO International Standards and Recommended Practices Environmental Protection, with the proposed modifications contained in this rulemaking.[128] These procedures are currently used by all manufacturers of commercial aircraft gas turbine engines (with thrust greater than 26.7 kN) to demonstrate compliance with ICAO emissions standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 87

Environmental protection, Air pollution control, Aircraft, Incorporation by reference.

Dated: September 12, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

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

Authority: Secs. 231, 301(a), Clean Air Act, as amended (42 U.S.C 7571, 7601(a)).

[128] ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993—Amendment 3, March 20, 1997. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

Subpart A—[Amended]

2. Section 87.7 is amended by removing paragraphs (b)(1) and (b)(2).

Subpart C—[Amended]

3. Section 87.21 is amended by adding paragraph (d)(1)(vi) to read as follows:

§ 87.21 Standards for exhaust emissions.

* * * * *

(d) * * *

(1) * * *

(vi) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 2003:

(A) Engines with a rated pressure ratio of 30 or less:

(*1*) Engines with a maximum rated output greater than 89 kilonewtons: Oxides of Nitrogen: (19 + 1.6(rPR)) grams/kilonewtons rO.

(*2*) Engines with a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons: Oxides of Nitrogen: (37.572 + 1.6(rPR)– 0.2087(rO)) grams/kilonewtons rO.

(B) Engines with a rated pressure ratio greater than 30 but less than 62.5:

(*1*) Engines with a maximum rated output greater than 89 kilonewtons: Oxides of Nitrogen: (7 + 2(rPR)) grams/ kilonewtons rO.

(*2*) Engines with a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons: Oxides of Nitrogen: (42.71 + 1.4286(rPR) − 0.4013(rO) + 0.00642(rPR − rO)) grams/kilonewtons rO.

(C) Engines with a rated pressure ratio of 62.5 or more:

Oxides of Nitrogen: (32 + 1.6(rPR)) grams/kilonewtons rO.

* * * * *

Subpart G—[Amended]

4. Section 87.64 is revised to read as follows:

§ 87.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be as specified by Appendices 3 and 5 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993 (including Amendment 3 of March 20, 1997), which are incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **FEDERAL REGISTER**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, or at the Office of the **Federal Register,** 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7.

5. Section 87.71 is revised to read as follows:

§ 87.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/ thrust/cycle or grams/kilowatt/cycle as calculated in § 87.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993 (including Amendment 3 of March 20, 1997), which is incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **FEDERAL REGISTER**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, or at the Office of Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7. Other methods of demonstrating compliance may be approved by the Secretary with the concurrence of the Administrator.

6. Section 87.82 is revised to read as follows:

§ 87.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to International Civil Aviation Organization (ICAO) Annex 16, Volume II, Environmental Protection, Aircraft Engine Emissions, Second Edition, July 1993 (including Amendment 3 of March 20, 1997), which are incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7.

7. Section 87.89 is revised to read as follows:

§ 87.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993 (including Amendment 3 of March 20, 1997), which is incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7.

[FR Doc. 03–24412 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI68

Endangered and Threatened Wildlife and Plants; Listing of the Central California Distinct Population Segment of the California Tiger Salamander; Reclassification of the Sonoma County and Santa Barbara County Distinct Populations from Endangered to Threatened; Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed rule that would: List the Central California distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) as a threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*); reclassify the Sonoma County and Santa Barbara County DPSs of the California tiger salamander from endangered to threatened; and exempt, under section 4(d) of the Act, existing routine ranching activities on private or Tribal lands from section 9 prohibitions for the Central California DPS of the California tiger salamander and, if reclassified to threatened, for the Santa Barbara and Sonoma County DPSs. Comments previously submitted need not be resubmitted, as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in the final rule.

DATES: Comments and information from all interested parties will be accepted until 5 p.m. on October 31, 2003.

ADDRESSES: (1) You may submit written comments to the Field Supervisor (Attn: CTS), U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

(2) You may send comments by electronic mail (e-mail) to: *catiger@R1.fws.gov. See* the ''Public Comments Solicited'' section below for file format and other information on electronic filing.

(3) You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address above.

Comments and materials received, as well as supporting documentation used in the preparation of the proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner or Arnold Roessler of the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone 916/414–6600, facsimile 916/414–6713, or visit our Web site at *http://sacramento.fws.gov/*). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2003, we published a proposed rule to list the Central California DPS of the California tiger salamander as a threatened species (68 FR 28647). The rule also proposed to reclassify the Sonoma County and Santa Barbara County DPSs from endangered to threatened. In addition, the proposed rule included a special rule to exempt, under section 4(d) of the Act, existing routine ranching activities from ?take? prohibitions under section 9 of the Act for the Central California DPS of the California tiger salamander and, if reclassified to threatened, for the Santa Barbara and Sonoma County DPSs. On July 3, 2003, we published a document to extend the comment period for the proposed rule to September 22, 2003 (68 FR 39892). For further information regarding background biological information, previous Federal actions, factors affecting the species, and conservation measures available to these three DPSs of the California tiger salamander, please refer to the proposed rule (68 FR 28647; May 23, 2003).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible.

Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. The Public Comments Solicited section of the proposed rule (68 FR 28647; May 23, 2003) includes a list of topics for which we are particularly seeking comments.

Previously submitted comments need not be resubmitted. If you submit comments by electronic mail (e-mail), please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI68'' and your name and address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary authors of this notice are Adam Zerrenner, Senior Fish and Wildlife Biologist and Arnold Roessler, Chief, Listing Branch (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–24857 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030908224–3224–01; I.D. 080403B]

RIN 0648–AM23

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 10

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 10), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would require, with limited exceptions, the use of NMFS-certified bycatch reduction devices (BRDs) in shrimp trawls in the Gulf of Mexico exclusive economic zone (Gulf EEZ) east of 85°30′ W. long. (approximately Cape San Blas, FL). In addition, this proposed rule would identify the certified BRDs currently authorized for use in the Gulf EEZ east of 85°30′ W. long. and would modify the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* to reflect the specific bycatch reduction criterion applicable for certification of BRDs used in this area of the Gulf EEZ. The intended effect of this proposed rule is to reduce bycatch in the Gulf of Mexico shrimp fishery to the extent practicable.

DATES: Comments must be received no later than 4:30 p.m., eastern time, on November 14, 2003.

ADDRESSES: Written comments on the proposed rule should be sent to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to (727) 570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 10, which includes an environmental assessment, regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and a social impact assessment should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *gulfcouncil@gulfcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: (727) 570–5305, fax: (727) 570–5583, e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the Gulf EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Council, approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Magnuson-Stevens Act requires that fishery management plans establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include measures that minimize bycatch and minimize the mortality of bycatch which cannot be avoided. Previously, the Council prepared, and NMFS approved and implemented (63 FR 18139, April 14, 1998), Amendment 9 to the FMP to address bycatch in the Gulf shrimp fishery in the western Gulf. Amendment 9 focused primarily on reducing the shrimp trawl bycatch of juvenile red snapper and required use of NMFS-certified BRDs, with limited exceptions, shoreward of the 100-fathom (fm)(183-m) depth contour west of 85°30′ W. long. Bycatch of juvenile red snapper occurs principally in the western Gulf. Amendment 10 and this proposed rule would extend the requirement for use of appropriately certified BRDs to the eastern Gulf to further reduce shrimp trawl bycatch in compliance with the Magnuson-Stevens Act requirements.

BRD Requirement

Amendment 10 specifies that the bycatch reduction criterion for certification of a BRD to be used in the Gulf EEZ east of 85°30′ W. long. is a minimum of 30-percent reduction, by weight, of finfish bycatch. This proposed rule would require a shrimp trawler in the Gulf EEZ east of 85°30′ W. long., the approximate longitude of Cape San Blas, FL, to have an appropriate NMFS-certified BRD installed in each net rigged for fishing. A shrimp trawler is defined as any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Currently available BRDs that would meet the applicable bycatch reduction criterion for the eastern Gulf and would be certified for use in that area include: Fisheye, Gulf Fisheye, Jones-Davis, Extended funnel, and Expanded mesh. Descriptions of these BRDs and minimum construction and installation requirements are provided in 50 CFR part 622 appendix D. As additional BRDs are tested and certified by NMFS, they would be added to the list of certified BRDs by publication of a notice in the **Federal Register**.

This proposed rule would exempt the following gear from the BRD requirement: (1) A single try net with a headrope length of 16 ft (4.9 m) or less; (2) up to two rigid-frame roller trawls of 16 ft (4.9 m) or less; (3) vessels trawling for royal red shrimp (*i.e.*, provided that at least 90 percent of all shrimp on board or offloaded are royal red shrimp); and (4) vessels trawling for groundfish

or butterfish. The Council has concluded that finfish bycatch associated with such gear or activities is likely to be minimal and that the costs associated with the BRD requirement would not be justified in such cases.

Standardized Bycatch Reporting

To address the Magnuson-Stevens Act requirement for a standardized bycatch reporting methodology, Amendment 10 proposes to use the annual Summer Shrimp/Groundfish and Fall Shrimp/Groundfish Trawl Surveys to determine annual finfish and invertebrate bycatch in the Gulf shrimp fishery. Trawls used in these research surveys are not equipped with BRDs. Because shrimp trawlers are currently required to use BRDs in the western Gulf, and this rule proposes to require them in the eastern Gulf as well, estimates of bycatch from the research surveys would be reduced by at least 35 percent (the estimated bycatch reduction achieved by the most commonly used Fisheye BRD). The surveys' sampled bycatch data would then be converted into 24-hour (or per-day) estimates. These results would then be multiplied by the same year's estimated shrimp effort data, in days fished, to obtain annual estimates of total finfish and invertebrate bycatch.

Minor Revisions to the *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual*

The current protocol manual was written to address testing and certification of BRDs based on a bycatch reduction criterion related to reduction of bycatch of juvenile red snapper in the western Gulf. Amendment 10 addresses bycatch in the eastern Gulf and establishes a different bycatch reduction criterion for evaluating BRDs to be used in that area, *i.e.*, a minimum of a 30-percent reduction, by weight, of finfish bycatch. This proposed rule would revise the appended protocol manual to distinguish, where necessary, the different criteria that would apply to BRD testing and certification in the specified eastern and western Gulf areas.

Additional Information

Additional background and rationale for the measures discussed here are contained in Amendment 10, the availability of which was announced in the **Federal Register** (68 FR 48592; August 14, 2003). The public comment period on Amendment 10 expires on October 14, 2003. All comments received on Amendment 10 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that Amendment 10 that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 10 and this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. Subsequently, NMFS prepared a supplement to the IRFA to clarify and correct information contained within the analyses of the social and economic impacts of the options in the proposed amendment, and to update the data used in these analyses. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analyses follows.

As amended, the Magnuson-Stevens Act provides the statutory basis for the proposed rule. The objective of this amendment is to further reduce bycatch in the Gulf shrimp fishery to the extent practicable. The proposed rule will require the use of BRDs in all NMFS statistical zones of the eastern Gulf of Mexico EEZ.

No duplicative, overlapping, or conflicting Federal rules have been identified.

In 2001, approximately 946 shrimp trawl fishing craft were known to operate in statistical areas 1 through 8 off the west coast of Florida. Within this group of affected entities, 460 operate in statistical areas 1 through 3, 283 operate in statistical areas 4 and 5, and 592 operate in statistical areas 6 through 8. Of the 946 shrimp trawlers affected by this proposed action, 736 craft are Coast Guard registered vessels and 210 are state registered boats; 474 are considered large vessels, while 472 are considered small vessels/boats; 868 (91.8 percent) shrimp trawlers landed shrimp in Florida, 102 landed shrimp in Alabama, 4 landed shrimp in Mississippi, and 31 landed shrimp in Texas; 49 landed in both Florida and Alabama, 7 landed in both Florida and Texas, and 1 each landed in Mississippi/Florida and Alabama/Texas.

Overall, average revenue per shrimp trawler from areas 1 through 8 is $26,440. Average total costs per shrimp trawler are $38,991, resulting in an average annual loss of $12,551. The average number of crew is 2.3 for small shrimp trawlers and 3.5 for large shrimp trawlers, resulting in an overall average of 2.9 crew per trawler. Each small trawler is assumed to use two nets, each large trawler is assumed to use 4 nets, and, in each case, each trawler is assumed to have at least one spare set of nets on board. A commercial fishing business is considered a small business entity if its annual gross revenues are less than or equal to $3.5 million. Based on the average revenue information provided above, all harvesting operations within this fishery can be considered to be small business entities.

Additionally, 61 shrimp dealers would be affected by the proposed actions. Average Gulf shrimp purchases per dealer is $2,029,221, with an average of $692,622 coming from harvests in areas 1 through 8. The average number of employees per dealer is 37.

A substantial number of small entities will be affected by the proposed action, regardless of whether the entire universe of Florida west coast shrimp trawlers or only certain groups within that universe (*e.g.*, shrimp trawlers that operate in lower Florida or large shrimp trawlers that land in Florida) is considered. That is, the total number of affected shrimp trawlers are those who participate in the west Florida shrimp fishery, which is 946. Of those 946 shrimp trawlers, 868 land in Florida and 399 are specifically large shrimp trawlers that land in Florida. Any of these estimates would be considered a substantial number of small entities though the primary economic impacts of the proposed action are on the latter group. The total number of shrimp trawlers operating in the entire Gulf of Mexico is not the appropriate universe for determining whether the substantial number criterion has been met, or whether the impacts to small entities are significant, since only those entities operating in areas 1 through 8 off the Florida west coast will be impacted by the proposed action.

Employment data within the dealer sector are sparse. However, for 12 of the affected shrimp dealers, the number of employees ranged from 1 to 168, with an average of 37 employees, based on the most recently available data. Further, only the single largest shrimp processor in the Gulf employed more than 500 workers on average per year. Since shrimp dealers are typically smaller operations than shrimp processors in terms of volume and employment, it can be assumed that all dealers affected by the proposed action

employ less than 500 workers per year on average. A dealer is considered a small business entity if it employs less than or equal to 500 employees. All of the 61 affected shrimp dealers can, therefore, be considered to be small business entities.

Since all shrimp harvest and dealer operations affected by the proposed action are considered to be small business entities, the issue of disproportionate effects between large and small entities does not arise.

NMFS' analysis indicates that the average revenue per shrimp trawler is $26,440, and the average annual profit is negative, equaling a loss of $12,511. Under the proposed action, the average reduction in revenue and profits per shrimp trawler would be $1,444 and $1,112, which represent reductions of 5.5 percent and 8.9 percent respectively. Although these figures can be broken down according to various criteria, such as vessel size category, state of landing, and area of fishing, they are generally representative of the analysis' results and need not be presented in this summary. The detailed break-outs are provided in the IRFA.

In order for a firm to continue operating in the short-run, revenues must at least cover variable costs. Due to the relatively large losses throughout the west Florida shrimp fishery, many shrimp trawlers cannot apparently currently cover their variable costs and additional regulatory burdens at the levels noted above will accelerate the rate at which these vessels' operations are forced to shut down. It is not possible at this time, however, to accurately determine how many more of these operations will in fact shut down as a result of the proposed actions.

In terms of the value of shrimp purchases, the loss per dealer is estimated to be $22,393, which represents an average of 1.1 percent for all dealers, but 2 percent for dealers in Florida. Since profitability is unknown in this sector, the significance of such losses cannot be determined with certainty. However, given that the number of dealers purchasing shrimp from the west Florida fishery declined from 84 in 1998 to 61 in 2001, and the poor economic health of the harvesting sector, it is logical to assume that losses are being incurred in the dealer sector. Dealers in Key West, Ft. Myers Beach, Tampa, St. Petersburg, and Tarpon Springs would likely be most susceptible to potential impacts of the proposed action.

Significant alternatives to the proposed action include area closures, seasonal closures, and modifications to BRD requirements. With respect to area and seasonal closures, the proposed action is to retain the status quo and thus would impose no adverse economic impacts on small entities. With regards to BRD requirements, two alternatives would require BRDs over the identical geographic range, statistical areas 1 through 8, as the proposed action and, thus would not reduce the expected negative economic impacts. Two alternatives would limit the BRD requirement to statistical areas 4 through 8, which would significantly reduce the negative economic impacts attributable to the proposed action. Two other alternatives, the status quo, which would not require BRDs, and an alternative that would limit the requirement to statistical areas 6 through 8 would further reduce the negative economic impacts of the proposed action. However, none of these alternatives would satisfy the requirement and Councils' intent to minimize bycatch ''to the extent practicable.'' Of the various alternatives that require BRDs, the proposed action would accomplish the greatest total bycatch reduction since BRDs would be required over a greater geographic range. Requiring BRDs over the entire area (statistical areas 1–8) would result in the bycatch reduction of approximately 4.006 million pounds, whereas requiring BRDs in only statistical areas 4–8 would result in the bycatch reduction of approximately 1.91 million pounds.

In conclusion, the proposed action is expected to create a significant and adverse economic impact on a substantial number of small entities. These impacts are likely even greater for shrimp trawlers that operate primarily or exclusively in lower Florida, particularly large shrimp trawlers. For these operations, the percentage increase in annual losses due to the proposed action likely ranges from 9.2 percent to as much as 23.4 percent. Although the impact on shrimp dealers is not as large in percentage terms (1.1 percent to 2 percent), the impact on this group of small entities is also likely significant, given the high probability that losses are also being incurred in this sector.

Copies of the IRFA and RIR are available upon request (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.41, paragraphs (h)(1) and (2) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) * * *

(1) *BRD requirement.* (i)

West of 85°30′ W. long. On a shrimp trawler in the Gulf EEZ west of 85°30′ W. long. and shoreward of the 100–fathom (183–m) depth contour, each net that is rigged for fishing must have a certified BRD listed in paragraph (h)(2)(i) of this section installed, unless exempted as specified in paragraphs (h)(1)(iii) through (v) or paragraph (h)(3)(iii) of this section.

(ii) *East of 85°30′ W. long.* On a shrimp trawler in the Gulf EEZ east of 85°30′ W. long., each net that is rigged for fishing must have a certified BRD listed in paragraph (h)(2)(ii) of this section installed, unless exempted as specified in paragraphs (h)(1)(iii) through (v) or paragraph (h)(3)(iii) of this section.

(iii) A shrimp trawler is exempt from the requirement to have a certified BRD installed in each net provided that at least 90 percent (by weight) of all shrimp on board or offloaded from such trawler are royal red shrimp.

(iv) A shrimp trawler is exempt from the requirement to have a BRD installed in a single try net with a headrope length of 16 ft (4.9 m) or less provided the single try net is either pulled immediately in front of another net or is not connected to another net.

(v) A shrimp trawler is exempt from the requirement to have a certified BRD installed in up to two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length used or possessed on board. A rigid-frame roller trawl is a trawl that has a mouth formed by a rigid frame and a grid of rigid vertical bars; has rollers on the lower horizontal part of the frame to allow the trawl to roll over the bottom and any obstruction while being towed; and has no doors, boards, or similar devices attached to keep the mouth of the trawl open.

(vi) A trawl net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use by shrimp trawlers in the respective areas of the Gulf EEZ specified in paragraphs (h)(2)(i) and (ii) of this section. Specifications of these certified BRDs are contained in appendix D to this part.

(i) *West of 85°30′ W. long.*
(A) Fisheye.
(B) Gulf fisheye.
(C) Jones-Davis.

(ii) *East of 85°30′ W. long.*
(A) Fisheye.
(B) Gulf fisheye.
(C) Jones-Davis.
(D) Extended funnel.
(E) Expanded mesh.

* * * * *

Note: The *Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual* and appendices H and I to the Manual are published as appendices to this document. These appendices will not appear in the Code of Federal Regulations.

Appendix—Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual

Definitions

Bycatch reduction criterion means—

(1) In the Gulf EEZ west of 85°30′ W. long., that the BRD reduces the mortality of juvenile (age 0 and age 1) red snapper by a minimum of 44 percent from the average level of bycatch mortality (F=2.06) on these age classes during the years 1984–1989.

(2) In the Gulf EEZ east of 85°30′ W. long., that the BRD reduces the bycatch of total finfish by at least 30 percent by weight.

Bycatch reduction device (BRD) is any gear or trawl modification designed to allow finfish to escape from a shrimp trawl.

BRD candidate is a bycatch reduction device to be tested for certification for use in the commercial shrimp fishery of the Gulf of Mexico.

Catch per unit of effort (CPUE) means the number or pounds of fish (*e.g.*, red snapper) or shrimp taken during a pre-defined measure of fishing activity (*e.g.*, per hour).

Certification phase is a required testing phase whereby an individual so authorized by the RA may conduct a discrete testing program, with a sample size adequate for statistical analysis (no less than 30 tows), to determine whether a BRD candidate meets the bycatch reduction criterion.

Certified BRD is a BRD that has been tested according to this protocol and has been determined by the RA as having met the bycatch reduction criterion.

Control trawl means a trawl used during the certification testing that is not equipped with a BRD. The catch of this trawl is compared to the catch of the experimental trawl.

Experimental trawl means the trawl used during the certification tests that is equipped with the BRD candidate.

Evaluation and oversight personnel includes scientists, observers, and other technical personnel who, by reason of their occupational or other experience, scientific expertise or training, are approved by the RA as qualified to evaluate and oversee the application and testing process. Scientists and other technical personnel will (1) review a BRD certification test application for its merit, and (2) critically review the scientific validity of the certification test results.

Observer means a person on the list maintained by the RA of individuals qualified to supervise and monitor a BRD certification test. Applicants may obtain the list of individuals qualified to be an observer from the RA. The observer chosen by the applicant may not have any current or prior financial relationship with the entity seeking BRD certification. For information on observer qualification criteria and the observer application process, see Appendix I.

Pre-certification phase is an optional testing phase whereby an individual, so authorized by the RA, can experiment with the design, construction, and configuration of a BRD and gather data.

Regional Administrator (RA) means the Southeast Regional Administrator, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, FL 33702, phone 727–570–5301.

Required measurements refers to the quantification of the dimensions and configuration of the trawl, the BRD candidate, the doors, the location of the BRD in relation to other parts of the trawl gear, and other quantifiable criteria used to assess the performance of the BRD candidate.

Sample size means the number of successful tows (a minimum of 30 tows per test are required).

Shrimp loss means the percent difference in average CPUE (*e.g.* kg/hr) between the amount of shrimp caught in the control trawl and the amount of shrimp caught in the experimental trawl.

Successful tow means that the control and experimental trawl were fished in accordance with the requirements set forth in the protocol and the terms and conditions of the letter of authorization; that no indication exists that problematic events, such as those listed in Appendix D–5, occurred during the tow which would impact or influence the fishing efficiency (catch) of one or both nets; and, in the Gulf EEZ west of 85°30′ W. long., that the control or experimental net caught at least five red snapper during the tow.

Tow time means the total time (hours and minutes) an individual trawl was fished while being towed (*i.e.*, the time between ''dog-off'' and start of haul back).

Trawl means a net and associated gear and rigging, as illustrated in Appendix B–5 of this manual, used to catch shrimp. The terms trawl and net are used interchangeably throughout the manual.

Tuning a net means adjusting the trawl and its components to minimize the differences in shrimp catch between the two nets that will be used as the control and experimental trawls during the certification tests.

I. Introduction

Purpose of the Protocol

This protocol sets forth a standardized scientific procedure for the testing of a BRD candidate and for the evaluation of its ability to meet the bycatch reduction criterion. For a BRD candidate to be certified by the RA, the BRD candidate must meet the bycatch reduction criterion.

There are two phases to this procedure: An optional, but recommended, pre-certification phase and a required certification phase. An applicant is encouraged to take advantage of the pre-certification phase which allows experimentation with different BRD designs and configurations prior to certification phase testing (see below for details). The certification phase requires the applicant to conduct a discrete testing program, with a sample size of no less than 30 tows to determine whether the BRD candidate meets the bycatch reduction criterion. There is no cost to the applicant for the RA's administrative expenses such as preparing applications, issuing letters of authorization (LOAs), or evaluating test results or certifying BRDs. However, all other costs associated with either phase (*e.g.*, field testing) are at the applicant's expense.

II. Pre-Certification Phase (Optional)

The pre-certification phase provides a mechanism whereby an individual can experiment with the design, construction, and configuration of a prototype BRD for up to 60 days to improve the design's effectiveness at reducing bycatch and to determine whether it is likely to meet the bycatch reduction criterion. To conduct pre-certification phase evaluations of a prototype BRD, the applicant must apply for, receive, and have on board the vessel during testing, an LOA from the RA.

A. Application

In order to obtain an LOA to conduct pre-certification phase evaluations of a prototype BRD, an individual must submit a complete application to the RA. A complete application consists of a completed application form, Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (the form is appended as Appendix J–1), and the following: (1) a brief statement of the purpose and goal of the activity for which the LOA is requested; (2) a statement of the scope, duration, dates, and location of the testing; (3) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD design; (4) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD and approved TED in the shrimp trawl; (5) a description of how the BRD is supposed to work; (6) a copy of the testing vessel's documentation or its state registration; and (7) a copy of the vessel's Federal shrimp permit.

An applicant requesting a pre-certification LOA of an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to 50 CFR 223.207(e). The pre-certification phase LOA application must also append a copy of that authorization.

B. Issuance

The RA will review the application for completeness. If the application is incomplete, the RA will inform the applicant of the incompleteness and give the applicant an opportunity to cure. If incompleteness is not cured within 30 days, the application will be returned to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct pre-certification phase testing upon the vessel specified in the application if the BRD design is substantially unlike BRD designs previously determined not to meet the current performance criterion, or if the design is substantially similar to BRD designs previously determined not to meet the current performance criteria and the application demonstrates that the design could meet the bycatch reduction criterion through design revision or upon retesting (*e.g.*, the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used). If a pre-certification phase LOA is denied, the RA will return the application to the applicant along with a letter of explanation including relevant recommendations as to curing the deficiencies which caused the denial. In arriving at a decision, the RA may consult with evaluation and oversight personnel. Issuance of a LOA allows the applicant to remove or disable the existing BRD in one net (to create a control net), and to place the prototype BRD in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the test must be equipped with a certified BRD. All trawls under tow during the pre-certification phase tests must be equipped with an approved TED unless operating under an authorization issued pursuant to 50 CFR 223.207(e). The LOA, and experimental TED authorization if applicable, must be on board the vessel while the pre-certification phase tests are being conducted. The term of the LOA will be 60 days.

C. Applicability

The pre-certification phase allows an individual to compare the catches of a control net to the catches of the experimental net (net equipped with the prototype BRD) to estimate the potential efficiency of the prototype BRD. If that individual subsequently applies for a certification phase LOA to test this design, he/she must include the results of the pre-certification phase evaluation with the certification application. The RA will use this information to determine if there is a reasonable scientific basis to conduct certification phase testing. Therefore, for each paired tow, the applicant should keep a written record of the weight of the shrimp catch, the weight of the finfish catch, and, if the testing is related to potential certification of the BRD for use in the Gulf EEZ west of 85°30′ W. long., the total catch (in numbers) of red snapper of each net. The form contained in Appendix D should be used to record this information.

III. Certification Phase (Required)

In order to have a BRD certified, it must, under certification phase testing, be consistent with the requirements of the testing protocol and LOA and be determined by the RA to meet the bycatch reduction criterion.

A. Application

To conduct certification phase testing, an individual must obtain a certification phase LOA. To obtain a certification phase LOA, an individual must submit a complete application to the RA. The complete test application consists of an Application to Test A Bycatch Reduction Device in the Exclusive Economic Zone (Appendix J–1), a copy of the vessel's current Coast Guard certificate of documentation or, if not documented, its state registration certificate; a copy of the vessel's Federal shrimp permit; the name of a qualified observer who will be on board the vessel during all certification test operations (*see* Appendix I); and a test plan showing: (1) An 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate; (2) an 8.5-inch × 11-inch (21.6-cm × 27.9-cm) diagram drawn to scale of the BRD candidate and approved TED in the shrimp trawl; (3) a description of how the BRD candidate is supposed to work; (4) the results of previous pre-certification phase tests; (5) the location, time, and area where the certification phase tests would take place; and (6) the identity of the observer from the list of qualified individuals maintained by the RA and certification that the observer has no current or prior financial relationship with the applicant or entity seeking BRD certification.

An applicant requesting a certification phase LOA to test an unapproved hard or soft TED as a BRD must first apply for and obtain from the RA an experimental TED authorization pursuant to requirements of 50 CFR part 223.207(e). The application for the certification phase LOA also must append a copy of that authorization.

A.1 Special Circumstances Not Covered by Protocol

Because actual testing conditions may vary, it may be necessary to deviate from the prescribed protocol to determine if a BRD candidate meets the bycatch reduction criterion. Any foreseeable deviations from the protocol must be described and justified in the application, and if scientifically acceptable will be approved by the RA in the LOA. The RA may consult with evaluation personnel to determine whether the deviations are scientifically acceptable. Without the RA's approval in the LOA, results from any tests deviating from the protocol may be rejected as scientifically unacceptable, and could result in a denial of certification.

B. Observer Requirement

A qualified observer must be on board the vessel during all certification testing operations (*See* Appendix I). A list of qualified observers is available from the RA. Observers may include employees or individuals acting on behalf of NMFS, state fishery management agencies, universities, or private industry who meet the minimum requirements outlined in Appendix I, but the individual chosen may not have a current or prior financial relationship with the entity seeking BRD certification. It is the responsibility of the applicant to ensure that a qualified observer is on board the vessel during the certification tests. Compensation to the observer, if necessary, must be paid by the applicant. Any change in information or testing circumstances, such as replacement of the observer, must be reported to the RA within 30 days. Under 50 CFR 600.746, the owner and operator of any fishing vessel required to carry an observer as part of a mandatory observer program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) is required to comply with guidelines, regulations, and conditions to ensure their vessel is adequate and safe to carry an observer, and to allow normal observer functions to collect scientific information as described in this protocol. A vessel owner is deemed to meet this requirement if the vessel displays one of the following: (i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I, and 46 CFR, chapter I; (ii) a certificate of compliance issued pursuant to 46 CFR 28.710; or (iii) a valid certificate of inspection pursuant to 46 U.S.C. 3311.

C. Issuance

The RA will review the application for completeness. If the application is not complete, the RA will notify the applicant of the incompleteness and give the applicant an opportunity to cure. If the incompleteness is not cured within 30 days, the RA will return the application to the applicant. Upon receipt of a complete application, the RA will issue a LOA to conduct certification phase testing of the BRD candidate specified in the application if: (1) The test plan meets the requirements of the protocol; (2) the qualified observer named in the application has no current or prior financial relationship with the entity seeking BRD certification; (3) the BRD candidate design is substantially unlike BRD designs previously determined not to meet the current bycatch reduction criterion, or if the BRD candidate design is substantially similar to a BRD design previously determined not to meet the current bycatch reduction criterion, the application demonstrates that the design could meet the bycatch reduction criterion upon retesting (*e.g.*, the application shows that statistical results could be improved upon retesting by such things as a larger sample size than that previously used); and (4) the results of any pre-certification phase testing conducted indicate a reasonable scientific basis for further testing. The submission of pre-certification phase data to provide a scientific basis for the conduct of certification testing is not an absolute requirement for the issuance of a certification phase LOA. For example, a request to conduct certification phase testing of a minor modification of a certified BRD design would not need to include pre-certification phase data. Similarly, a request for certification phase testing of a previously failed design that under a different test plan (*e.g.*, larger sample sizes) could yield improved statistical results would likewise not need pre-certification phase data. However, pre-

certification phase data would normally be needed to establish a reasonable scientific basis for conducting certification phase testing (*e.g.*, that the BRD could meet the certification criterion upon certification testing). In making these determinations, the RA may consult with evaluation and oversight personnel. If a LOA to conduct certification phase testing is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies resulting in the denial. Issuance of a LOA allows the applicant to remove or disable the existing certified BRD in one net (to create a control net) and to place the BRD candidate in another net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the tests must be equipped with a BRD. All trawls under tow during the certification tests must be equipped with an approved TED unless operating under an authorization issued pursuant to 50 CFR 223.207(e). The LOA will specify the date when the applicant may begin to test the BRD candidate, the observer who will conduct the onboard data collection, and the vessel to be used during the test. The LOA and experimental TED authorization, if applicable, must be onboard the vessel while the certification phase tests are being conducted.

D. Testing Protocol

Certification testing must be conducted in areas and at times when commercial quantities of penaeid shrimp and finfish pertinent to the certification testing are available to the gear.

Certification testing of BRDs for use in the Gulf EEZ west of 85°30′ W. long., must be conducted in areas and at times when juvenile (age 0 and age 1) red snapper are available to the gear. The best time for testing such a BRD candidate is July and August (July 1–August 31) due to the availability of red snapper on the penaeid shrimp commercial grounds located shoreward of the 100–fm (183–m) depth contour west of 85°30′ W. long., the approximate longitude of Cape San Blas, FL. A certification test conducted for BRD use west of 85°30′ W. long. may also be evaluated for BRD use east of 85°30′ W. long. because the requirement that ''finfish'' were available to the gear would have been satisfied. However, it is preferable that certification testing for BRD use east of 85°30′ W. long. be conducted in that same area.

Data for all certification testing should be recorded on the forms found in Appendices B through G, using the instructions provided for each form.

D.1. Tuning the Control and Experimental Trawls Prior to BRD Certification Trials

The primary assumption in assessing the bycatch reduction efficiency of the BRD candidate during paired-net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from that of the control net. Therefore, it is imperative that the fishing efficiency of the two nets be as similar as possible prior to starting the certification tests. Catch data from no more than 20 tuning tows should be collected on nets that will be used as control and experimental trawls to determine if there is a between-net or between-side (port vs. starboard) difference in fishing efficiency (bias). Any net/side bias will be reflected as differing catch rates of shrimp and total finfish between two nets that were towed simultaneously. During the tuning tows, these nets should be equipped with identical approved hard TEDs, without the BRD candidate being installed. Using this information, the applicant should identify and minimize the causes for any net/side bias, to the extent practicable, by making appropriate trawl gear adjustments. Form D–1 from Appendix D should be used to record the net/side bias data collected from these tows. These data will enable the RA to determine if any net/side bias existed in either trawl in assessing the BRD candidate's performance.

If the applicant is testing a soft TED as a BRD, it will be imperative that little or no position or side bias with the trawl nets be demonstrated before the certification trials are initiated. Once any net/side bias is corrected using identical approved hard TEDs in both nets, any alterations in catch rate following the substitution of the soft TED into the experimental net can then be attributed to that TED's influence.

D.2. Retention of Data Collected During Tuning Trials

All data collected during tuning trials and used for minimizing the net/side bias must be documented and submitted to the RA along with the testing data for evaluation. Additional information on tuning shrimp trawls is available from the Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, Mississippi 39568–1207; phone (601) 762–4591.

D.3. Certification Tests

The certification tests must follow the testing protocol where paired identical trawls are towed by a trawler in acceptable testing areas (see introductory paragraph of section D). For tests of BRD candidates that do not encompass testing a hard or soft TED as the BRD candidate, identical approved hard TEDs are required in each trawl and one of the trawls must be equipped with a functioning BRD candidate. To test a hard or soft TED as a BRD candidate, the control net must be equipped with an approved hard TED, and the experimental net must be equipped with the TED that is acting as the BRD candidate.

A minimum sample size of 30 successful tows per test is required. Additional tows may be necessary for sufficient statistical evidence, especially if catch of the species upon which the bycatch reduction criterion is based (*e.g.*, red snapper) is highly variable. A gear change (*i.e.*, changing nets, doors, or rigging) during a test constitutes the beginning of a new test. All certification tows must be no less than 2 hours and no more than 8 hours in duration. The applicant may select any tow time within this range. Once a tow time is selected, no tow time during a series of tests may vary by more than 10 percent.

To avoid potential biases associated with trynet catches, the outside trawls on quad-rigged vessels must be used as the control and experimental trawls, and for double-rigged vessels, the use of a trynet is prohibited.

The functioning BRD candidate must be switched every 4–6 tows (approximately every 2 days) between the two trawl nets. This process must be repeated, ensuring that an equal number of successful tows are made with the BRD candidate employed in both the port and starboard nets, until a minimum of 30 successful tows have been completed. For BRDs incorporated in the codend of the net, this process can be facilitated by the use of zippers, or other quick-connection devices, to more easily move the codends between nets; however, simply switching the entire net will not satisfy this requirement because doing so would not resolve net bias. Such quick-connection devices must be attached behind the TED. The TED must not be moved unless the BRD is actually incorporated into the TED portion of the net. Where a hard TED is being tested as a BRD candidate, that portion of the net including the TEDs must be moved, and again, quick-connection devices located in front of the TEDs may be used.

A different procedure must be followed to conduct tests of an approved or experimental soft TED as a BRD candidate. To conduct these tests, the applicant must first demonstrate that little or no side/net bias exists between the two nets to be used in the test (see D.1.). Removing the soft TED from one trawl net and installing it in the other net is not required. For these tests, the control (with a hard TED) and experimental (with the soft TED) nets must be disconnected from the doors and their positions switched from one side of the vessel to the other. The first switch must be made after successfully completing approximately 25 percent of the total number of intended tows. This process must be repeated, at 25 percent intervals, until at least 30 successful tows are completed (*i.e.*, every 7–8 successful tows).

Following each paired tow, the catches from the control and experimental nets must be examined separately. This requires that the catch from each net be kept separate from each other, as well as from the catch taken in other nets fished during that tow. First, the observer must weigh the total catch of each test net (control and experimental nets). If the catch in a net does not fill one standard 1-bushel (ca. 10 gallon) (30 liters) polyethylene shrimp basket (ca. 70 pounds) (31.8 kg), but the tow is otherwise considered successful, data must be collected on the entire catch of that net, and recorded as a ''select'' sample (see Appendix E). If the catch in a net exceeds 70 pounds (31.8 kg), a well-mixed sample consisting of one standard 1-bushel (ca. 10 gallon) (30 liters) polyethylene shrimp basket must be taken from the total catch of that net.

Data must be collected on Form E–1 for the following species or general groups found in each of the samples: (1) Penaeid shrimp—brown, white and pink shrimp from each sample must be separated by species, counted and weighed; in addition, the weight for those penaeid shrimp species caught in each test net, but that were not included in the sample, must be recorded so that a total

shrimp catch for each net (by weight) is documented; (2) crustacea—mantis shrimp, sugar shrimp, seabobs, crabs, lobsters and other similar species—must be weighed as an aggregate; (3) other invertebrates—squid, jellyfish, starfish, sea pansies, shells, and other similar species—must be weighed as an aggregate; (4) each finfish species or species group listed in Appendix E must be weighed and counted; (5) other finfish—including all other fish not listed on the above-referenced form must be weighed as an aggregate; and (6) debris (mud, rocks, and related matter) must be weighed as an aggregate.

''Select'' finfish species (page E–3 of this Manual) (*i.e.*, particular species to be quantified from the total catch and not just the sample) are red snapper, Spanish mackerel, and king mackerel. All individuals of the ''Select'' species from each test net (control and experimental net) must be collected, counted, weighed, and recorded. Lengths for as many as 30 individuals of each select species must be recorded on Form F–1. These data are necessary to robustly determine age-class composition, and specific mortality reductions attributable to each of the age classes.

Applicants must also collect qualitative information, using Form G–1, on the condition (alive or dead) and fate (floated off, swam down, eaten) of the discards whenever possible, and note the presence of any predator species such as sharks, porpoises, and jacks that are observed. The condition and fate of the bycatch is important for determining the fishing mortality and waste associated with this discard.

E. Reports

A report on the BRD candidate test results must be submitted for certification. The report must contain a comprehensive description of the tests, copies of all completed data forms used during the certification trials, and photographs, drawings, and similar material describing the BRD. The captain or owner must sign and submit the cover form (Appendix A). The report must include a description and explanation of any unforseen deviations from the protocol which occurred during the test. Applicants must provide information on the cost of materials, labor, and installation of the BRD candidate. In addition, any unique or special circumstances of the tests, including special operational characteristics or fishing techniques which enhance the BRD's performance, should be described and documented as appropriate.

F. Certification

The RA will determine whether the required reports and supporting materials are sufficient to evaluate the BRD candidate's efficiency. The RA also will determine whether the applicant adhered to the prescribed testing protocol, and whether the BRD candidate meets the bycatch reduction criterion. In making a decision, the RA may consult with evaluation and oversight personnel.

The RA will determine the effectiveness of the BRD candidate. For the western Gulf, the statistical protocol in Appendix H provides the methodology that the RA will use to estimate the reduction in bycatch mortality on age-1 juvenile red snapper if the test is conducted during the primary period (July or August). Tests conducted during other parts of the year will, most likely, catch both age 0 and age 1 red snapper. To evaluate the overall reduction in mortality rate of these juvenile age classes attributable to the BRD candidate will require alternative extensive analysis, involving use of the Goodyear (1995) stock assessment model to assign mortality reductions by specific size classes within the age 0 and age 1 red snapper catch.

For the eastern Gulf the RA will determine the effectiveness of the BRD candidate to, on average, reduce the bycatch of finfish by 30 percent by weight compared to the bycatch of finfish in the designated control net. To evaluate the efficiency of the BRD candidate, the RA will rely on the Southeast Fisheries Science Center to provide statistically valid mean reduction rates in finfish bycatch attributable to the BRD candidate.

Following a favorable determination of these criteria, the RA will certify the BRD (with any appropriate conditions as indicated by test results) and publish the certification in the **Federal Register**.

IV. BRDs Not Certified and Resubmission Procedures

The RA will advise the applicant, in writing, if a BRD is not certified. This notification will explain why the BRD was not certified and what the applicant may do to either modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification was denied because of insufficient information, the RA will explain what information is lacking. The applicant must provide the additional information within 60 days from receipt of such notification; thereafter, the applicant must re-apply. If the RA subsequently certifies the BRD, the RA will announce the certification in the **Federal Register**.

V. Decertification of BRDs

The RA will decertify a BRD whenever it is determined that it no longer satisfies the bycatch reduction criterion. Before determining whether to decertify a BRD, the Council and public will be advised and provided an opportunity to comment on the advisability of any proposed decertification. The RA will consider any comments from the Council and public, and if the RA elects to proceed with decertification of the BRD, the RA will publish proposed and final rules in the **Federal Register** with a comment period of not less than 15 days on the proposed rule.

VI. Interactions With Sea Turtles

The following section is provided for informational purposes. Sea turtles are listed under the Endangered Species Act as either endangered or threatened. The following procedures apply to incidental take of sea turtles under 50 CFR 223.206(d)(1):

Any sea turtles taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead (as described in paragraph (B)(4) below) must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 to 24 hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(4) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise, the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

Any sea turtle so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

References

Gulf of Mexico Fishery Management Council, 1997. Amendment 9 to the Fishery Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, Including a Final Supplemental Environmental Impact Statement and Regulatory Impact Review and Social Impact Assessment. Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619, 153 p.

Goodyear, C. P.; 1995. Red snappers in U.S. waters of the Gulf of Mexico. National Marine Fisheries Service, Southeast Fisheries Science Center, Miami Laboratory, Miami, FL. Laboratory Report, Contribution # MIA 95/96–05, 171 p.

Hoese, H. Dickson and Richard H. Moore; 1977. Fishes of the Gulf of Mexico, Texas, Louisiana, and Adjacent Waters. Texas A&M University Press. College Station, TX, 327 p.

SAFMC; 1997. Final Bycatch Reduction Device Testing Protocol Manual. South

Atlantic Fishery Management Council, 1 Southpark Cir., Ste 306, Charleston, S.C. 29407, 34 p.

Ward, John M., Teofilo Ozuma and Wade Griffen; 1995 Cost and Revenues in the Gulf of Mexico Shrimp Fishery. NOAA Tech. Mem. NMFS–SEFSC–371, 76 p.

Appendix H—Statistical Procedures for Analyzing BRD Evaluation Data Relative to the Western Gulf Criterion

NMFS will calculate the reduction in bycatch mortality (F) based on data gathered during the testing. Both age 0 and age 1 red snapper, ranging in length from 10 mm to 200 mm, occur frequently in shrimp trawls. During the July/August (July 1-August 31) period, the most recently spawned year class of fish have not fully recruited to the shrimp grounds; thus the catch is represented by a relatively narrow length range of individuals, all of which are considered to be age 1. The numerical reduction in catch-per-unit-effort (CPUE) of this specific age class is expected to be a good predictor of fishing mortality (F) reduction, although the size composition data will be checked for any particular test. The analysis of the data collected under this testing protocol will be based on a modified paired t-test. Because of the varying age and size composition of the red snapper catch taken at other times of the year, more detailed analyses through use of a stock assessment model (Goodyear 1995) incorporating the size-specific reduction performance of the device and the seasonal progression of F must be conducted to determine if the BRD candidate will meet the bycatch reduction criterion. Based on the time of the year that the test is conducted, NMFS will utilize the appropriate technique to assess the performance of the BRD candidate as a service for the BRD sponsor.

All experimental tows must be conducted in conformance with the requirements of the BRD testing protocol. Data collected from no more than 20 tuning tows of the control and experimental trawls (without the BRD candidate installed) must be included to determine if any net bias exists prior to beginning certification phase testing. To further reduce problems caused by no or low catches, a tow being considered for certification in the western Gulf must contain a minimum catch of 5 red snapper in at least one trawl for inclusion in the analysis. Once conducted, the tow and the corresponding collected data become the permanent part of the record and cannot be discarded. Only the successful tows will count toward the minimum required; however, information from other tows, if appropriate, will be used in the analysis.

Statistical Approach for Calculation of Bycatch Mortality (F) Reduction for Devices Tested in July/August

The statistical approach assumes that the BRD to be tested does not achieve the minimum required reduction rate, (R_o). The hypotheses to be tested are as follows:

H_o: BRD does not achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} \le R_o, \text{ i.e. } \left(1 - R_o\right)\mu_c - \mu_b \le 0.$$

H_a : BRD does achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} > R_o, \text{ i.e. } \left(1 - R_o\right)\mu_c - \mu_b > 0.$$

R denotes the actual reduction rate (unknown), R_o denotes the minimum required reduction rate, μc denotes the actual mean CPUE with the control, and μb denotes the actual mean CPUE with the BRD.

With any hypothesis testing, there are two risks involved known as type I error (rejection of true H_o) and type II error (acceptance of false H_o). The probabilities of committing these errors are denoted by alpha and beta, respectively. The probabilities are inversely related to each other. As alpha increases, beta decreases and vice versa. An alpha of 10 percent will be used. The two hypotheses are tested using a ''modified'' paired t-test.

The CPUE values for the control and BRD trawls for each successful tow is computed first and is used in the following computations:

$$t = \frac{\left(1 - R_o\right)\ \bar{x} - \bar{y}}{s_{d0}/\sqrt{n}},$$

Where:

$\bar{x}$ the observed mean CPUE for the control,

$\bar{y}$ is the observed mean CPUE for the BRD,

s_{d0} is the standard deviation of $d_i = \{(1 - R_o)x_i - Y_i\}$ values,

n is the number of successful tows used in the analysis, and

i = 1,2, . . . ,n.

The H_o will be rejected if $t > t_{alpha,n-1}$ where $t_{alpha,n-1}$ denotes the (1—alpha)100th percentile score in the t distribution with $(n - 1)$ degrees of freedom.

A $(1 - \text{alpha})$ 100-percent two-sided confidence interval on R consists of all values of R_o for which H_o: $R = R_o$ (versus H_a $R \neq R_o$) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

Appendix I—Qualifications of Observer

An observer:

1. Must have a Bachelor's degree in fisheries biology or closely related field from an accredited college, have at least 6 months experience working with a university, college, state fisheries agency, NMFS, or private research organization such as the Gulf and South Atlantic Fisheries Development Foundation as an observer on a trawler (including research trawlers) in the southeast region, or have successfully completed a training course conducted or approved by the Director of the NMFS Southeast Fisheries Science Center.

2. Must not have a current or prior financial relationship with the entity seeking BRD certification. In addition, any individual:

1. Applying to serve as an observer must provide the names, addresses, and telephone numbers of at least three references who can attest to the applicant's background, experiences, and professional ability. These references will be contacted; unsatisfactory references may be a basis for disapproval of an applicant as an observer.

2. Wishing to serve as an observer should submit a resume and supporting documents to the Director, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149. The Center will use this information to determine which names will to be included on a list of qualified observers. If an applicant is not approved as an observer, the RA will notify the applicant of the disapproval and will provide an explanation for the denial.

[FR Doc. 03–24737 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted petitions filed by South Carolina Shrimpers' Association, P.O. Box 66, McClellanville, South Carolina 29458, and the South Carolina Shrimp Growers Association, 7575 Ethel Post Office Road, Meggett, South Carolina 29449, for trade adjustment assistance. The groups represent shrimpers and shrimp growers, respectively, in the state of South Carolina. The Administrator will determine within 40 days whether or not imports of shrimp and prawns contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing year period beginning January 2002 through December 2002. If the determination is positive, all shrimp producers in South Carolina will be eligible to apply to the Farm Service Agency for technical assistance at no cost and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: September 25, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–24861 Filed 9–29–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on October 17, 2003, in Greenville, California. The purpose of the meeting will be to review and recommend a slate of projects to the Plumas National Forest Supervisor for funding consideration under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. This is the third funding cycle of five under this Act.

DATES & ADDRESSES: The October 17 meeting will take place from 9–4 p.m., at the Catholic Church Social Hall, 209 Jesse Street, Greenville, California.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.* Final agendas are posted one week prior to the meeting on the internet at: *http://www.fs.fed.us/r5/pay2states/plumas.* Prior meeting minutes and agendas are available on the same site.

SUPPLEMENTARY INFORMATION: Agenda items for the meeting include: (1) Introduce new committee members as needed; (2) review nominations and conduct elections for calendar year 2004 chairperson; (3) review and recommend a slate of projects to the Plumas National Forest Supervisor for Cycle 3 funding consideration; and (4) set future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee after being recognized by the Chair.

Dated: September 19, 2003.

James M. Peña,

Forest Supervisor.

[FR Doc. 03–24682 Filed 9–29–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.

DATES: Comments on this notice must be received by December 1, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Douglas MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, United States Department of Agriculture, Stop 0781, 1400 Independence Ave., SW., Washington, DC 20250–0781, Telephone: (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Title: Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.

OMB Number: 0575–0045.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, to make initial and subsequent loans and grants to provide housing and related facilities for domestic farm labor. A loan only can be made to a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing and that is engaged in agricultural or aquacultural farming operations and which will own the housing and operate it on a nonprofit basis. A loan can also be made to any limited partnership in which the general partner is a nonprofit entity. A loan and/or grant can be made to public,

private nonprofit organizations for domestic farm labor in areas where need exists. In some cases, rental assistance may be provided to eligible tenants.

RHS has the responsibility of assuring the public that funds for Labor Housing projects are financed to build, buy, improve or repair farm labor housing and related facilities. The facilities financed are to have decent, safe and sanitary living conditions and are managed and operated as mandated by Congress. 7 CFR part 1944, subpart D was issued to set forth the policies and procedures and delegation of authority for making initial and subsequent insured loans under Section 514 and grants under Section 516 to provide housing and related facilities for domestic farm labor and to assure that applicable laws and authorities are carried out as intended.

With the provisions of this regulation, RHS will be able to provide the financial assistance and necessary guidance to applicants in the development of their project proposals. It provides the Agency the capacity to meaningfully evaluate the feasibility of the proposed projects. RHS will be able to assure Congress and the general public that all Labor Housing projects will be operated for purposes that are intended, and for the benefit of those they are mandated to serve.

The required information is collected on a project-by-project basis and is done so in accordance with the amended Housing Act of 1949, so that RHS can provide guidance and be assured of compliance with terms and conditions of loan, grant, and/or subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.9 hours per response.

Respondents: Farms, Not-for-profit Institutions, and State, Local or Tribal Governments.

Estimated Number of Respondents: 695.

Estimated Number of Responses per Respondent: 1.85.

Estimated Total Annual Burden on Respondents: 10,151 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0039.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 17, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–24675 Filed 9–29–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi, and International Business Services, Ltd, and Top Oil Tools, Ltd., and Uni-Arab Engineering and Oil Field Services, and Jaime Radi Mustafa and Nureddin Shariff Sehweil; Renewal of Order Temporarily Denying Export Privileges

In the Matter of: Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, International Business Services, Ltd., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, and, 41 Chamale Cove East, Slidell, Louisiana 70460, and, 2301 Covington Highway 190, Slidell, Louisiana 70460, Respondents; and, Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460, and, Uni-Arab Engineering and Oil Field Services, P.O. Box 46112, Abu Dhabi, United Arab Emirates, and, Al-Gaith Tower, Hamden Street, Flat No. 1202, Abu Dhabi, United Arab Emirates, and, Jaime Radi Mustafa, a.k.a. Radi Mustafa, 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, Khalidiya, P.O. Box 46112, Abu Dhabi, United Arab Emirates, and, Nureddin Shariff Sehweil, a.k.a. dean Sehweil, 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, 106 Everest Drive, Slodell, Louisiana 70461, and, Khalidiya, P.O. Box 46112, Abu Dhabi, United Arab Emirates; Related Persons.

Through the Office of Export Enforcement (''OEE''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, has requested that I renew the order (''TDO'') I issued on March 29, 2003, pursuant to § 766.24 of the Export Administration Regulations (currently codified at 15 CFR 730–774 (2003)) (''EAR''),[1] temporarily denying all U.S. export privileges of Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458 (''Talyi''), and International Business Services, LTD., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460 (''IBS''). Pursuant to Sections 766.24(c) and 766.23 of the EAR, the TDO also applies to the following as related persons to Talyi and IBS: Top Oil Tools, Ltd. (''Top Oil''), 41 Chamale Cove East, Slidell, Louisiana 70460; Uni-Arab Engineering and Oil Field Services (''Uni-Arab''), P.O. Box 46112, Abu Dhabi, United Arab Emirates, and, Al-Gaith Tower, Hamden Street, Flat No. 1202, Abu Dhabi, United Arab Emirates; Jaime Radi Mustafa, a.k.a. Radi Mustafa (''Radi Mustafa''), 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, Khalidiya, P.O. Box 46112, Abu Dhabi, United Arab Emirates; and Nureddin Shariff Sehweil, a.k.a. Dean Sehweil (''Dean Sehweil''), 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, 106 Everest Drive, Slidell, Louisiana 70461, and, Khalidiya, P.O. Box 46112, Abu Dhabi, United Arab Emirates.

BIS states in its September 5, 2003 request that, based upon evidence previously adduced that was the basis for the issuance of the September 30, 2002 order and the March 29, 2003 renewal (as modified on July 24, 2003 to add Uni-Arab, Radi Mustafa, and Dean Sehweil as related persons), it believes that a renewal of the TDO is necessary to prevent further violations of U.S. export control laws. Specifically,

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833 (August 11, 2003)), has continued the EAR in effect under IEEPA.

the evidence indicates that after the TDO was issued on September 30, 2002, the persons currently subject to the TDO deliberately and covertly violated its terms. *See* BIS Request for Renewal of TDO, dated September 5, 2003, at 5–7. BIS has also established a close and intimate business relationships between Talyi and IBS, and Top Oil, Uni-Arab, Radi Mustafa, and Dean Sehweil, such that continuing to name them as related persons is necessary to prevent evasion of the TDO. *See id.* at 7–9. Further, BIS has produced evidence in this matter that directly contradicts statements made by Radi Mustafa and Dean Sehweil in sworn affidavits concerning prior unauthorized shipments of U.S.-origin items to Libya by Uni-Arab. *See id.* at 10–13. Finally, BIS states that both criminal and administrative cases are proceeding against Talyi, IBS and Top Oil that can result in criminal and civil fines, a term of imprisonment, and/or a denial of export privileges, and that renewal of the TDO is necessary to prevent further violations of U.S. export control laws. *See id.* at 13–14.

Accordingly, I am renewing this order because I have concluded that a TDO continues to be necessary, in the public interest, to prevent an imminent violation of the EAR.

It is therefore ordered:

First, that Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458 (''Talyi''), and International Business Services, Ltd., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460 (''IBS'') (hereinafter collectively referred to as the ''denied persons''); and the following persons subject to the Order by their relationship to the denied persons, Top Oil Tools, Ltd., 41 Chamale Cove East, Slidell, Louisiana 70460; Uni-Arab Engineering and Oil Field Services (''Uni-Arab''), P.O. Box 46112, Abu Dhabi, United Arab Emirates, and, Al-Gaith Tower, Hamden Street, Flat No. 1202, Abu Dhabi, United Arab Emirates; Jaime Radi Mustafa, a.k.a. Radi Mustafa (''Radi Mustafa''), 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, Khalidiya, P.O. Box 46112, Abu Dhabi, United Arab Emirates; and Nureddin Shariff Sehweil, a.k.a. Dean Sehweil (''Dean Sehweil''), 888 Cross Gates Boulevard, Slidell, Louisiana 70458, and, 106 Everest Drive, Slidell, Louisiana 70461, and, Khalidiya, P.O. Box 46112, Abu Dahabi, United Arab Emirates (the ''related persons'') (together, the denied persons and the related persons are ''persons subject to this Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this Order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the EAR that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, in addition to the related person named above, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of § 766.24(e) of the EAR, denied persons may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. A related person may appeal to the Administrative Law Judge at the aforementioned address in accordance with the provisions of Section 766.23(c) of the EAR.

This Order is effective immediately upon expiration of the order issued on March 29, 2003, or September 25, 2003, and shall remain in effect for 180 days.

A copy of this Order shall be served on Talyi, IBS, Top Oil, Uni-Arab, Radi Mustafa, and Dean Sehweil, and shall be published in the **Federal Register**.

Entered this 24th day of September, 2003.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 03–24783 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, request for revocation in part and deferral of administrative review.

SUMMARY: The Department of Commerce (the Department) has received requests

to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part and to defer the initiation of an administrative review of one company in one countervailing duty order.

EFFECTIVE DATE: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania. In addition, the Department received a request to defer for one year the initiation of the January 1, 2002 through December 31, 2002 administrative review of the countervailing duty order on Stainless Steel Sheet and Strip in Coils from France with respect to one exporter in accordance with 19 CFR 351.213(c). The Department received no objection to this request for any party cited in 19 CFR 351.213(c)(l)(ii).

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2004. Also, in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of the January 1, 2002, through December 31, 2002, administrative review of the countervailing duty order on Stainless Steel Sheet and Strip in Coils from France with respect to one exporter.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Oil Country Tubular Goods, A–357–810	8/1/02–7/31/03
Siderca, S.A.I.C	
Brazil: Seamless Pipe, A–351–826	8/1/02–7/31/03
V & M do Brasil S.A.	
Canada:	
Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/02–7/31/03
Continuous Colour Coat, Ltd.	
Dofasco Inc.	
Ideal Roofing Company, Ltd.	
Impact Steel Canada Ltd.	
Russel Metals Export	
Sorevco and Company, Ltd.	
Stelco Inc.	
Pure Magnesium, A–122–814	8/1/02–7/31/03
Magnola Metallurgy Inc.	
Norsk Hydo Canada, Inc.	
France: Industrial Nitrocellulose, A–427–009	8/1/02–7/31/03
Bergerac N.C.	
India: Polyethylene Terephthalate (PET) Film, A–533–824	12/21/01–6/30/03
Gareware Polyester Limited [1]	
Italy: Granular Polytetrafluoroethylene (PTFE) Resin, A–475–703	8/1/02–7/31/03
Solvay Solexis, Inc.	
Japan:	
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/02–7/31/03
JFE Steel Corporation	
Nippon Steel Corporation	
Kobe Steel Company, Ltd.	
Sumitomo Metals	
Kawasho Corporation	
Nisshin Steel	
Granular Polytetrafluroethylene Resin, A–588–707	8/1/02–7/31/03
Asahi Glass Fluoropolymers Co., Ltd.	
Mexico: Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4/5 Inches), A–201–827	8/1/02–7/31/03
Tubos de Acero de Mexico, S.A.	
Gray Portland Cement and Clinker, A–201–802	8/1/02–7/31/03
CEMEX, S.A. de C.V.	
GCC Cementos, S.A. de C.V.	
Oil Country Tubular Goods, A–201–817	8/1/02–7/31/03
Hylsa, S.A. de C.V.	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/02–7/31/03

	Period to be reviewed
Dongbu Steel Co., Ltd.	
Dongshin Special Steel Co., Ltd.	
Hyundai Hysco	
Pohang Iron and Steel Co., Ltd./Pohang Coated Steel Co., Ltd./Pohang Steel Indust	
SeAH Steel Corporation	
Union Steel Manufacturing Co., Ltd.	
Structural Steel Beams, A–580–841	8/1/02–7/31/03
Dongkuk Steel Mill Co., Ltd.	
INI Steel Company	
Romania:	
Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe, A–485–805	8/1/02–7/31/03
S.C. Silcotub S.A.	
S.C. Petrotub S.A.	
Cut-to-Length Carbon Steel Plate, A–485–803	8/1/02–7/31/03
CSR SA Resita	
Metalexportimport, S.A.	
MINMET, S.A.	
Sidex S.A.	
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/02–6/30/03
Chia Far Industrial Co., Ltd.[2]	
The People's Republic of China:	
Petroleum Wax Candles[3], A–570–504	8/1/02–7/31/03
Amstar Business Co., Ltd.	
AtHome America	
Avon Products, Inc.	
Candle World Industrial Co.	
Dalian Hanbo Lighting Co., Ltd.	
Dongguan Fay Candle Company, Ltd.	
Generaluxe Factory	
Guangdong Xin Hui City Si Qian Art & Craft Factory	
Jiangsu Holly Corporation	
Li & Fung Trading Ltd.	
Premier Candle Co. Ltd.	
Qingdao Kingking Applied Chemistry Co., Ltd.	
Shandong Jiaye Gen. Merch.	
Shanghai Charming Wax Co., Ltd.	
Simon Int'l Ltd.	
Sincere Factory Company	
Smartcord Int'l Co., Ltd./Rich Talent Trading	
Suzhou Ind'l Park Nam Kwong	
Taizhou Int'l Trae Corp.	
Two's Company Inc.	
Universal Candle Co., Ltd.	
Zen Continental Co., Inc.	
Zhong Hang-Scanwell International/Scanwell Freight Express (LAX), Inc.	
Countervailing Duty Proceedings	
Canada:	
Alloy Magnesium C–122–815	1/1/02–12/31/02
Magnola Metallurgy Inc.	
Norsk Hydro Canada Inc.	
Pure Magnesium, C–122–815	1/1/02–12/31/02
Magnola Metallurgy Inc.	
Norsk Hydro Canada Inc.	
Deferral of Initiation of Administrative Review	
France: Stainless Steel Sheet and Strip in Coils, C–427–815	1/1/02–12/31/02
Ugine S.A.	
Suspension Agreements	
None.	

[1] Company inadvertently omitted from previous initiation notice.
[2] Company inadvertently omitted from previous initiation notice.
[3] If one of the above named companies does not qualify for a separate rate, all other exporters of petroleum wax candles from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 24, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–24766 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724217–3238–06]

Solicitation of Applications for the Minority Business Development Center (MBDC) Program

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency is revising the announcement soliciting competitive applications to operate its Minority Business Development Center (MBDC) Program published on Friday, August 29, 2003 (68 FR 51965). The original solicitation is amended to (1) clarify that there are only three basic areas under the work requirements, and (2) update the computer requirements under the headings Network Design, Desktop Workstations, Maintenance and Security, and Time for Compliance.

DATES: The closing date for applications for each MBDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of the publication of this Notice.

MBDA anticipates that awards for the MBDC program will be made with a start date of January 1, 2004. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Minority Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: The Minority Business Development Agency revises its announcement soliciting competitive applications to operate its Minority Business Development Center (MBDC) Program published on Friday, August 29, 2003 (68 FR 51965) to provide clarification concerning the number of basic areas under the work requirements, and to amend computer requirements for MBDC.

On page 51968, a typographical error appears under the heading ''Work Requirements''. The notice incorrectly states that the MBDC is required to perform work in four (4) basic areas. This notice clarifies that there are only three (3) basic areas where the NABDC must perform work: Market Development, Client Services, and Operational Quality.

Also, on pages 51970 through 51972 of the **Federal Register** notice, the Computer Requirements for the MBDC Program have been amended to reflect the following changes:

1. Under the heading *Network Design*:

- The term ''server-based local area network'' has been substituted for ''Client Server'' for clarity;
- The requirement for a service pack 3 or greater server has been deleted;
- The requirement for a Domain Controller server has been deleted;
- Grant recipients may use a Pentium IV class CPU, instead of a Pentium IV CPU; and
- The requirement for a trusted relationship between the servers of MBDA's and the award recipient's has been deleted.

2. Under the heading *Desktop Workstations*:

- Grant recipients may use a Pentium IV class CPU, instead of a Pentium IV CPU;
- The option of XP Professional software has been added to Operating systems;
- A requirement for a software or hardware-based Firewall has been added to the antivirus protection software; and
- The requirement that 50% of all employee workstations to be fully operational during business hours, has been deleted.

3. Under the heading *Maintenance and Security*:

- The requirement for a trusted relationship for any security component has been deleted.

4.Under the heading *Time for Compliance:*

- The requirement for the contact information for the ISP Technical Contact has been deleted.

The amended Computer Requirements reads as follows:

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, minority-owned businesses, the MBDA Federal IT system and the public. These required assets and their configuration are hereinafter referred to as the ''enterprise.'' The basic components of the enterprise are the desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling

communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (email) address available to the public. Each grantee shall design, develop and maintain, in accordance with the computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a server-based local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is *fully compatible* with Microsoft Windows 2000. Any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV class central processing unit (CPU), shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV class central processing unit (CPU), operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 or XP Professional, with MS Office 2000 Professional or higher, Microsoft Internet Explorer 6.x , and a software or hardware-based Firewall. Additionally, at least one workstation have installed both a full page scanner, along with software fully compatible with Adobe Acrobat software for the production of electronic document submissions.

3. *Maintenance and Security:* A network map (''as-built'') reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the MBDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the MBDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the MBDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public Web site using a unique address (*e.g., http://www.center-name.com*). The first page (Index page) of the Web site shall clearly identify the recipient as a Minority Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency.

The Index page of the Web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56Kb/s analog phone line connection in less than ten (10) seconds. The Web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the MBDC and employees, a statement referencing the services available at the MBDC, the hours under which the MBDC operates and a link to the MBDA homepage (*http://www.mbda.gov*). For purpose of electronically directing clients to the appropriate MBDC staff, the Web site shall also contain a short biographical statement for each employee of the MBDC including management, contractors, part-time, full-time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the MBDC, nor any other person, shall use the MBDC Web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the Web site shall comply with Federal standards of the American With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, current, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be predominately featured. From time to time, MBDA shall audit the recipient's Web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and email address of the Project

Director, Network or System Administrator.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure Web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each MBDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance Web site (*http://www.mbda.gov*). Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. There shall be no ''sharing'' of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Dated: September 24, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–24636 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218–3239–07]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency is revising the announcement soliciting competitive applications to operate its Native American Development Center (NABDC) Program published on Friday, August 29, 2003 (68 FR 51981). The original solicitation is amended to (1) clarify the total Federal amount for the Arizona Statewide NABDC award, (2) clarify that there are only three basic areas under the work requirements, and (3) update the computer requirements under the headings Network Design, Desktop Workstations, Maintenance and Security, and Time for Compliance.

DATES: The closing date for applications for each NABDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of the publication of this Notice. MBDA anticipates that awards for the NABDC program will be made with a start date of January 1, 2004. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5:00 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW, between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: The Minority Business Development Agency revises its announcement soliciting competitive applications to operate its Native American Development Center (NABDC) Program published on Friday, August 29, 2003 (68 FR 51981) to provide clarification concerning the total Federal amount and the number of basic areas under the work requirements, and to amend computer requirements for NABDC.

On page 51991 of the **Federal Register** notice, the total Federal amount available for the operation of the Arizona Statewide NABDC was incorrectly stated. The total Federal amount should be $188,000 for operation of the Arizona Statewide NABDC.

On page 51984, a typographical error appears under the heading ''Work Requirements''. The notice incorrectly states that the NABDC is required to perform work in four (4) basic areas. This notice clarifies that there are only three (3) basic areas where the NABDC must perform work: Market Development, Client Services, and Operational Quality.

Finally, on pages 51986 through 51988 of the **Federal Register** notice, the requirements listed under the heading Computer Requirements for the NABDC Program is amended to reflect the following changes:

1. Under the heading *Network Design:*

- The term ''server-based local area network'' has been substituted for ''Client Server'' for clarity.
- The requirement for a service pack 3 or greater server has been deleted;
- The requirement for a Domain Controller server has been deleted;
- Grant recipients may use a Pentium IV class CPU, instead of a Pentium IV CPU;
- The requirement for a trusted relationship between the servers of MBDA's and the award recipient's has been deleted.

2. Under the heading *Desktop Workstations:*

- Grant recipients may use a Pentium IV class CPU, instead of a Pentium IV CPU;
- The option of XP Professional software has been added to Operating systems;
- A requirement for a software or hardware-based Firewall has been added to the antivirus protection software;
- The requirement that 50% of all employee workstations to be fully operational during business hours, has been deleted;

3. Under the heading *Maintenance and Security:*

- The requirement for a trusted relationship for any security component has been deleted.

4. Under the heading *Time for Compliance:*

- The requirement for the contact information for the ISP Technical Contact has been deleted.

The amended Computer Requirements reads as follows:

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, Native American and other minority-owned businesses, the MBDA Federal IT system and the public. These

required assets and their configuration are hereinafter referred to as the ''enterprise.'' The basic components of the enterprise are the desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (e-mail) address available to the public. Each grantee shall design, develop and maintain, in accordance with the computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a server-based local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is *fully compatible* with Microsoft Windows 2000. Any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV class central processing unit (CPU), shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV class central processing unit (CPU), operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 or XP Professional, with MS Office 2000 Professional or higher, Microsoft Internet Explorer 6.x , and a software or hardware-based Firewall. Additionally, at least one workstation shall have installed both a full page scanner, along with software fully compatible with Adobe Acrobat software for the production of electronic document submissions.

3. *Maintenance and Security:* A network map (''as-built'') reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the NABDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the NABDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the NABDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public Web site using a unique address (*e.g.*, *http://www.center-name.com*). The first page (Index page) of the Web site shall clearly identify the recipient as a Native American Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the Web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56Kb/s analog phone line connection in less than ten (10) seconds. The Web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and e-mail addresses of the NABDC and employees, a statement referencing the services available at the NABDC, the hours under which the NABDC operates and a link to the MBDA homepage (*http://www.mbda.gov*). For purpose of electronically directing clients to the appropriate NABDC staff, the Web site shall also contain a short biographical statement for each employee of the NABDC including management, contractors, part-time, full-time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the NABDC, nor any other person, shall use the NABDC Web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the Web site shall comply with Federal standards of the American With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, current, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be

predominately featured. From time to time, MBDA shall audit the recipient's Web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via e-mail to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and e-mail address of the Project Director, Network or System Administrator.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure Web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each NABDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance Web site (*http://www.mbda.gov*). Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. There shall be no ''sharing'' of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Dated: September 24, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–24635 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091603G]

Endangered Species; Permit No. 1174 and Permit No. 1360

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that requests for modifications of scientific research permits No. 1174 submitted by Harold Brundage, Environmental Research and Consulting, Inc, 112 Commons Court, Chadds Ford, Pennsylvania 19317, and No. 1360 submitted by Dr. David Secor, Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science, P.O. Box 38, Solomons, Maryland 20619, have been granted.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits,Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring,MD 20910 (phone 301/713–2289, fax 310/713–0376) and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

Mr. Brundage is authorized to sample for and collect 2,500 shortnose sturgeon (Acipenser brevirostrum) annually in the Delaware River and Estuary system and in the lower Susquehanna River/Chesapeake Bay Complex. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon. This modification will extend the total authorized takes through August 31, 2004.

Dr. Secor is authorized to determine the ages of shortnose sturgeon caught in the Hudson river by interpreting annulus of pectoral fin spines. The method uses 10 captive shortnose sturgeon from seven age classes (70 total) from US Fish and Wildlife Service Warm Springs Fish Hatchery, Georgia. This modification will extend the total authorized takes through November 30, 2004.

Issuance of these modifications, as required by the ESA was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of these permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 22, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–24735 Filed 9–29–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Technical Assistance Teleconferences for Organizations Interested in Applying for a 2004 Learn and Serve America Program Grant

AGENCY: Corporation for National and Community Service.

ACTION: Notice of technical assistance conference calls.

SUMMARY: The Corporation for National and Community Service (hereinafter the 'Corporation') will be providing six teleconferences for potential applicants for a Learn and Serve America *School-based* grant competition (The official Notice of Funds Availability will be published on or about November 14, 2003). Approximately $3.5 million will be available for grants to be awarded to state education agencies; or nonprofit organizations with programs in two or more states. Funds for this grant competition are FY 2003 funds available under authority provided by Pub. L. 108–7. Participation in these calls is optional.

The technical assistance teleconferences are designed to support potential applicants in preparing high quality proposals. Teleconferences scheduled in October 2003 will focus on:

(1) Developing innovative collaborations between schools and other community organizations;

(2) Designing impact evaluation strategies as an integral part of application development; and,

(3) Creating programs that are designed to be replicated and/or increased in scale. Teleconferences scheduled in February 2004 will focus on clarification of the grant application guidelines and an introduction to *eGrants,* the Corporation's Web-based grant management system.

The Corporation expects to make awards to applicants proposing innovative service-learning initiatives in two program areas of high importance to the Corporation: (1) *Homeland Security* through creation of programs that engage schools, students, their families, with community-based organizations in activities to minimize the damage or speed the recovery from disasters and emergencies (Schools often serve as the locus of a community's response to disasters by storing supplies and providing shelter and housing for victims and responders to any local emergency); (2) *Bridging the Digital Divide* through programs that reduce inequality in technological literacy, access to technology, or address underutilization of available technology and its applications. In both program areas the Corporation strongly encourages incorporation of adult, especially senior, volunteers. Applicants may also address both issues areas within a single program design.

DATES: *Teleconference Dates:* The first three calls, focused on developing high-quality programs, will take place on Wednesday, October 29, 2003, from 2–3:30 p.m. e.s.t., on Thursday, October 30, 2003, from 4–5:30 p.m. e.s.t., and on Tuesday, November 4, 2003, from 1–2:30 p.m. e.s.t. The second round of calls, to clarify program guidance, will take place on Friday, February 6, 2004, from 1–2:30 p.m. e.s.t., on Thursday, February 12 from 3–4:30 p.m. e.s.t., and on Tuesday, February 17, 2004, from 4–5:30 p.m. e.s.t. Please register for these calls by telephoning Juanita Peoples at (202) 606–5000 x117. The Corporation strongly encourages potential applicants to participate in both calls. Availability is limited to the first 30 registrants per call.

ADDRESSES: Corporation for National and Community Service, Learn and Serve America, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Mark Abbott, Learn and Serve America, *mabbott@cns.gov,* 202–606–5000 x120.

Dated: September 24, 2003.

Amy B. Cohen,

Director, Learn and Serve America.

[FR Doc. 03–24729 Filed 9–29–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 1, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 24, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Part B of the Individuals with Disabilities Education Act Biennial Performance Report.

Frequency: Annually.

Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 12,000.

Abstract: State educational agencies are required to establish goals for the performance of children with disabilities in that State that promote the purposes of Part B of the Individuals with Disabilities Education Act (Part B). States must also establish performance indicators that the State will use to assess its progress in achieving these goals. Section 612(a)(16) of Part B requires States to report to the Secretary on the progress that the State has made toward meeting its goals. The Office of Special Education Programs (OSEP) is implementing an integrated, four-part accountability strategy: (1) Verifying the effectiveness and accuracy of States' monitoring, assessment, and data collection systems; (2) attending to States at high-risk for compliance, financial, and/or management failure; (3) supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies; and (4) focusing OSEP's intervention on States with low ranking Reporting requirements for States' Self-Assessments, Improvement Plans, and Biennial Performance Reports are being combined in this Part B Annual Performance Report.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2355. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–24648 Filed 9–29–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Institutional Cooperation and Student Mobility in Postsecondary Education Among the United States, Canada and Mexico); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions of higher education and other public and private nonprofit institutions and agencies.

Applications Available: December 10, 2003.

Deadline for Transmittal of Applications: April 16, 2004.

Deadline for Intergovernmental Review: July 15, 2004.

Estimated Available Funds: $300,000.

Estimated Range of Awards: $30,000. $200,000—$215,000 for four-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2004. $210,000 for four-year duration of grant.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than twenty (20) double-spaced pages using the following standards:

- A ''page'' is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the title page, the budget section, including the narrative budget justification, the assurances and certifications, the resumes, the bibliography, or the letters of support.

Our reviewers will not read any pages of your application narrative that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American, Canadian, and Mexican institutions of higher education to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities throughout North America. The invitational priority is issued in cooperation with Canada and Mexico. Canadian and Mexican institutions of higher education participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources Development Canada and the Mexican Department of Public Education for additional funding under separate Canadian and Mexican competitions.

Priority

We are particularly interested in applications that meet the following invitational priority.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Canada, and Mexico.

Aligning Your Proposal to the Review Criteria

The success of this Special Focus Competition depends upon (1) the extent to which funded projects are being replicated—*i.e.*, adopted or adapted by others; and (2) the manner in which projects are being institutionalized and continued after grant funding. These two results constitute FIPSE's indicators of the success of our program.

If funded, you will be asked to collect and report data from your project on steps taken toward these goals. Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of the proposed project. Consideration of FIPSE's two performance outcomes is an important part of many of the review criteria discussed below. Thus, it is important to the success of your application that you include these objectives. Their measure should be a part of the project evaluation plan, along with measures of objectives specific to your project.

Methods for Applying Selection Criteria

We give equal weight to the listed criteria. Within each of the criteria, we give equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, we use selection criteria chosen from those listed in 34 CFR 75.210 of EDGAR.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Program for North American Mobility in Higher Education [84.116N] is one of the programs included in the pilot project. If you are an applicant under the Program for North American Mobility in Higher Education, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in

this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Title Page which substitutes for ED 424 in the Program for North American Mobility in Higher Education, the Budget Summary Sheet which substitutes for ED 524 in the Program for North American Mobility in Higher Education, and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Title Page, which substitutes for ED 424 in the Program for North American Mobility in Higher Education, to the Application Control Center after following these steps:

1. Print the Title Page, which substitutes for ED 424, from e-Application.
2. The institution's Authorizing Representative must sign the Title Page, which substitutes for ED 424.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the Title Page, which substitutes for ED 424.
4. Fax the signed Title Page, which substitutes for ED 424, to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Program for North American Mobility in Higher Education and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Program for North American Mobility in Higher Education at: *http://e-grants.ed.gov*.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116N.

FOR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006–8544. Telephone: (202) 502–7500 or via Internet: *http://www.ed.gov/FIPSE*.

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 number listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that number. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: September 25, 2003.

Sally Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–24794 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA31

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services establishes a final priority for one new award under the Assistive Technology Act (AT Act) Technical Assistance Program (TA) for NIDRR. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus attention on an area of national need. We intend this priority to measure and improve the outcomes of the Assistive Technology (AT) State

grant program that serves individuals with disabilities.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a proposed rule be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 30-day public comment period on this notice, no comments were received. For this reason, and in order to make timely grant awards, the Secretary has determined that a delayed effective date is unnecessary and impracticable.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: We published a notice of proposed priority in the **Federal Register** on August 14, 2003 (68 FR 48739). There are no differences between the notice of proposed priority and this notice of final priority.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on August 14, 2003 (68 FR 48741). This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statement for this priority was published in the notice of proposed priority on August 14, 2003 (68 FR 48739).

Priority

The Assistant Secretary proposes a Data Collection Technical Assistance Project. The purpose of the project is to maintain and support the existing Web-based data collection instrument for the AT Act State grantees and to develop, implement, test, support and maintain a Web-based data collection instrument for the AT Act Protection and Advocacy (P&A) grantees. The Data Collection Technical Assistance Project must:

(a) Maintain and support the existing Web-based data collection instrument for the AT Act State grantees and develop, implement, test, support and maintain a Web-based data collection and analysis system, including a data collection instrument for the AT Act P&A grantees to assess performance outcomes;

(b) Train entities funded under the AT Act in the use of the data collection systems including specific training on the data collection instruments;

(c) Generate analytical reports based on the data collected from the grantees and prepare an annual report on grantees' performance and outcomes, including interpretations of findings;

(d) Identify and evaluate successful strategies that can be linked to increased access to and provision of AT based on the data collected from the grantees, including analyses of use of AT by individuals with disabilities and national trends related to AT use by individuals with disabilities;

(e) Coordinate information dissemination activities and distribute information about access to and provision of AT for individuals with disabilities of all ages to the AT Act State grantees, AT Act P&A grantees, grantees providing TA to the AT Act State grantees and P&A grantees, and the National AT Internet Site; and

(f) Prepare and submit an annual report of findings about program outcomes, and separately prepare a report on assessment of the reliability of the data collection measures and validity of data collected from the AT Act grantees and P&A grantees, and the extent to which the data addresses the intended purposes of the data collection activities.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, we have determined that the benefits of the final priority justify the costs.

Summary of Potential Costs and Benefits

The potential cost associated with this final priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Data Collection Project have been well established over the years in that similar projects have been completed. This final priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this final priority and proposed applications and project requirements will be the establishment of a new Data Collection Project that generates, disseminates, and promotes the use of new information that will improve access to AT and expand opportunities for employment, education and community life.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government

Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is 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.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.224B, Assistive Technology Act Technical Assistance Program)

Program Authority: 29 U.S.C. 3014.

Dated: September 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–24703 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA30

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities for the Alternative Financing Mechanisms Program (AFP) under title III of the Assistive Technology Act of 1998 (AT Act) that is administered by the National Institute on Disability and Rehabilitation Research (NIDRR) and the Access to Telework Fund Program (Telework) under section 303(b) of the Rehabilitation Act of 1973, as amended (Rehab Act), that is administered by the Rehabilitation Services Administration (RSA). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2003 and later years.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a proposed rule be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). In order to make timely grant awards, the Secretary has determined that a delayed effective date is impracticable.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5666 or via the Internet: *carol.cohen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: We published a notice of proposed priorities and change to the application process for the Alternative Financing Mechanisms Program (AFP) and the Access to Telework Fund Program (Telework) in the **Federal Register** on August 5, 2003 (68 FR 46411). There are no significant differences between the notice of proposed priorities and this notice of final priorities.

Public Comment

In the notice of proposed priorities, we invited comments on the proposed priorities. The only substantive comments we received suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on August 5, 2003 (68 FR 46418).

When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Eligibility for an AFP Grant

States that receive or have received grants under section 101 of the AT Act are eligible for an AFP grant. Under section 3(a)(13)(A) of the AT Act, State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Eligibility for a Telework Grant

States as defined in the AT Act and governing bodies of American Indian tribes located on Federal and State reservations consistent with section 7(19)(B) of the Rehab Act are eligible for a Telework grant. Consortia of States and American Indian tribes are also eligible for a Telework grant.

Joint Administration of Grants

States may jointly apply for and administer an AFP grant and a Telework grant. States that submit one application for the two priorities must meet the requirements for each priority and will compete separately under each priority.

Background

The background statements for the following priorities were published in the notice of proposed priorities on August 5, 2003 (68 FR 46411).

Priority 1: Alternative Financing Mechanism Program

The purpose of these requirements is to increase the funding for and provision of AT (Sec. 2(b)(1)(A)). The AFP will: (1) achieve the program's short-term goal of purchasing AT through alternative financing mechanisms for individuals with disabilities, and other eligible parties; and (2) achieve the program's long-term goals of establishing a nationwide network of permanent State AFPs that promote independence and choice.

States that receive or have received grants under section 101 of the AT Act are eligible to compete for an AFP (Sec. 303(a)). In its application, a State must identify and describe one or more of the following types of AFP programs that the State will implement:

(1) a low-interest loan fund;

(2) an interest buy-down program;

(3) a revolving loan fund;

(4) a loan guarantee or insurance program;

(5) a program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or AT services; or

(6) another mechanism that meets the requirements of title III and is approved by the Secretary (Sec. 301(b)).

According to section 301(a) of the AT Act, the AFP is designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT. The terms ''AT devices'' and ''AT services'' are defined in section 3(a) of the AT Act. When family members, guardians, advocates, and authorized representatives (including employers who have been designated by an individual with a disability as an authorized representative) receive AFP support to purchase AT, the purchase must be on behalf of an individual with a disability, *i.e.*, the AT that is purchased must be solely for the benefit of that individual.

In addition, an applicant must submit the following assurances:

(1) *Nature of the Match:* an assurance that the State will provide the non-Federal share (25 percent) of the cost of the AFP in cash, from State, local, or private sources (Sec. 303(b)(1)). An applicant must identify the amount of Federal funds the State is requesting and the amount of cash that the State is going to generate as a match as well as the source of the cash.

(2) *Permanence of the Program:* an assurance that the AFP will continue on a permanent basis (Sec. 303(b)(2)).

A State's obligation to implement the AFP program consistent with all of the requirements, including reporting requirements, continues throughout the project period until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid.

If a State decides to terminate its AFP while there are still funds available to operate the program, the State must return the Federal share of the funds remaining in the permanent separate account to NIDRR (*e.g.*, 75 percent if the original State:Federal match was 1:3) except for funds being used for grant purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the State must also return the Federal share of any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(3) *Consumer Choice and Control:* an assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control (Sec. 303(b)(3)).

(4) *Supplement Not Supplant:* an assurance that the funds made available through the grant to support the AFP will be used to supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms (Sec. 303(b)(4)).

(5) *Permanent Separate Account:* an assurance that the State will ensure that (A) all funds that support the AFP, including funds repaid during the life of the program, will be placed in a permanent separate account and identified and accounted for separately from any other fund; (B) if the organization administering the program invests funds within this account, the organization will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and (C) the organization will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of such person (Sec. 303(b)(5)).

During the first 12-month budget period, a grantee must deposit its matching funds and its Federal award funds in the permanent and separate account.

(6) *Use and Control of Funds:* an assurance that (A) funds comprised of the principal and interest from the account described in paragraph (5) will be available to support the AFP; and (B) any interest or investment income that accrues on or derives from such funds after such funds have been placed under the control of the organization administering the AFP, but before such funds are distributed for purposes of supporting the program, will be the property of the organization administering the program (Sec. 303(b)(6)).

This assurance regarding the use and control of funds applies to all funds derived from the AFP including the original Federal award, the State matching funds, AFP funds generated by either interest bearing accounts or investments, and all principal and interest paid by borrowers of the AFP who are extended loans from the permanent separate account.

(7) *Indirect Costs:* an assurance that the percentage of the funds made available through the grant that is used for indirect costs will not exceed 10 percent (Sec. 303(b)(7)).

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the amount of funds in the permanent and separate account and any outstanding loans from that account.

(8) *Contract with a Community-based Organization:* an assurance that the State will enter into a contract with a community-based organization (including a group of such organizations) that has individuals with disabilities involved in organizational decision making at all organizational levels, to administer the AFP. The contract will: (1) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of title III; (2) include any provision the Secretary requires concerning oversight and evaluation necessary to protect Federal financial interests; and (3) require the community-based organization to enter into a contract, to expand opportunities under title III and facilitate administration of the AFP, with commercial lending institutions or organizations or State financing agencies (Sec. 304 (a) and (b)).

During the first 12-month budget period, a grantee must enter into the contract with a CBO and ensure that the CBO has entered into the contract with the commercial lending institutions or organizations or State financing agencies.

(9) *Administrative Policies and Procedures:* an assurance that the State and any community-based organization that enters into a contract with the State under title III, will submit to the Secretary the following policies and procedures for administration of the AFP: (1) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the program; (2) A policy and procedure to ensure that access to the AFP shall be given to consumers regardless of type of disability, age, income level, location of residence in the State, or type of AT device or AT service for which financing is requested through the program; and (3) A procedure to ensure consumer-controlled oversight of the program (Sec. 305).

Grantees must submit the administrative policies and procedures required in this assurance within six months of the start of the grant.

(10) *Data Collection:* an assurance that the State will collect the following: (1) Information on the type of alternative financing mechanisms used by the State and the community-based organization with which each State entered into a

contract, under the program (Sec. 307); (2) the amount of assistance given to consumers through the program (who shall be classified by age, type of disability, type of AT device or AT service financed through the program, geographic distribution within the State, gender, and whether the consumers are part of an underrepresented population or rural population) (Sec. 307); and (3) information on the program's short-term and long-term goals.

Grantees must enter the data requested in this assurance, and other data the Secretary may require, in the system developed by the Secretary. The Technical Assistance provider has developed a (voluntary) web-based data collection instrument to assist the AFP grantees for this purpose. For more information on the data collection system, products, and reports, *see http://www.resna.org/AFTAP/loan/index.html.* Grantees must enter the data elements contained in this form as well as specific information (to be determined) pertaining to the short-term and long-terms goals.

Through the analysis of data collected under the following reporting requirements, the Secretary will assess grantee success in meeting the program's overall goals of:

(1) increasing access to alternative financing programs for the purchases of AT for individuals with disabilities; and

(2) establishing a nationwide network of permanent State AFPs that promote independence and choice.

Performance measures used to determine whether the goals have been accomplished will include: (1) Number of loan applications; (2) number of loans; (3) amount and terms of each loan; (4) number of loan applications denied and the reasons for the denials; (5) number of individuals with disabilities who obtained AT; (6) purpose and type of the AT purchased; (7) default rate and net losses; (8) number of States that have established new loan program or expanded existing loan programs; and (9) State loan capacity.

Grantee evaluation systems must be capable of collecting and analyzing this and any additional required information.

Priority 2: Access to Telework Fund

In its application, a State or Indian tribe must identify and describe one or more of the following types of programs that the State will implement:

(1) a low-interest loan fund;

(2) an interest buy-down program;

(3) a revolving loan fund;

(4) a loan guarantee or insurance program;

(5) a program operated by a partnership among private entities for the purchase, lease, or other acquisition of computers and other equipment, including adaptive equipment;

(6) another mechanism that meets the requirements and intent of this program and is approved by the Secretary.

In addition, an applicant must submit the following assurances:

(1) *Nature of the Match:* an assurance that the State or Indian tribe will provide the non-Federal share (10 percent) of the cost of Telework in cash, from State or Indian tribe, local, or private sources. An applicant must identify the amount of Federal funds it is requesting and the amount of cash that the State or Indian tribe is going to generate as a match as well as the source of the cash.

(2) *Permanence of the Program:* an assurance that Telework will continue on a permanent basis.

A State or Indian tribe's obligation to implement Telework consistent with all of the requirements, including reporting requirements, continues throughout the project period until there are no longer any funds available to operate Telework and all outstanding loans have been repaid.

If a State or Indian tribe decides to terminate its Telework grant while there are still funds available to operate the program, the State or Indian tribe must immediately return the Federal share of the funds remaining in the permanent separate account to RSA (*e.g.*, 90 percent if the original State or Indian tribe: Federal match was 1:9) except for funds being used for grant purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the State or Indian tribe must also return the Federal share of any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(3) *Consumer Choice and Control:* an assurance that, and information describing the manner in which, Telework will expand and emphasize consumer choice and control.

(4) *Supplement Not Supplant:* an assurance that the funds made available through the grant to support Telework will be used to supplement and not supplant other Federal, State or Indian tribe, and local public funds to support similar services to individuals with disabilities.

(5) *Permanent Separate Account:* an assurance that the State or Indian tribe will ensure that (A) all funds that support Telework, including funds repaid during the life of the program, will be placed in a permanent separate account and identified and accounted for separately from any other fund; (B) if the organization administering the program invests funds within this account, the organization will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and (C) the organization will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of such person.

During the first 12-month budget period, a grantee must deposit its matching funds and its Federal award funds in the permanent and separate account.

(6) *Use and Control of Funds:* an assurance that (A) funds comprised of the principal and interest from the account described in paragraph (5) will be available to support Telework; and (B) any interest or investment income that accrues on or derives from such funds after such funds have been placed under the control of the organization administering Telework, but before such funds are distributed for purposes of supporting the program, will be the property of the organization administering the program.

This assurance regarding the use and control of funds applies to all funds derived from Telework including the original Federal award, the State or Indian tribe matching funds, Telework funds generated by either interest bearing accounts or investments, and all principal and interest paid by borrowers of Telework who are extended loans from the permanent separate account.

(7) *Indirect Costs:* an assurance that the percentage of the funds made available through the grant that is used for indirect costs will not exceed 10 percent.

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the amount of funds in the permanent and separate account and any outstanding loans from that account.

(8) *Administrative Policies and Procedures:* an assurance that the State or Indian tribe will submit to the Secretary the following policies and procedures for administration of Telework: (1) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific device or

service to be financed through the program; (2) A policy and procedure to ensure that access to Telework shall be given to consumers regardless of type of disability, age, income level, location of residence in the State or Indian tribe, or type of device or service for which financing is requested through the program; and (3) A procedure to ensure consumer-controlled oversight of the program.

Grantees must submit the administrative policies and procedures required in this assurance within six months of the start of the grant.

(9) *Data Collection:* an assurance that the State or Indian tribe will collect the following: (A) Information on whether the program is achieving its short-term goal of increasing access to technology for disabled individuals through the provision of loans that must be used to purchase computers and other equipment, including adaptive equipment, so that individuals with disabilities can telework from home and other remote sites; and (B) Information on whether the program is achieving its long-term goal of increasing employment opportunities and competitive employment outcomes for individuals with disabilities.

Grantees must enter the data requested in this assurance, and other data the Secretary may require, in the system developed by the Secretary.

Through the analysis of data collected under the following reporting requirements, the Secretary will assess grantee success in meeting the program's overall goals of: (1) Increasing access to technology for disabled individuals; and (2) Increasing employment opportunities and competitive employment outcomes for individuals with disabilities.

Performance measures used to determine whether the goals have been accomplished will include: (1) Number of loan applications; (2) number of loans; (3) amount and terms of each loan; (4) number of loan applications denied and the reasons for the denials; (5) the types of equipment financed, including the total number of each type of equipment financed; (6) number of individuals who obtained telework employment as a result of Telework loans; (7) default rate and net losses; and (8) the total financial contribution to the project, including the Federal share and non-Federal matching contributions, and the source of the non-Federal share.

Grantee evaluation systems must be capable of collecting and analyzing this and any additional information as required by the Secretary.

In addition, each State applicant must provide the following assurance:

Contract with a Community-based Organization: an assurance that the State (note: Indian tribes are exempt from this requirement) will enter into a contract with a community-based organization (including a group of such organizations) that has individuals with disabilities involved in organizational decision making at all organizational levels, to administer Telework. The contract will: (1) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of this priority; (2) include any provision the Secretary requires concerning oversight and evaluation necessary to protect Federal financial interests; and (3) require the community-based organization to enter into a contract, to expand opportunities under this priority and facilitate administration of Telework, with commercial lending institutions or organizations or State financing agencies.

During the first 12-month budget period, a grantee must enter into the contract with a CBO and ensure that the CBO has entered into the contract with the commercial lending institutions or organizations or State financing agencies.

Applicability of Education Department General Administrative Regulations (EDGAR) to AFP and Telework

In general, EDGAR applies to these two grants except to the extent it is inconsistent with the purpose and intent of title III of the AT Act, section 303(b) of the Rehab Act, or the requirements in this notice. Specifically, grantees are exempt from section 80.21(i) regarding interest earned on advances and the addition method in section 80.25(g)(2) applies to program income rather than the deduction method in section 80.25(g)(1). Also, sections 75.560–75.564 do not apply to the extent that these sections of EDGAR are inconsistent with the AFP and Telework requirement that indirect costs cannot exceed 10 percent. Finally, section 75.125, which requires applicants to submit a separate application for each program, does not apply to this competition.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.224C, Alternative Financing Program and 84.235T, Access to Telework Fund Program.)

Program Authority: 29 U.S.C. 773(b) and 29 U.S.C. 3051–3056.

Dated: September 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–24704 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR); Notice of Extension

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: The Secretary waives the requirements in Education Department General Administrative Regulations (EDGAR), at 34 CFR 75.250 and 75.261(a) and (c)(2), respectively, that generally prohibit project periods exceeding 5 years and project period extensions involving the obligation of additional Federal funds to enable six Rehabilitation Research and Training Centers that conduct research on issues relating to the employment of individuals with disabilities to receive funding from October 1, 2003 until April 30, 2004.

EFFECTIVE DATE: This notice is effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The President's New Freedom Initiative (NFI) and the National Institute on Disability and Rehabilitation Research Long Range Plan (Plan) establish improving employment outcomes for individuals with disabilities as a critical need. National data indicate that employment rates of individuals with disabilities continue to lag well behind those of individuals without disabilities.

Note: The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

In accordance with the goals of the NFI and the Plan, and as authorized under section 204(b)(2) of the Rehabilitation Act of 1973, as amended, through NIDRR, the Department provides funding for Rehabilitation Research and Training Centers to conduct research on the improvement of employment outcomes for individuals with disabilities. In order to foster more efficient use of Federal funds for the Rehabilitation and Research Training Centers program, the Secretary intends to refocus the priorities for research on these employment issues and provide funding for new awards in fiscal year (FY) 2004.

The grants for six Rehabilitation Research and Training Centers focusing on employment issues at Virginia Commonwealth University, Cornell University, The University of Wisconsin at Stout, The University of Hawaii, The University of Iowa, and The University of Massachusetts are scheduled to expire between September 30, 2003 and December 16, 2003. It would be contrary to the public interest, however, to have any lapses in these research and training activities before the refocused priorities can be implemented and new awards granted for FY 2004.

To avoid any lapse in research and training activities before the refocused priorities can be implemented, therefore, the Secretary has decided to fund these projects until April 30, 2004. Accordingly, the Secretary waives the requirements in 34 CFR 75.250 and 75.261(a) and (c)(2), which prohibit project periods exceeding 5 years and extensions of project periods that involve the obligation of additional Federal funds.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the waiver of the requirements in 34 CFR 75.250 and 75.261 applicable to the maximum project period and extension of the project period for these grants on a one-time only basis is procedural and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

In addition, given the fact that the additional period of funding is only for a limited period of approximately four months from the expiration of the last grant agreement in December 2003, and the extensions must begin by September 30, 2003 to avoid any lapse in funding, the Secretary has determined that proposed rulemaking on this waiver is impracticable, unnecessary, and contrary to the public interest. Thus, proposed rulemaking also is not required under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: September 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–24705 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

University Reactor Instrumentation (URI) Program Solicitation Number DE–PS07–03ID14541

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of solicitation for awards of financial assistance.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for special research grant awards that will upgrade and improve U.S. nuclear research and training reactors. It is anticipated that on September 25, 2003, a full text for Solicitation Number DE–PS07–03ID14541 for the fiscal year 2004 URI Program will be made available at the Industry Interactive Procurement System (IIPS) Web site at: *http://e-center.doe.gov:* The deadline for receipt of applications will be on December 5, 2003. Applications are to be submitted via the IIPS Web site. Directions on how to apply and submit applications are detailed under the solicitation on the Web site.

FOR FURTHER INFORMATION CONTACT: Kathleen Stallman, Contract Specialist at *stallmkm@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR part 600.6(b). Eligibility for awards under this program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor because the purpose of the University Reactor Instrumentation (URI) program is to upgrade and improve the U.S. university nuclear research and training reactors and to contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Public Law 95–91.

Issued in Idaho Falls on September 22, 2003.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 03–24741 Filed 9–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–301–084 and GT01–25–006]

ANR Pipeline Company; Notice of Compliance Filing

September 23, 2003.

Take notice that on September 16, 2003 ANR Pipeline Company (ANR), tendered for filing five agreements with West Tennessee Public Utility District in compliance with the Commission's May 23, 2003 Order in the above-referenced docket.

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 ''eLibrary'' 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: September 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24647 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–609–000]

CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

September 23, 2003.

Take notice that on September 17, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2003:

Second Revised Sheet No. 17.
Second Revised Sheet No. 18.
Second Revised Sheet No. 19.
Second Revised Sheet No. 31.
Second Revised Sheet No. 32.

CEGT states that the purpose of this filing is to adjust CEGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to Sections 27 and 28 of its General Terms and Conditions.

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 ''eLibrary''. 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: September 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24646 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–137–000, EC03–137–000, ER99–963–001, ER99–2769–005, ER99–3450–004, ER00–2706–002, ER01–390–002, ER01–2760–002 and ER02–1866–001]

Chandler Wind Partners, LLC, Desert Southwest Power, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Nevada Sun-Peak Limited Partnership, Ridge Crest Wind Partners, LLC; Notice of Filing

September 22, 2003.

Take notice that on September 12, 2003, Chandler Wind Partners, LLC (Chandler Wind), Desert Southwest Power, LLC (DSP), Foote Creek II, LLC (Foote Creek II), Foote Creek III, LLC (Foote Creek III), Foote Creek IV, LLC (Foote Creek IV), Nevada Sun-Peak Limited Partnership (Nevada Sun-Peak), Ridge Crest Wind Partners, LLC (Ridge Crest) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect upstream membership interests in Applicants to Caithness Investors, LLC, a newly-formed limited liability company owned by ArcLight Energy Partners Fund I, L.P., and the owners of Caithness Energy, L.L.C. Applicants have requested privileged treatment of the contents of a portion of Exhibit B and of Exhibit I to the Section 203 application.

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 eLibrary (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.

Comment Date: October 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24638 Filed 9–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–342–003]

Questar Pipeline Company; Notice of Tariff Filing

September 24, 2003.

Take notice that on September 22, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 86, to be effective May 12, 2003.

Questar states that this filing is being made to make a minor administrative correction relating to Questar's two tariff filings dated April 14, 2003, and April 29, 2003, filed in Docket Nos. RP03–342–000 and–001, respectively, that modified Questar's measurement section of its tariff. This filing deletes language that was intended to be deleted in Docket No. RP03–342–001 upon discovery that the North American Energy Standards Board (NAESB) Standard 2.3.9 was inadvertently deleted in Docket No. RP03–342–000 and replaced by a new paragraph.

Questar states that it filed an amendment to reverse this replacement, but only half of the incorrect paragraph was deleted. Questar states that this filing continues that correction by deleting the remaining part of the paragraph that is redundant in purpose to NAESB Standard 2.3.9.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (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 eFiling link.

Protest Date: October 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24643 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–607–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 23, 2003.

Take notice that on September 15, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of October 15, 2003.

Tennessee states that it is filing the revised tariff sheets to update its system map, zone maps and title page data.

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 ''eLibrary''. 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: September 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24644 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–608–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

September 23, 2003.

Take notice that on September 16, 2003, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective October 16, 2003.

Williston Basin states that the tariff sheets add a new provision to Section 10 of the General Terms and Conditions of its Tariff to permit Williston Basin, under certain conditions, to reserve capacity that is available for firm service for future expansion projects. The tariff sheets also reflect revisions to Subsections 10.2, 10.3, 10.3.2, and 10.4.2 of Section 10 and to Subsection 50.1 of Section 50 to enhance customer service, and to Subsections 50.3.3 and 50.3.4 to allow for these revisions operationally. The tariff sheets also add a provision to Rate Schedules IS–1 and FS–1 to allow for the recovery of the difference in the withdrawal rate between Rate Schedules IS–1 and FS–1 when gas held in storage is transferred from a Rate Schedule IS–1 shipper to a Rate Schedule FS–1 shipper.

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 ''eLibrary''. 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 *FERCOnline Support@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: September 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24645 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–136–000, et al.]

Empire Connection LLC, et al.; Electric Rate and Corporate Filings

September 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Empire Connection LLC, New York Transmission Holdings Corp.

[Docket Nos. EC03–136–000]

Take notice that on September 11, 2003, Empire Connection LLC (EC) and NYT Holdings Corp. (NYT Holdings) (jointly, Applicants) filed with the Federal Energy Regulatory Commission a joint application pursuant to Section 203 of the Federal Power Act for the disposition of jurisdictional facilities relating to the transfer of indirect upstream membership interests in EC to NYT Holdings. EC states that it is authorized to sell transmission rights at negotiated rates, subject to certain conditions, on transmission facilities for which construction has not yet begun.

Comment Date: October 2, 2003.

2. Cities of Azusa, Banning, Colton, and Riverside, California

[Docket No. EL03–228–000]

Take notice that on September 12, 2003, the Cities of Azusa, Banning, Colton, and Riverside, California (Cities) submitted a Petition for Declaratory Order clarifying the Cities' rights and obligations under the Wholesale Distribution Access Tariff (WDAT) of the Southern California Edison Company (SCE), on file with the Commission as SCE FERC Electric Tariff First Revised Volume No. 5.

Comment Date: October 14, 2003.

3. Quark Power L.L.C.

[Docket No. ER97–2374–013]

Take notice that on September 10, 2003, Quark Power L.L.C. (Quark) tendered for filing its triennial market power analysis in support of its market-based rate authority in compliance with the Commission's June 6, 1997 and August 3, 2000, Orders accepting Quark's market-based rate schedule.

Comment Date: October 1, 2003.

4. Empire Connection LLC

[Docket No. ER03–452–001]

Take notice that on September 11, 2003, Empire Connection LLC (EC) submitted for filing its FERC Electric Tariff, Original Volume No. 1 pursuant to the authorization to sell transmission rights at negotiated rates granted in Conjunction LLC, 103 FERC ¶ 61,198, and EC's Procedures for Implementation of Standards of Conduct and the Standards of Conduct required under Order No. 889.

Comment Date: October 2, 2003.

5. Connecticut Jet Power LLC

[Docket No. ER03–563–020]

Take notice that on September 10, 2003, Connecticut Jet Power LLC, tendered for filing, information supporting the fixed cost portion of the PUSH Reference Levels for its six generating units at its Cos Cob, Torrington, Franklin Drive and Branford Stations, which are located in the Connecticut and Southwest Connecticut Designated Congestion Areas.

Connecticut Jet Power LLC states that they have provided a copy of this filing to ISO–NE on the date of filing and to each person designated on the official service list.

Comment Date: October 1, 2003.

6. New England Power Pool

[Docket No. ER03–894–002]

Take notice that on September 15, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (the ISO) (jointly, Participants Committee), filed for acceptance a filing in compliance with the Commission's August 15, 2003 Order Rejecting Proposed Hydro Quebec Interconnection Credit Values and Adopting Values, issued in Docket Nos. ER03–894–000 and ER03–894–001, 104 FERC ¶ 61,218. NEPOOL and the ISO report that Hydro Quebec Interconnection Capability Credit (HQICC) values have been established for the period October 2003 through May 2004 as directed in the August 15, 2003 order.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: October 6, 2003.

7. Idaho Power Company

[Docket Nos. ER03–953–001, ER03–954–001 and ER03–964–001]

Take notice that on September 12, 2003, Idaho Power Company, tendered for filing, in compliance with the Letter Order dated August 11, 2003 in Docket Nos. ER03–953–000 and ER03–954–001 and the Letter Order dated August 13, 2003 in Docket No. ER03–964–000, submitted the following documents designated in accordance with Order No. 614, FERC Stats.& Regs. Preambles ¶ 31,096 (2000):

- First Revised FERC Electric Rate Schedule No. 28 superseding FERC Electric Rate Schedule No. 28, Interconnection Agreement among Idaho Power Company, the Washington Water Power Company, and Pacific Power and Light Company;
- First Revised FERC Electric Rate Schedule No. 69 superseding FERC Electric Rate Schedule No. 69, Interconnection and Transmission Services Agreement between Idaho Power Company and Sierra Pacific Power Company;
- First Revised FERC Electric Rate Schedule No. 72 superseding FERC Electric Rate Schedule No. 72, Transmission Services Agreement between Idaho Power Company and the City of Seattle;
- First Revised FERC Electric Rate Schedule No. 74 superseding FERC Electric Rate Schedule No. 74, Agreement for Supply of Power and Energy between Idaho Power Company and Washington City, Utah, as well as a Notice of Cancellation of First Revised FERC Electric Rate Schedule No. 74;
- First Revised FERC Electric Rate Schedule No. 75 superseding FERC Electric Rate Schedule No. 75, Agreement for Supply of Power and

Energy between Idaho Power Company and the Utah Associated Municipal Systems;

• First Revised FERC Electric Rate Schedule No. 77 superseding FERC Electric Rate Schedule No. 77, Transmission Services Agreement Executed by the United States of America Department of Energy, acting by and through the Bonneville Power Administration, and Idaho Power Company, as well as a Notice of Cancellation of First Revised FERC Electric Rate Schedule No. 77;

• First Revised FERC Electric Rate Schedule No. 87 superseding FERC Electric Rate Schedule No. 87, Idaho Power Company and PacifiCorp Electric Operations Restated Transmission Service Agreement; and

• First Revised Service Agreement No. 165 superseding Original Service Agreement No. 165 under Idaho Power's FERC Electric Tariff First Revised Volume No. 5, Service Agreement between Idaho Power Company and Bonneville Power Administration for Firm Point-to-Point Transmission Service under Idaho Power Company's Open Access Transmission Tariff.

Comment Date: October 3, 2003.

8. NRG Marketing Services LLC

[Docket No. ER03–955–001]

Take notice that on September 12, 2003, NRG Marketing Services LLC amended its application for market-based rate authorization filed in Docket No. ER03–955–000 on June 16, 2003.

Comment Date: October 3, 2003.

9. Mirant Las Vegas, LLC

[Docket No. ER03–1047–001]

Take notice that on September 12, 2003, Mirant Las Vegas, LLC (MLV) filed compliance tariff sheets as required by Commission's Order dated September 5, 2003, 104 FERC ¶ 61,242.

MLV states that it has served copies of filing on the official service list in this proceeding and the Nevada Public Utilities Commission.

Comment Date: October 3, 2003.

10. Western Systems Power Pool, Inc.

[Docket No. ER03–1149–001]

Take notice that on September 16, 2003, the Western Systems Power Pool, Inc. (WSPP) submitted changes to the WSPP Agreement to correct the table of contents and cover page to reflect the effective date and section name and number changes approved as amendments by the FERC by Order dated September 11, 2003. WSPP states that it seeks an effective date of October 1, 2003 for these corrections. This is the same date on which the amendments shall become effective.

WSPP states that copies of the transmittal letter have been served on all state commissions within the United States. This filing also has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: October 7, 2003.

11. Sierra Pacific Energy Company

[Docket No. ER03–1237–000]

Take notice that on August 22, 2003, Sierra Pacific Energy Company (SPEC) tendered for filing a Notice of Cancellation of its Market Rate Authority issued by Commission's Order dated January 12, 2003 in Docket No. ER00–500–000. SPEC requests an effective date of August 21, 2003.

Comment Date: September 26, 2003.

12. New England Power Pool and ISO New England Inc.

[Docket Nos. ER03–1318–000 and ER03–1318–001]

Take notice that on September 9, 2003, as supplemented on September 12, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc (ISO–NE), jointly filed revisions to NEPOOL Market Rule 1 to implement a Forward Reserve Market in New England. A November 15, 2003 effective date is requested.

The NEPOOL Participants Committee and ISO–NE state that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: October 3, 2003.

13. Kansas City Power & Light Company

[Docket No. ER03–1324–000]

Take notice that on September 10, 2003, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 2, dated August 21, 2003, between KCPL and the City of Ottawa, Kansas. KCPL proposes and effective date of October 1, 2003 and requests any necessary waiver of the Commission's notice requirement.

KCPL states that this Amendment provides for an additional point of interconnection.

Comment Date: October 1, 2003.

14. Mid-Continent Area Power Pool

[Docket No. ER03–1325–000]

Take notice that on September 10, 2003, the Mid-Continent Area Power Pool (MAPP), tendered for filing an amendments to the Restated Agreement that propose to modify Service Schedule B to the Restated Agreement.

MAPP states that a copy of this filing has been served on all MAPP members and the state commissions in the MAPP region. MAPP states that it has posted the filing on the MAPP Web site at *http://www.mapp.org.*

Comment Date: October 1, 2003.

15. South Point Energy Center, LLC

[Docket No. ER03–1327–000]

Take notice that on September 11, 2003, South Point Energy Center, LLC tendered for filing a proposed change to the Western Systems Power Pool Rate Schedule FERC No. 6 to reflect the admission of South Point Energy Center, LLC to membership in the Western Systems Power Pool Agreement.

Comment Date: October 2, 2003]

16. Sierra Pacific Resources Operating Companies

[Docket No. ER03–1328–000]

Take notice that on September 11, 2003, Sierra Pacific Resources Operating Companies tendered for filing amendments to its Open Access Transmission Tariff to implement revised rates for transmission service offered by its subsidiary Nevada Power Company.

Comment Date: October 2, 2003.

17. Central Maine Power Company

[Docket No. ER03–1329–000]

Take notice that on September 12, 2003, Central Maine Power Company (CMP) tendered for filing an unexecuted Service Agreement for Non-Firm Local Point-to-Point Transmission Service entered into with Androscoggin Reservoir Company. Service under the Transmission Service Agreement will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP–FERC Electric Tariff, Fifth Revised Volume No. 3, Original Service Agreement Number 194.

Comment Date: October 3, 2003.

18. Ebersen, Inc.

[Docket No. ER03–1330–000]

Take notice that on September 12, 2003, Ebersen, Inc., filed a request for acceptance of Rate Schedule No. 1, the granting of certain blanket approvals, the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. Ebersen, Inc. states that it is an energy marketer and that it purchases and sells energy and wholesales electric power with no affiliation or intention to engage in the business of generating or transmitting electric power.

Comment Date: October 3, 2003.

19. Williams Power Company, Inc.

[Docket No. ER03–1331–000]

Take notice that on September 12, 2003, Williams Power Company, Inc. (WPC) submitted for filing a Notice of Succession, pursuant to Sections 35.16 and 131.51 of the Commission's regulations. Williams Energy Marketing & Trading Company (WEMT) states that it changed its name to WPC, and accordingly WPC is successor to WEMT's FERC Rate Schedule No.1 as amended; all rate schedules filed by any party to which WEMT has been a party as may be amended; and the agreements entered into by WEMT thereunder.

Comment Date: October 7, 2003.

20. FPL Energy Oklahoma Wind, LLC

[Docket No. ER03–1332–000]

Take notice that on September 12, 2003, FPL Energy Oklahoma Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: October 3, 2003.

21. FPL Energy Sooner Wind, LLC

[Docket No. ER03–1333–000]

Take notice that on September 12, 2003, FPL Energy Sooner Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: October 3, 2003.

22. Allegheny Trading Finance Company

[Docket Nos. ER03–1334–000 and ER03–1334–001]

Take notice that on September 12, 2003, as supplemented on September 16, 2003, Allegheny trading Finance Company (AF) filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, which was originally accepted for filing on October 22, 2002 in Docket No. ER03–65–000, 101 FERC ¶ 61,278.

Comment Date: October 7, 2003.

23. Commonwealth Edison Company

[Docket No. ER03–1335–000]

Commonwealth Edison Company of Indiana, Inc.

Take notice that on September 12, 2003, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed changes to its rates for transmission and scheduling services. ComEd requests that the proposed rates become effective in two stages. ComEd requests an effective date for the first stage of November 1, 2003, and requests an effective date for the second stage as of the ComEd Integration Date into PJM Interconnection, LLC, and accordingly requests waiver of all applicable requirements to permit the effective dates requested.

ComEd states that copies of the filing were served upon the affected state commissions, and copies of the transmittal letter were served on ComEd's transmission customers, and on parties to the service list in Docket No. ER03–262–000. ComEd also states that in addition, the filing, in its entirety, is being posted on the ComEd Web site at *http://www.comedtransmission.com*, and hard copies will be made available to any customer upon request.

Comment Date: October 3, 2003.

24. Illinois Power Company

[Docket No. ER03–1342–000]

Take notice that on September 15, 2003, Illinois Power Company (Illinois Power), filed a Second Revised Interconnection Operating Agreement entered into with Aquila Piatt County Power L.L.C. and subject to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of August 26, 2003 for the Second Revised Interconnection Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power states that it has served a copy of the filing on Aquila Piatt County Power L.L.C.

Comment Date: October 6, 2003.

25. American Electric Power Service Corporation

[Docket No. ER03–1344–000]

Take notice that on September 15, 2003, American Electric Power Service Corporation (AEPSC) as agent for West Texas Utilities Company (now known as AEP Texas North Company), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, a Notice of Cancellation of Service Agreements between West Texas Utilities Company and various entities under WTU FERC Electric Tariff, First Revised Volume No. 8. AEPSC states that the Power Sales Tariff was accepted for filing by the Commission, effective January 1, 1997 in Docket ER96–2342–000.

AEPSC requests an effective date of September 1, 2003 for the cancellation.

AEPSC states it has served copies of the filing upon the parties listed in Exhibit 1 and the affected state regulatory commissions.

Comment Date: October 6, 2003.

26. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1345–000]

Take notice that on September 15, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing revisions to Attachment C of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 1 (OATT), pursuant to the Commission's May 16, 2003, Order in Docket No. ER02–573–000.

The Midwest ISO has requested an effective date of 60 days following the Commission's Order accepting the proposed changes, due to necessary software changes and implementation.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest ISO also states that in addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: October 6, 2003.

27. DTE East China, LLC., DTE River Rouge No. 1, LLC

[Docket No. ER03–1346–000]

Take notice that on September 15, 2003, DTE East China, LLC (East China), and DTE River Rouge No. 1, LLC (River Rouge) tendered for filing pursuant to Section 205 of the Federal Power Act, an application associated with sales of power by East China and River Rouge to The Detroit Edison Company.

East China states that a copy of the application was served upon the Michigan Public Service Commission.

Comment Date: October 6, 2003.

28. Ameren Services Company

[Docket No. ER03–1347–000]

Take notice that on September 16, 2003, Ameren Services Company (ASC) tendered for filing executed Service Agreements for Firm Point-to-Point Services and Non-Firm Point-to-Point Transmission Service between ASC and Tractebel Energy Marketing, Inc. ASC asserts that the purpose of the Agreements is to provide transmission services to Tractebel Energy Marketing,

Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 7, 2003.

29. Commonwealth Electric Company

[Docket No. ER03–1348–000]

Take notice that on September 16, 2003, Commonwealth Electric Company (Commonwealth Electric) tendered for filing an executed Related Facilities Agreement between Commonwealth Electric and Entergy Nuclear Generation Company (Entergy). Commonwealth Electric requests an effective date of the Agreement of November 16, 2003.

Commonwealth Electric states that it has served a copy of the filing on Entergy and the Massachusetts Department of Telecommunications and Energy.

Comment Date: October 7, 2003.

30. Southern California Edison Company

[Docket No. ER03–1349–000]

Take notice that on September 15, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Agreement For Interconnection Service and the Interconnection Facilities Agreement between SCE and Harbor Cogeneration Company (Harbor), Service Agreement Nos. 2 and 9 under SCE's FERC Electric Tariff, First Revised Volume No. 6. SCE respectfully requests an effective date of August 31, 2003.

SCE states that the Revised Sheets to these agreements reflect an extension of their terms and conditions to provide interconnection service to Harbor's 110 MW generating facility through September 30, 2003. SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment Date: October 6, 2003.

31. PJM Interconnection, L.L.C.

[Docket No. ER03–1350–000]

Take notice that on September 16, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Merck & Co, Inc., and PECO Energy.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an August 14, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: October 7, 2003.

32. Ameren Energy Resources Generating Company

[Docket No. ER03–1351–000]

Take notice that on September 16, 2003, Ameren Energy Resources Generating Company (AERG), submitted for Commission acceptance or approval a Bi-lateral Electric Power Supply Agreement (BEPSA) for the sale of energy and capacity between AERG and Ameren Energy Marketing Company. AERG requests an effective date of October 1, 2003 for the BEPSA. AERG states that copies of this filing have been served on the Illinois Commerce Commission.

Comment Date: October 7, 2003.

33. Stalwart Power Company

[Docket No. ER03–1352–000]

Take notice that on September 16, 2003, Stalwart Power Company (Stalwart) tendered for filing a Notice of Cancellation of its market-based tariff granted by the Commission in Docket No. ER95–1334–000 on July 1, 1997. Stalwart states that it has not engaged in the wholesale or retail marketing of electricity and has no plans to do so in the future. Stalwart also states that it has no assets or sales; however, the corporate name and corporate structure are being maintained for possible future use.

Comment Date: October 7, 2003.

34. Black Hills Power, Inc., Basin Electric Power Cooperative, Powder River Energy Corporation

[Docket No. ER03–1354–000]

Take notice that on September 16, 2003, Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation tendered for filing a joint open access transmission tariff with the Federal Energy Regulatory Commission.

Comment Date: October 7, 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 filed to access the document. For assistance, call (202) 502–8222 or TTY, (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. 03–24699 Filed 9–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–74–000]

Dominion Cove Point LNG, LP; Notice of Availability of the Environmental Assessment for the Proposed Cove Point East Project

September 23, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Dominion Cove Point LNG, LP (DCP) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the following proposed compressor facilities that comprise the Cove Point East Project:

Compressor Facilities

- Loudoun Compressor Station—install one 2,370 and two 4,735 horsepower (hp) reciprocating engine-driven compressors at a new compressor station in Loudoun County, Virginia.
- Pleasant Valley Compressor Station—install one 4,750 and one 2,750 hp electric motor-driven compressors and two transformers at a new

compressor station in Fairfax County, Virginia.

The purpose of the Cove Point East Project is to fulfill requests for service by Washington Gas Light and Virginia Power Service Energy Corporation, Inc. DCP's Cove Point East Project would create an additional 445 million standard cubic feet per day (MMscfd) of natural gas capacity on its system in order to fulfill requests for service by Washington Gas Light (350 MMscfd) and Virginia Power Service Energy Corporation, Inc (95 MMscfd).

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1;
- Reference Docket No. CP03–74–000;
- Mail your comments so that they will be received in Washington, DC on or before October 22, 2003.

Please note we are continuing to experience delays in mail from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the preceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the eLibrary link. Click on the eLibrary link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, call toll-free (1–866) 208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the commission, such as orders, notices, or rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubcribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–24640 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF03–6–000]

Sound Energy Solutions, POLB Application No. HDP 03–079; Notice of Intent To Prepare a Joint Environmental Impact Statement and Notice of Preparation of Joint Environmental Impact Report, Application Summary Report for SES' Proposed Long Beach LNG Import Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

September 22, 2003.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission) and the Port of Long Beach (POLB or Port) will jointly prepare an environmental impact statement, an environmental impact report, and an application summary report (EIS/EIR/ASR) on Sound Energy Solutions' (SES) proposed Long Beach LNG Import Project. This notice announces the opening of the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EIS/EIR/ASR. Please note that the scoping period will close on October 30, 2003.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meeting we have scheduled as follows:

FERC/POLB Public Scoping Meeting, Long Beach LNG Import Project, October 9, 2003 at 7 p.m., Long Beach Convention & Entertainment Center, Seaside Meeting Room 301, (562) 436–3636.

The FERC will be the lead Federal agency in the preparation of the EIS/EIR/ASR and the POLB will be the lead state agency for California. The joint document will satisfy the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

This notice is being sent to affected landowners; POLB tenants; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staffs of the FERC's Office of Energy Projects and the POLB.

libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

SES proposes to construct and operate a liquefied natural gas (LNG) import terminal facility on a 27-acre site on a portion of Pier T, designated Berth T–126, on Terminal Island within the Port of Long Beach, California. The proposed site, which was formerly part of a naval shipyard, would require a limited amount of dredging (between 75,000 and 125,000 cubic yards) to support the ship berth and achieve uniform water depth. The dredged material would be disposed of in a confined landfill within the Port. The project would not require the intake or discharge of sea water and/or process water. During construction, SES would require an additional 20- to 30-acre site in the project area for materials storage and fabrication. The location of this construction laydown area has not yet been identified.

The Long Beach LNG Import Project would provide about 700 million standard cubic feet of natural gas per day to the local transmission and distribution systems. In addition, a portion of the LNG would be distributed locally to fuel LNG-powered vehicles. According to SES, its project would provide large volumes of natural gas to southern California markets to enhance reliability of supply and ensure price competition. The distribution of LNG as vehicle fuel would enable diesel trucks and other vehicles to convert to natural gas, which would reduce vehicle pollutant emissions in the region.

The project facilities would include:

- a ship berth and unloading facilities capable of receiving LNG tankers ranging in capacity from 95,000 to 145,000 cubic meters;
- two LNG storage tanks, each with a capacity of 160,000 cubic meters;
- vaporization equipment, boil-off gas compressors, and natural gas liquids recovery system;
- truck loading facilities;
- associated hazard detection, control, and prevention systems;
- ancillary service facilities; and
- up to 4.4 miles of pipeline currently proposed to interconnect with the existing Southern California Gas Company pipeline system.

Maps depicting the proposed terminal site, site layout, and various pipeline routes under consideration are provided in appendix 1.[2]

SES proposes to place the project in service in late 2007 or early 2008. To achieve this in-service date, SES is requesting approval to begin construction of the terminal facilities in the fall of 2004. The approximate duration of construction would be 3 years.

The EIS/EIR/ASR ProcessThe FERC will use the EIS/EIR/ASR to consider the environmental impact that could result if it issues SES an Order Authorizing Approval of a Place of Import under Section 3 of the Natural Gas Act. The POLB will use the document to determine the project's consistency with the certified Port Master Plan and the California Coastal Act as well as to consider the environmental impact that could result if it issues SES a Harbor Development Permit.

This notice formally announces our preparation of the EIS/EIR/ASR and the beginning of the process referred to as ''scoping.'' We are soliciting input from the public and interested agencies to help us focus the analysis in the EIS/EIR/ASR on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in a draft EIS/EIR/ASR. The draft EIS/EIR/ASR will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; POLB tenants; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS/EIR/ASR. We will consider all comments on the draft EIS/EIR/ASR and revise the document, as necessary, before issuing a final EIS/EIR/ASR.

The POLB is initiating its CEQA review based on SES' submittal of a Harbor Development Permit application on July 25, 2003. Although no formal application for import authorization has been filed, the FERC staff is initiating its NEPA review now. The purpose of the FERC's NEPA Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. The POLB has agreed to conduct its CEQA review in conjunction with the NEPA Pre-filing Process. A diagram depicting the lead agencies' joint environmental review process is attached to this notice as appendix 2.

We have held early discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include the California Coastal Commission; California Department of Fish and Game; National Marine Fisheries Service; Regional Water Quality Control Board, Los Angeles Region; South Coast Air Quality Management District; U.S. Army Corps of Engineers (ACOE), U.S. Coast Guard; and U.S. Fish and Wildlife Service. By this notice, we are asking these and other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS/EIR/ASR. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below. Currently, the ACOE has expressed its intention to participate as a cooperating agency in the preparation of the EIS/EIR/ASR to satisfy its NEPA responsibilities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposal. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative terminal sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before October 30, 2003, and carefully follow these instructions:

- Send an original and two copies of your letter to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of your comments for the attention of Gas Branch 1, DG2E;
- Reference Docket No. PF03–6–000 on the original and both copies;
- Send an additional copy of your letter to: Robert Kanter, Ph.D., Planning Division, 925 Harbor Plaza, Port of Long Beach, Long Beach, CA 90807; and
- Reference Application No. HDP 03–079 on your letter.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

The public scoping meeting to be held on October 9, 2003 at the Long Beach Convention & Entertainment Center is designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS/EIR/ASR. A transcript of the meeting will be made so that your comments will be accurately recorded.

Please note that the FERC is continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. *See* 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, PF03–6–000), and follow the instructions. Searches may also be done using the phrase ''Long Beach LNG'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Information about the project is also available from the POLB. You may call the POLB Environmental Planning Section at 562–590–4160 or e-mail questions and comments to the POLB at *Crouch@POLB.com.*

Finally, SES has established an Internet Web site for this project at *http://www.soundenergysolutions.com.* The Web site includes a description of the project, maps and photographs of the proposed site, SES' answers to frequently asked questions about LNG, and links to related documents.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24639 Filed 9–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–178–017]

Notice of Intent To Prepare an Environmental Assessment, Availability of Scoping Document, and Soliciting Scoping Comments

September 23, 2003.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 178–017.

c. *Date filed:* April 14, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon Hydroelectric Project.

f. *Location:* On the Kern River, near the Town of Bakersfield, Kern County, California. The project occupies approximately 11.26 acres of public land located within the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randal S. Livingston, Pacific Gas and Electric Company Power Generation, Mail Code N11E, P.O. Box 770000, San Francisco, CA 94177 (415) 973–7000.

i. *FERC Contact:* Allison Arnold at (202) 502–6346 or *allison.arnold@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an 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.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The Kern Canyon Project consists of: (1) An existing 150-foot-long and 23-foot-high dam; (2) an existing 3-acre reservoir having a usable capacity of 27-acre-feet; (3) a 1.58-mile-long horseshoe shaped tunnel; (4) a 520-foot-long steel penstock varying in diameter from 96 inches to 90 inches; (5) a powerhouse containing one generating unit with an installed capacity of 9,540 kilowatts; (6) existing transmission facilities; and (7) appurtenant facilities. The project is estimated to generate an average of 67.6 gigawatt hours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process

Pursuant to the National Environmental Policy Act and procedures of the Federal Energy Regulatory Commission (Commission or FERC), the Commission staff intends to prepare an Environmental Assessment (EA) that evaluates the environmental

impacts of issuing a new license for the Kern Canyon Hydroelectric Project.

The EA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis. Preparation of staff's EA will be supported by a scoping process to ensure identification and analysis of all pertinent issues.

We prepared Scoping Document 1 (SD1) to provide you with information on:

- the Kern Canyon Hydroelectric Project;
- the environmental analysis process we will follow to prepare the EA; and
- our preliminary identification of issues that we will address in the EA.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and have prepared SD1 to provide information on the proposed project and to solicit written comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EA. The SD1 has been distributed to parties on the Service List for this proceeding and is available from our Public Reference Room at (202) 502–8371. It can also be accessed online at *http://www.ferc.gov* under the ''eLibrary'' link.

A site visit was conducted on August 8, 2003 for Commission staff and interested members of the public to visit the project site. The notice for the site visit was published in the **Federal Register** on July 17, 2003. Comments received from participants during the site visit were incorporated into SD1.

Other than those received during the site visit conducted on August 8, 2003, no comments have been filed to date related to the licensing. Therefore, we do not anticipate at this time that there is a need to hold a public meeting near the project site.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24641 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.PL03–6–000]

Natural Gas Markets Conference; Notice of Public Conference

September 23, 2003.

1. The Federal Energy Regulatory Commission (FERC) will hold a conference on October 14, 2003, to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. Last year the Commission held a wide ranging discussion concerning its regulatory goals for the natural gas industry (Docket No. PL02–9–000). This year's conference on the ''state of the gas market'' will focus on the findings and recommendations contained in the National Petroleum Council's soon to be released report: Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy.[1]

2. Last March, the Secretary of Energy asked the National Petroleum Council to conduct a study of natural gas in the United States in the 21st Century. Specifically, he stated:

Such a study should examine the potential implications of new supplies, new technologies, new perceptions of risk, and other evolving market conditions that may affect the potential for natural gas demand, supplies, and delivery through 2025. It should also provide insights on energy market dynamics, including price volatility and future fuel choice, and an outlook on the longer term sustainability of natural gas supplies. Of particular interest is the Council's advice on actions that can be taken by industry and government to increase the productivity and efficiency of North American natural gas markets and to ensure adequate and reliable supplies of energy for consumers.

3. At the conference, representatives of the National Petroleum Council will present their report and interested individuals will have an opportunity to respond and ask questions. The summary of findings and recommendations will be available from the National Petroleum Council on September 25, 2003 on the National Petroleum Council Web site at *http://www.npc.org*. The entire integrated report will be available at the conference.

4. In addition, the Commission also seeks to encourage industry representatives and interested individuals to raise other issues for the Commission to consider in shaping its future regulatory policies concerning the natural gas industry. Following the National Petroleum Council presentation and discussion, the Commission will have an open forum that will give all interested individuals an opportunity to raise issues.

[1] The National Petroleum Council is an oil and natural gas advisory committee to the Secretary of Energy.

5. The conference will be held on October 14, 2003 at FERC, 888 First Street, NE. in Washington, DC, beginning at 10 a.m. in the Commission Meeting Room. The public is invited to attend.

6. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

Magalie R. Salas,

Secretary.

[FR Doc. 03–24642 Filed 9–26–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0120; FRL–7565–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, EPA ICR Number 1765.03, OMB Control Number 2060–0353

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 30, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0120, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mark Morris, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code C504–04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5416; fax number: (919) 541–3470; e-mail address: *morris.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2003 (68 FR 40654), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). The EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0120, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

Abstract: The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents to this information collection are manufacturers and importers of automobile refinish coatings and coating components. Manufacturers of automobile refinish coatings and coating components fall within standard industrial classification (SIC) 2851, ''Paints, Varnishes, Lacquers, Enamels, and Allied Products'' and North American Industry Classification System (NAICS) code 325510, ''Paint and Coating Manufacturing.'' Importers of automobile refinish coatings and coating components fall within SIC 5198, ''Wholesale Trade: Paints, Varnishes, and Supplies.''

Estimated Number of Respondents: 4.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 14.

Estimated Total Annual Cost: $940, which includes $0 annualized capital or O&M costs and $940 labor costs.

Changes in the Estimates: There is a decrease of 8 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. There is a decrease because the previous renewal ICR overestimated the number of respondents.

Dated: September 16, 2003.

Sara Hisel McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 03–24779 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0013; FRL–7565–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety, EPA ICR Number 2103.02, OMB Control Number 2040–0253

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 30, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0013 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan Dolgin, Water Protection Task Force, Mail Code 4606, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460: telephone number: 202–564–9895; fax number: 202–564–8513; e-mail address: *dolgin.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 20, 2003 (68 FR 27555), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0013, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety.

Abstract: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) amends the Safe Drinking Water Act (SDWA). The Act requires each community water system (CWS) serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. EPA will use the data collected under this ICR to evaluate the steps taken by CWSs to ensure the security of the nation's drinking water supply. EPA will use the information collected under this ICR to determine whether CWSs have completed vulnerability assessments and prepare or revise updated emergency response plans.

Primary users of the information collected under this ICR include the EPA Office of Ground Water and Drinking Water (OGWDW), EPA Regional Administrators, and CWSs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 130 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Community Water Systems.

Estimated Number of Respondents: 8,487.

Frequency of Response: 3 responses per system during the ICR period.

Estimated Total Annual Hour Burden: 2,913,929.

Estimated Total Annualized Cost: $156,458,154, includes $82,211 O&M costs.

Changes in the Estimates: There is an increase of 261,537 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is a result of adding burden hours to the respondent inventory. In the previous ICR, when EPA off-set respondent costs by the amount of grant funding that was

provided to systems, it inadvertently off-set a corresponding number of hours. However, although system costs were off-set by grant funding, the amount of labor hours required to complete all requirements of the Act remains the same. Therefore, EPA has added these previously unaccounted for hours into the official inventory.

Dated: September 22, 2003.

Sara Hisel McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 03–24781 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7565–6]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104(k)(6); Announcement of Proposal Deadline for the Competition for the 2004 National Brownfields Job Training Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of Brownfields Job Training Grant application guidelines and deadline for submissions of proposals.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Job Training Grants on September 30, 2003. This notice provides information on how to obtain the application guidelines. These grants provide training to facilitate site assessment, remediation of brownfields sites, or site preparation (see Catalogue of Federal Domestic Assistance Number: 66.815).

The National brownfields job training grants will be awarded on a competitive basis using a one-step proposal selection process. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, *Proposal Guidelines for Brownfields Job Training Grants (September 2003).* Proposals will be evaluated and ranked by National Evaluation Panels. Final selections will be made by EPA Senior Management based upon the ranking of Final Proposals by the National Evaluation Panels. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Contacts.

DATES: This action is effective as of September 30, 2003. EPA expects to make up to 10 job training grant awards in fiscal year 2004 contingent upon the availability of funds. *The application deadline for Proposals for the 2004 Job Training grants is December 1, 2003,* proposals must be postmarked by USPS or delivered to U.S. EPA Headquarters no later than December 1, 2003, and a duplicate copy sent to the appropriate U.S. EPA Regional Office by other means.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

OBTAINING PROPOSAL GUIDELINES: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/.*

Copies of the proposal guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703–412–9810; Outside Washington, DC Metro at 1–800–424–9346; TDD for the Hearing Impaired at 1–800–553–7672.

In order to ensure that the guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than ten (10) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

FOR FURTHER INFORMATION CONTACT: EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields job-training grants is authorized under section 104(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k)(6). Eligibility for Brownfields grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA and nonprofit organizations as defined in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. ''Eligible entities'' include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community and non profit organizations. For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. The term ''nonprofit organization'' means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields job training grants.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Responses to the criteria will be used to determine whether to make an award and the amount of funds to be awarded. There is no guarantee of an award.

Job Training Grants

Threshold Criteria

A. Location of Project
B. Applicant Eligibility
C. Proof of Non-Duplication of Effort

Ranking Criteria

A. Community Need (a maximum of 10 points may be received for this criterion)
B. Institutional Capacity (a maximum of 15 points may be received for this criterion)
C. Training Program Objectives and Plans (a maximum of 30 points may be received for this criterion)

D. Budget, Schedule and Leveraging (a maximum of 20 points may be received for this criterion)
E. Community Involvement and Partnerships (a maximum of 15 points may be received for this criterion)
F. Measures of Success (a maximum of 10 points may be received for this criterion)

EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; designation as a Federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe.

Dated: September 24, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–24780 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7566–1]

Meeting of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under section 10(a)(2) of Pub. L. 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will hear presentations and have discussions on topics important to the Environmental Protection Agency's (EPA's) national drinking water program, including, but not limited to: An overview of EPA research activities; status reports from NDWAC's work groups on Affordability and the Contaminant Candidate List; an update on security, regulatory, and implementation activities; and an update on drinking water data quality.

DATES: The Council meeting will be held on November 19, 2003, from 8:30 a.m. until 5:30 p.m. and November 20, 2003, from 8:30 a.m. until 1 p.m., eastern standard time.

ADDRESSES: The meeting will be held at The Kingsgate Marriott Conference Hotel at the University of Cincinnati, located at 151 Goodman Drive, Cincinnati, Ohio 45219, and is open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Leslie Cronkhite, Designated Federal Officer, National Drinking Water Advisory Council, by phone at (202) 564–3878, by e-mail to *cronkhite.leslie@epa.gov* or by regular mail to the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate one hour during the meeting for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify the Council's Designated Federal Officer by telephone at (202) 564–3878, no later than October 3, 2003. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received no later than October 3, 2003, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any person needing special accommodations at this meeting, including wheelchair access, should contact Leslie Cronkhite (*see* **FOR FURTHER INFORMATION CONTACT** section). Arrangements need to be made at least five business days before the meeting so that appropriate special accommodations can be made.

Dated: September 24, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–24778 Filed 9–29–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Hearing on Proposed Revised Employer Information Report (EEO–1)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Equal Employment Opportunity Commission has scheduled a public hearing to gather information and hear public comment on its proposed revision of the Employer Information Report (EEO–1) published for public comment at 68 FR 34965 (June 11, 2003).

TIME AND DATE: October 29, 2003; 9:30 a.m.

PLACE: 1801 L Street, NW, Washington, DC; Ninth Floor Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Carol Miaskoff, Assistant Legal Counsel, Coordination Division, 1801 L Street, NW, Washington, DC 20507; (202) 663–4689 (voice) or (202) 663–7026 or Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW, Room 9222, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: Under section 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–8(c)), the Equal Employment Opportunity Commission (EEOC) on June 11, 2003 published proposed modifications to the EEO–1 Report form used by respondents annually to classify the race and ethnicity and job categories of employees. 68 FR 34965–34969. The proposed EEO–1 Report form can be found at *http://www.eeoc.gov/eeo1*. The June 11, 2003 notice requested comments on the proposed changes to the EEO–1 Report and indicated that a hearing would be held. This notice sets the hearing for October 29, 2003.

Persons wishing to present their views orally at the hearing should notify the Commission of their desire to do so, in writing, postmarked or received no later than October 8, 2003. The notice should be addressed to Frances M. Hart, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507. The Executive Secretariat will accept notices transmitted by facsimile (''fax'') machine. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number.) Only documents of six or fewer pages will be accepted via fax transmittal. This limitation is necessary to assure access to the equipment. Receipt of a fax transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free numbers.)

The notice must include a list of all the issues you wish to address and a summary of the remarks to be offered on each issue. In addition, such persons must provide Ms. Hart with a detailed statement of their remarks suitable for inclusion in the record of the hearing, postmarked or received no later than October 15, 2003. Persons who fail to timely submit the list/summary due October 8, 2003, or the detailed statement due October 15, 2003, may not be permitted to testify. Any person who wishes to submit a written statement in lieu of testimony should submit that statement to Ms. Hart at the above address by October 25, 2003. All comments submitted in response to the prior June 11, 2003 notice will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m. Please call the library staff at (202) 663–4630 to make an appointment. The comments submitted in response to the June 11, 2003 notice will automatically become part of the hearing record unless the submitter directs otherwise. A person who has already submitted comments in response to the June 11, 2003 notice should not make any other submission unless he or she wants to present views orally at the hearing. In order to present views orally at the hearing, you must make new submissions complying with the October 8 and 15, 2003 due dates described above.

Because of time limitations, not all interested persons may be able to testify. EEOC will organize panels of speakers for the hearing, notifying speakers of the identity of their co-panelists and requesting that the panelists organize their testimony to fit the time period allotted. All statements received by EEOC in connection with this hearing will be available for review after November 3, 2003, at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m.

Signed this 24th day of September, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–24626 Filed 9–29–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire directly 14.33 percent of the voting shares of Century Capital Financial, Inc., Kilgore, Texas, and thereby indirectly acquire voting shares of Century Capital Financial–Delaware, Inc., Wilmington, Delaware, and City National Bank, Kilgore, Texas.

2. Morrill Bancshares, Inc., Merriam, Kansas; to acquire up to 35.80 percent of the voting shares of Century Capital Financial, Inc., Kilgore, Texas, and thereby indirectly acquire voting shares of Century Capital Financial–Delaware, Inc., Wilmington, Delaware, and City National Bank of Kilgore, Kilgore, Texas.

3. Davis Bancorporation, Inc., Davis, Oklahoma; to acquire up to 17.90 percent of the voting shares of Century Capital Financial–Delaware, Inc., Wilmington, Delaware, and Century Capital Financial, Kilgore, Texas, and thereby indirectly acquire voting shares of City National Bank of Kilgore, Kilgore, Texas.

Board of Governors of the Federal Reserve System, September 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24632 Filed 9–29–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Agricole S.A., and SAS Rue la Boetie, both of Paris France; to retain the voting shares of Credit Lyonnais, Paris, France, and thereby control the U.S. nonbanking subsidiaries of Credit Lyonnais and engage in making, acquiring, brokering, or servicing loans or other extensions of credit pursuant to section 225.28(b)(1) of Regulation Y; leasing personal or real property or acting as agent, broker or adviser in leasing of such property pursuant to section 225.28(b)(3) of Regulation Y;

acting as investment or financial advisory to any person pursuant to section 225.28(b)(6) of Regulation Y; acting as a futures commission merchant pursuant to section 225.28(b)(7)(iv) of Regulation Y.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire up to 41.34 percent of FBC Financial Corporation, and thereby indirectly acquire 1st Bank Oklahoma, both of Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

2. Morrill Bancshares, Inc., Merriam, Kansas; to acquire up to 41.34 percent of FBC Financial Corporation, and thereby indirectly acquire 1st Bank Oklahoma, both of Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

3. Davis Bancorporation, Inc., Davis, Oklahoma; to acquire up to 13.78 percent of FBC Financial Corporation, and thereby indirectly acquire 1st Bank Oklahoma, both of Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2003.

Board of Governors of the Federal Reserve System, September 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–24631 Filed 9–29–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, October 6, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2953.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24952 Filed 9–26–03; 4:08 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Vaccine Advisory Committee

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on October 7, 2003, from 9 a.m. to 5 p.m., and on October 8, 2003, from 8:30 a.m. to 3:15 p.m.

ADDRESSES: Department of Health and Human Services; Room 705A Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Carolin Commodore, Staff Assistant, National Vaccine Program Office and Executive Secretary, National Vaccine Advisory Committee; U.S. Department of Health and Human Services, Room 725H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 260–1253.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program (NVP) to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Secretary designated the Assistant Secretary for Health to serve as the Director, NVP. The National Vaccine Advisory Committee (NVAC) was established to provide advice and make recommendations to the Director, NVP, on matters related to the program's responsibilities. Topics to be discussed at the meeting include: The Institute of Medicine's (IOM) vaccine safety reviews and the recent IOM report on vaccine financing; a status report on the nation's smallpox vaccine program, and an overview of the SARS vaccine research and development at the National Institutes of Health (NIH). Updates will be given on activities at the NIH's Vaccine Research Center, pandemic influenza preparedness planning, and a status report on the West Nile virus vaccine. A tentative agenda will be made available for review on the NVPO Web site.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, whose contact information is listed above prior to close of business October 3, 2003. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should call the telephone number listed in the contact information to register.

The National Vaccine Program Office will be organizationally relocated to the Office of Public Health and Science on October 1. Due to administrative matters impacting this organizational relocation, this notice is being published less than 15 days in advance of the meeting.

Dated: September 24, 2003.

Bruce G. Gellin,

Director, National Vaccine Program Office and Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 03–24797 Filed 9–29–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 (noon)–8 p.m., October 21, 2003.

Place: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830. Telephone: (865) 241–4780.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters To Be Discussed: The agenda includes a discussion of the final Public Health Assessment on Uranium Release from the Y–12 plant, plan for addressing the Public Health Assessment on Iodine, description of cancer incidence review document, updates from the Public Health Assessment, Public Health Needs Assessment, Agenda, and Outreach and Communications Workgroup.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lorine Spencer, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

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 ATSDR.

Dated: September 24, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–24677 Filed 9–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee

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 committee meeting:

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC).

Times and Dates:

9 a.m.–5 p.m., November 5, 2003.
9 a.m.–3 p.m., November 6, 2003.

Place: The Ritz-Carlton Buckhead, 3434 Peachtree Road, NE., Atlanta, Georgia 30326, Telephone: 404–237–2700.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include a review and discussion of the National Breast and Cervical Cancer Early Detection Program components; professional education, screening, tracking, follow-up and case management, coalitions and partnerships, quality assurance and improvement, public education and outreach; update of the implementation of the treatment act; review of program announcement 2060, the National Cancer Prevention and Control Program; and discussion and review of related policies and emerging issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Debra Younginer, Executive Secretary, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K-57, Chamblee, Georgia 30316, Telephone: 770–488–1074.

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: September 24, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–24676 Filed 9–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control

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 subcommittee and committee meetings.

Name: Science and Program Review Subcommittee (SPRS), meetings of the Advisory Committee for Injury Prevention and Control, and its subcommittees, the Science and Program Review Subcommittee

and the Subcommittee on Intimate Partner Violence and Sexual Assault.

Time and Date: 8 a.m.–10:15 a.m., November 5, 2003.

Place: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, Georgia 30328.

Status: Open to the public, limited only by the space available.

Purpose: The SPRS provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC), as well as second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The SPRS also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The SPRS will discuss the new research agenda, upcoming program announcements and meeting dates.

Name: Subcommittee on Intimate Partner Violence and Sexual Assault (SIPVSA).

Time and Date: 8:30 a.m.–10:15 a.m., November 5, 2003.

Place: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, Georgia 30328.

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to the full advisory committee and the Director, NCIPC, regarding feasible goals for prevention and control of domestic and sexual violence. The SIPVSA will make recommendations regarding strategies, objectives, and priorities in programs, policies and research, and will also review the NCIPC research agenda priorities and implementation related to intimate partner violence and sexual assault.

Matters to be Discussed: The SIPVSA will hold a conference call meeting to discuss strategies for examining models for integration of intimate partner violence and sexual assault prevention into broader public health infrastructure and strategies.

Place: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, Georgia 30328.

Status: Open to the public, limited only by the space available.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates:

1 p.m.–5:45 p.m., November 5, 2003.
8:30 a.m.–2:30 p.m., November 6, 2003.

Place: The Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, Georgia 30328.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters to be Discussed: Prior to the full committee meeting, there will be a brief meeting conducted by conference call of the Working Group on Injury Control and Infrastructure Enhancement, a group formed to report to the full committee identifying gaps and suggesting ways to enhance injury prevention efforts. The working group will focus on defining injury infrastructure and developing a simple mechanism to assess current efforts underway throughout the injury field to enhance that infrastructure. Starting at 1 p.m., the full committee will meet. Agenda items include an update on Center activities from the Director, NCIPC; discussion of results of DHHS' review of the Federal Advisory Committee survey results of ACIPC; reports from the Subcommittees and Working Group; state infrastructure development; an introduction to CDC's Injury Research Agenda charge to the Committee, update of research implementation and evaluation, review of plans for updating the research agenda; and ways of ensuring the translation of research into practice; updating the acute care agenda; NCIPC injury prevention recommendations, CDC's Strategic Initiative; and implementation of the President's Management Agenda at CDC.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

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: September 24, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–24673 Filed 9–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Candidate Chemicals for Possible Inclusion in Future Releases of the National Report on Human Exposure to Environmental Chemicals

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: On Monday, October 7, 2002, CDC published final selection criteria and solicited nominations for chemicals or categories of chemicals for analytical development and inclusion in future releases of the National Report on Human Exposure to Environmental Chemicals (the ''Report''). (*See* 67 FR, p. 62477–8, October 7, 2002.) Subsequently, the nominated chemicals were published on CDC's Web site, *http://www.cdc.gov/exposurereport.* CDC now provides the list of candidate chemicals by priority groups that may be included in future releases of the ''Report.'' Using the selection criteria and the weighting factors described in the above-mentioned notice, an expert panel of outside reviewers and scientists at CDC's National Center for Environmental Health, Division of Laboratory Sciences, scored nominated individual chemicals or categories of chemicals. On the basis of their final point score, chemicals were placed in one of five priority groups. Listing these chemicals or categories of chemicals in priority groups does not imply that CDC has determined that exposure to them causes adverse human health effects. The nominations enabled CDC to learn which chemicals or categories concerned the public and the scientific community. Chemicals in the priority groups are listed in alphabetical order. Chemicals in Group 1 are more likely, but not guaranteed, to appear in future releases of the ''Report'' than are chemicals in the remaining groups. In addition to appearing in the **Federal Register**, the list of candidate chemicals will appear on CDC's Web site at *http://www.cdc.gov/exposurereport/candidatechemicals.* CDC will publish additional notices in the **Federal Register** as needed to keep the public abreast of progress.

Candidate Chemicals in Priority Groups

Group 1 [in alphabetical order]

1,3-Butadiene
1-Decanesulfonic acid, 1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10, 10, 10-heneicosafluoro, ammonium salt
Aldicarb
Benzo[a]pyrene
Dichlorvos (DDVP)
Diesel exhaust
Dimethoate
Ethylene dibromide
Fonofos
Formaldehyde
Isodrin
Mancozeb
Manganese
Methyl bromide
N-methyl perfluorooctanesulfonamidoacetate (M570)
Octabromodiphenyl ether (OBDE)
Oxamyl
Pentabromodiphenyl ether (PeBDE)—congeners include BDE 82, 116, and 119
Perfluorinated carboxylic acid metabolites of telomer alcohol or telomer acrylate (n = 3)
Perfluorobutane sulfonate (PFBS)

Perfluorooctanoic acid fluoride
Perfluorooctanoic acid (PFOA) ammonium salt*
PFOA ethyl ester
PFOA free acid
PFOA methyl ester
PFOA potassium salt*
PFOA silver salt*
PFOA sodium salt*
Perfluorooctane sulfonate (PFOS) ammonium salt*
PFOS diethanolamine salt*
PFOS lithium salt*
PFOS potassium salt*
Phorate
Phosmet
trans Fatty acids
*PFOA and PFOS measured as a consequence of exposure to any PFOA or PFOS salt.

Group 2 [in alphabetical order]

2,2′,4,4′-Tetrachlorobiphenyl (PCB 47)
2,3,4,4′,5-Pentachlorobiphenyl (PCB 114)
2′,3,4,4′,6-Pentachlorobiphenyl (PCB 123)
Acetaldehyde
Acrolein
Amitrole
Anthracene
Benzo[j,k]-fluorene
Bifenthrin
Butylate
(Carboxymethylamino) methylphosphonic acid (Glyphosate)
Chromium (speciated and total)
Diaminochlorotriazine
Lambda cyhalothrin
Methomyl
Mevinphos
Molinate
N-methyl-N-ethylnitrosamine
N-nitrosodibutylamine
N-nitrosodiethanolamine
N-nitrosodiethylamine
N-nitroso-dimethylamine (NDMA)
N-nitrosodiphenylamine
N-nitrosodipropylamine
Pebulate
Pendimethalin
Pentachloronitrobenzene
Perchlorate
Perfluorodecanesulfonate (PFDS) ammonium salt
Perfluorooctanesulfonamidoacetate (M556)
Propazine
Selenium (speciated and total)
Simizine
Thiram
Tin (speciated and total)
Triclosan
Trifluralin

Group 3 [in alphabetical order]

4,4′-Dichlorobiphenyl (PCB 15)
2,2′,3,3′,4,4′,5,6,6′-Nonachlorobiphenyl (PCB 207)
2,2′,3,3′,4,4′,6-Heptachlorobiphenyl (PCB 171)
2,2′,3,3′,4,4′,6,6′-Octachlorobiphenyl (PCB 197)
2,2′,3,3′,5,5′-Hexachlorobiphenyl (PCB 133)
2,2′,3,4,4,′5-Hexachlorobiphenyl (PCB 137)
2,2′,3,4,4′,5,6′-Heptachlorobiphenyl (PCB 182)
2,2′,3,4,4′,5,6-Heptachlorobiphenyl (PCB 191)
2,2′,3,4,4′,5,6,6′-Octachlorobiphenyl (PCB 204)
2,2′,3,4,4′,6,6′-Heptachlorobiphenyl (PCB 184)
2,2′,3,4,4′,6-Hexachlorobiphenyl (PCB 139)
2,2′,3,4,4′,6′-Hexachlorobiphenyl (PCB 140)
2,2′,3,4,4′-Pentachlorobiphenyl (PCB 85)
2,2′,4,4′,5,6′-Hexachlorobiphenyl (PCB 154)
2,2′,4′,4′,6-Pentachlorobiphenyl (PCB 100)
2,3,3′,4,4′,5,5′,6-Octachlorobiphenyl (PCB 205)
2,3,3′,4,4′,5,6-Heptachlorobiphenyl (PCB 190)
2,3,3′,4′,5,6′-Hexachlorobiphenyl (PCB 163)
2,3,3′,5,5′,6-Hexachlorobiphenyl (PCB 165)
2,3,4,4′,5,6-Hexachlorobiphenyl (PCB 166)
2,3,4,4′,5′,6-Hexachlorobiphenyl (PCB 168)
2,3,4,4′,6-Pentachlorobiphenyl (PCB 119)
2,4,4′,6-Tetrachlorobiphenyl (PCB 75)
3,3′,5,5′-Tetrachlorobiphenyl (PCB 80)
3,4,4′-Trichlorobiphenyl (PCB 37)
Acephthene
Aluminum
Desethyl atrazine
Desisopropyl atrazine
Fenbuconazole
Methiocarb
Pentylphenol
PFOS-related compounds (n = 11; a heterogeneous group)
Radon

Group 4 [in alphabetical order]

Acenaphthylene
Benzo[g,h,i]pyrene
Butachlor
Desethyl S-atrazine
Desisopropyl S-atrazine
Fluoroalkyl ethers (n = 6)
Fluoroalkyl iodides (n = 3)
Formetanate
Gamma, omega-perfluoroalkyl alcohols (n = 3)
3-chloro-4(dichloromethyl)5-hydroxy-2(5H)furanone (MX)
Other phased-out PFCs related to PFOS chemistries (n = 13)
Perfluorinated carboxylic acid metabolites of telomer alcohol or telomer acrylate (n = 3)
Perfluorinated chemicals not assigned to a structural class (n = 2)
Perfluorinated homologues of PFOS and PFOA (n = 2)
Perfluorinated quaternary ammonium chemicals (n = 2)
Perfluoroalkanes (n = 3)
Perfluoroalkyl acids and salts (n = 6)
Perfluoroalkyl alcohols (n = 4)
Perfluoroalkyl carboxylic acid fluorides (n = 2)
Perfluoroalkyl esters (n = 5)
Perfluoroalkyl iodides (n = 6)
Perfluoroalkyl sulfonamides (n = 10)
Perfluoroalkyl sulfonates (n = 75)
Perfluoroalkyl sulfonyl fluorides (n = 4)
Perfluoroglycol acid fluorides (n = 5)
Primicarb
Propiconazole
Propylparaben
Strontium
Tebuconazole
Thiodicarb
Triadimefon
Ziram

Group 5 [in Alphabetical Order]

1,2,4-Trizole
Acetamiprid
Acetochlor ethane sulfonic acid
Acetochlor oxanilic acid
Alachlor ethane sulfonic acid
Alachlor oxanilic acid
Butylparaben
Cerium
Copper
Dimethenamid
Dimethenamid ethane sulfonic acid
Dimethenamid oxanilic acid
Ethylparaben
Hexachlorocyclopentadiene (HCCPD)
Iron
Lanthanum
lmidacloprid
lmidazolinone herbicides (*e.g.,* imazapyr, imazethapyr, imazaquin)
Methylparaben
Metolachlor ethane sulfonic acid
Metolachlor oxanilic acid
Myclobutanil
Nickel
Perfluorinated compounds that the U.S. Food and Drug Administration has approved as indirect food additives (n = 16)
Perfluoroalkyl acids and salts (n = 2)
Scandium
Silver
Sulfonyl urea herbicides (*e.g.,* nicosulfuron, chlorsulfuron, triasulfuron)
Tellurium
Thiamethoxam
Triazole actic acid
Triazole aniline
Vanadium

Some chemicals that were nominated appeared in the second ''Report,'' which was published in January 2003. In addition, other chemicals or groups of chemicals that were already scheduled for inclusion in either the third or fourth release of the ''Report'' were not reviewed by the external expert panel and thus do not appear on the priority list. Chemicals or chemical categories that were included in the second ''Report,'' as well as those already slated for inclusion in future ''Reports,'' are listed below.

Nominated Chemicals or Chemical Categories Already Measured in the Second ''Report''

Metals

Cadmium
Lead
Mercury (inorganic and total)

Tobacco Smoke

Cotinine

Polyaromatic Hydrocarbons (PAHs)

Naphthalene (as the metabolites 1- and 2-naphthol)

Organochlorine Pesticides

Chlordane (as the metabolite oxychlordane)
4,4′-DDE (p,p′-DDE)
4,4′-DDT (p,p′-DDT)
Heptachlor (as the metabolite heptachlor epoxide)
Heptachlor epoxide
Hexachlorobenzene
Lindane (gamma HCH)
Mirex

1,2,4-Trichlorobenzene (as the metabolite 2,4,5-trichlorophenol)

Organophosphate Pesticides

Chlorpyrifos (as the metabolite 3,5,6-trichloro-2-pyridinol)

Phenols

ortho-Phenylphenol

N-Methyl Carbamates

Carbaryl (as the metabolite 1-naphthol)
Carbofuran (as the metabolite carbofuranphenol)
Propoxur (as the metabolite 2-isopropoxyphenol)
Alachlor (as the metabolite alachlor mercapturate)

Triazines

Atrazine (as the metabolite atrazine mercapturate)

Other Herbicides

2,4-Dichlorophenoxyacetic acid (2,4-D)

Polychlorinated Biphenyls (PCBs)

PCB numbers 52, 66, 81, 99, 101, 105, 118, 126, 128, 138, 146, 153, 156, 157, 167, 169, 170, 180, and 183

Nominated Chemicals or Chemical Categories Already Planned for Inclusion in Future ''Reports''

Metals

Arsenic (speciated and total)
Methyl mercury

Volatile Organic Compounds (VOCs)

Benzene
1,1,1-Trichloroethane
1,2-Dichlorobenzene
Carbon tetrachloride
Chloroform
Ethylene dichloride
Perchloroethylene
Toluene
Xylenes (o, m, p-isomers)

Polybrominated Compounds

Polybrominated biphenyls (PBBs)
Polybrominated diphenyl ethers (PBDEs)
Tetrabromodiphenyl ether (TeBDE)
Pentabromodiphenyl ether (PeBDE)
Heptabromodiphenyl ether (HpBDE)
Decabromodiphenyl ether (DeBDE)
Hexabromocyclododecane (HBCD)
Tetrabromobisphenol A (TBBP-A)

Organochlorine Pesticides

alpha Hexachlorocyclohexane (HCH)
Aldrin (as the metabolite endrin)
4,4′-DDD (p,p′-DDD; DDD)
Dieldrin
Endosulfan
Endrin
Methoxychlor
Octachlorostyrene
Pentachlorobenzene (as the metabolite pentachlorophenol)
Toxaphene

Chloroacetanilides

Acetochlor (as the metabolite acetochlor mercapturate)
Metolachlor (as the metabolite metolachlor mercapturate)

Phenols

Bisphenol A
Nonylphenol
Octylphenol

Dithiocarbamates

Ethylenethiourea

Pyrethrins and Pyrethroids

Cyfluthrin
Cypermethrin
Deltamethrin
Esfenvalerate
Fenvalerate
Permethrin

Perfluorinated Compounds

Perfluorohexanoic sulfonic acid (PFHS)
Perfluorooctane sulfonate (PFOS), including nominated salt forms
Perfluorooctanoic acid (PFOA), including nominated salt forms

Organophosphate Pesticides

Acephate
Azinophos-methyl (also as dialkyl phosphate metabolites)
Coumaphos (also as dialkyl phosphate metabolites)
Methamidophos

Polychlorinated Biphenyls (PCBs)

PCB numbers 77, 87, 151, 158, 189, 194, 195, 169, 203, 206, and 209

ADDRESSES: Address all correspondence related to this notice to Dorothy Sussman, CDC, National Center for Environmental Health, Division of Laboratory Sciences, Mail Stop F–20, 4770 Buford Highway, Atlanta, Georgia 30341.

SUPPLEMENTARY INFORMATION: CDC publishes the ''Report'' under the authorities 42 U.S.C. 241 and 42 U.S.C. 242k. The ''Report'' provides an ongoing assessment using biomonitoring of the exposure of the noninstitutionalized, U.S. civilian population to environmental chemicals. Biomonitoring assesses human exposure to chemicals by measuring the chemicals or their breakdown products in human specimens such as blood or urine. For the ''Report,'' an environmental chemical means a chemical compound or chemical element present in air, water, soil, dust, food, or other environmental medium. The ''Report'' provides exposure information about participants in an ongoing national survey known as the National Health and Nutrition Examination Survey (NHANES). This survey is conducted by CDC's National Center for Health Statistics; biomonitoring measurements are conducted by CDC's National Center for Environmental Health. The first ''Report,'' published in March 2001, gave information about levels of 27 chemicals in the U.S. population. The second ''Report,'' published in January 2003, provided data on 116 chemicals, including expanded data on the 27 in the first ''Report,'' and was the most extensive assessment ever of the exposure of the U.S. population to environmental chemicals. The ''Report'' can be obtained in the following ways: Access *http://www.cdc.gov/exposurereport;* e-mail *ncehdls@cdc.gov;* or telephone 1–866–670–6052.

Current plans are to release future reports of exposure of the U.S. population that cover 2-year periods (*e.g.*, 2001–2002; 2003–2004; 2005–2006) and that will include data on more chemicals than the 116 listed in the second ''Report.'' Over time, CDC will be able to track trends in exposure levels. Future releases also may include additional exposure information for special exposure populations (*e.g.*, children, women of childbearing age, elderly people) from studies examining localized or point sources and from studies of adverse health effects resulting from exposure to varying levels of environmental chemicals.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: September 24, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–24671 Filed 9–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1530]

Richard L. Borison; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Dr. Richard L. Borison for 10 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Borison was convicted of felonies under Georgia State law for racketeering, theft, and false statements and representations,

and was a material participant in offenses for which another person is being debarred. Dr. Borison has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective September 30, 2003.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm., 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 8, 1998, the Superior Court for the County of Richmond, State of Georgia, accepted Dr. Borison's plea of guilty and entered judgment against him for 36 counts of criminal offenses under Georgia State law for racketeering, theft, and false statements and representations.

As a result of this conviction, FDA served Dr. Borison by certified mail on December 5, 2002, a notice proposing to debar him for 10 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Dr. Borison an opportunity for a hearing on the proposal. The debarment proposal was based on findings: (1) Under section 306(b)(2)(B)(ii) of the act (21 U.S.C. 335a(b)(2)(B)(ii) that Dr. Borison was convicted of felonies under State law for racketeering, theft, and false statements and representations; and (2) under section 306(b)(2)(B)(iii) of the act that Dr. Borison was a material participant in offenses leading to the conviction and debarment of another individual. Dr. Borison was provided 30 days to file objections and to request a hearing. Dr. Borison did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(b)(2)(B) of the act, and under authority delegated to her (21 CFR 5.34), finds that Dr. Richard L. Borison: (1) Has been convicted of a felony under State law for racketeering, theft, and false statements and representations; and (2) was a material participant in offenses leading to the conviction of another individual.

As a result of the foregoing findings, Dr. Richard L. Borison is debarred for 10 years (two periods of 5 years, to run consecutively, based on his conviction for State felonies and his role as a material participant in the offenses leading to the conviction and debarment of another individual) from providing services in any capacity to a person that has an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262)(see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Borison in any capacity during his period of debarment will be subject to civil money penalties. If Dr. Borison, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Borison during his period of debarment.

Any application by Dr. Borison for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2000N–1530 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–24656 Filed 9–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1428]

Suhas V. Sardesai; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Suhas V. Sardesai from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Sardesai was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Sardesai failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective September 30, 2003.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1998, the U.S. District Court for the District of Maryland accepted Mr. Suhas V. Sardesai's plea of guilty to one count of distributing an adulterated drug into interstate commerce, a Federal felony offense under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)).

As a result of this conviction, FDA served Mr. Sardesai by certified mail on July 24, 2002, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Sardesai an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Sardesai was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Sardesai was provided 30 days to file objections and request a hearing. Mr. Sardesai did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.34), finds that Mr. Suhas V.

Sardesai has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Mr. Suhas V. Sardesai is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Sardesai, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Sardesai, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Sardesai during his period of debarment.

Any application by Mr. Sardesai for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2000N–1428 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–24655 Filed 9–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1427]

Edmund J. Striefsky; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Edmund J. Striefsky from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Striefsky was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Striefsky failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective September 30, 2003.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1998, the U.S. District Court for the District of Maryland accepted Mr. Edmund J. Striefsky's plea of guilty to one count of distributing an adulterated drug into interstate commerce, a Federal felony offense under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)).

As a result of this conviction, FDA hand delivered to Mr. Striefsky on February 11, 2003, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Striefsky an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Striefsky was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Striefsky was provided 30 days to file objections and request a hearing. Mr. Striefsky did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.34), finds that Mr. Edmund J. Striefsky has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Mr. Edmund J. Striefsky is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Striefsky, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Striefsky, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Striefsky during his period of debarment.

Any application by Mr. Striefsky for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2000N–1427 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–24657 Filed 9–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: October 23, 2003, 8:30 a.m.–4:30 p.m.; October 24, 2003, 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will begin work on its fourth report which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2004. The fourth report focuses on the role of primary care in health care delivery in the future and the implications for training health professionals.

Agenda: The meeting on Thursday, October 23, will begin with welcoming and opening comments from the Chair of the Advisory Committee. A plenary session will follow in which Advisory Committee members will hear speakers address the topic of the future of primary care medicine and dentistry. The Advisory Committee will begin its work on the fourth report.

On Friday, October 24, the Advisory Committee will meet in plenary session to discuss training needs of health professionals in the future. Meeting in workgroups, the Advisory Committee will structure various portions of the fourth report. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, MD, PhD, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: September 23, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–24658 Filed 9–29–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Public Meeting of the Airport and Seaport User Fee Advisory Committee

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This document announces the date, time, and location for a public meeting of the Airport and Seaport User Fee Advisory Committee and the agenda for consideration by the Committee. It also invites submission of written statements. In order to be considered for discussion at the meeting, a statement must be received by the Committee at least five days prior to the date of the meeting.

DATES: The 26th meeting of the Airport and Seaport User Fee Advisory Committee will be held on Wednesday, October 22, 2003, at 1 p.m., at the Office of Field Operations, Bureau of Customs and Border Protection, 5th Floor Bridge Conference Room, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Office of Finance, (202) 927–0609; email: *cynthia.sargent@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Airport and Seaport User Fee Advisory Committee was created under the authority of 8 U.S.C. 1356(k) (section 286(k) of the Immigration and Nationality Act, as amended; see also the Federal Advisory Committee Act (5 U.S.C.A. App. § 2)) to meet periodically and advise the Attorney General on issues related to the performance of certain inspectional services performed by the Immigration and Naturalization Service (INS). Since the legacy INS inspection component has been merged with the U.S. Customs Service (along with other agencies) to form the Bureau of Customs and Border Protection (CBP), effective on March 1, 2003, the function of the Committee is now under CBP and the Committee now advises the Secretary of Homeland Security.

The Committee consists of representatives of the airline and other transportation industries that are subject to fees and charges authorized by law or proposed by the governing agency (either INS prior to March 1, 2003, or CBP afterward). Matters of consideration by the Committee include time periods during which inspectional services should be performed, number and deployment of inspectional officers, the level of fees, and the appropriateness of any proposed fee. The fees addressed by the Committee are immigration fees and should not to be confused with COBRA fees authorized under 19 U.S.C. 58c.

Generally, the Committee focuses its attention on those subjects that most concern and benefit the travel industry, the traveling public, and CBP. One such subject is the fee charged for immigration inspectional services under 8 U.S.C. 1356(d) (section 286(d) of the Immigration and Nationality Act, as amended). This fee applies to each passenger arriving at a port of entry in the United States, or to the preinspection of a passenger in a place outside the United States prior to arrival in the United States, aboard a commercial aircraft or vessel.

Public Meeting

In accordance with 8 U.S.C. 1356(k), CBP announces that the twenty-sixth meeting of the Airport and Seaport User Fee Advisory Committee will take place at 1 p.m. on October 22, 2003, at CBP Headquarters, Office of Field Operations, 5th Floor Bridge Conference Room, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. The meeting is open to the public, and advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person identified previously in this notice at least five days prior to the meeting. Any interested party may submit a written statement at any time before or after the meeting to the contact person for consideration by the Committee. Written statements received by the contact person at least five days prior to the meeting will be considered for discussion at the meeting.

Meeting Agenda

At this meeting, the Committee is expected to pursue the following agenda (which may be modified prior to the meeting):

1. Introduction of the Committee members;

2. Discussion of administrative issues;

3. Discussion of activities since last meeting;

4. Discussion of specific concerns and questions of Committee members;

5. Discussion of future traffic trends;

6. Discussion of relevant written statements timely submitted by the public in advance of the meeting (as above); and

7. Scheduling of next meeting.

Dated: September 26, 2003.

John E. Eichelberger,

Assistant Commissioner, Office of Finance.

[FR Doc. 03–24845 Filed 9–29–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for USAccess; Form I–923.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Customs and Border Protection has proposed a new collection of information; Form I–923, entitled Application for USAccess (U.S. Automated Check-in, Clearance, and Entry Support Services). This collection will be used to enroll applicants in the USAccess pilot program to prescreen applicants in order to expedite U.S. citizens seeking admission to the Washington/Dulles International Airport (IAD) arriving from London/Heathrow Airport (LHR). The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 1, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for USAccess.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–923, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the DHS to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 66 minutes (1.10 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Theresa M. O'Malley, Chief Information Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Room 4636–26, Washington, DC 20202.

Dated: September 23, 2003.

Richard A. Sloan,

Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–24630 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation facilities located on various Indian reservations throughout the United States. We are required to establish rates to recover the costs to administer, operate, maintain, and rehabilitate those facilities. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before December 1, 2003.

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: Jeff Loman, Acting Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS–3061–MIB, Code 210, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The tables in this notice list the irrigation project contacts where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation, the current irrigation assessment rates, and the proposed rates for the 2004 irrigation season and subsequent years where applicable.

What Are Some of the Terms I Should Know for This Notice?

The following are terms we use that may help you understand how we are applying this notice.

Administrative costs mean all costs we incur to administer our irrigation projects at the local project level. Local project level does not normally include the Agency, Region, or Central Office costs unless we state otherwise in writing.

Assessable acres mean lands designated by us to be served by one of our irrigation projects and to which we provide irrigation service and recover our costs. (*See Total assessable acres.*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand deliver your bill will be stated on it.

Costs mean the costs we incur for administration, operation, maintenance,

and rehabilitation to provide direct support or benefit to an irrigation facility.

Customer means any person or entity that we provide irrigation service to.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you, and your means all interested parties, especially persons or entities that we provide irrigation service to and receive beneficial use of our irrigation projects affected by this notice and our supporting policies, manuals, and handbooks.

Irrigation project means, for the purposes of this notice, the facility or portions thereof, that we own, or have an interest in, including all appurtenant works, for the delivery, diversion, and storage of irrigation water to provide irrigation service to customers for whom we assess periodic charges to recover our costs to administer, operate, maintain, and rehabilitate. These projects may be referred to as facilities, systems, or irrigation areas.

Irrigation service means the full range of services we provide customers of our irrigation projects, including, but not limited to, water delivery. This includes our activities to administer, operate, maintain, and rehabilitate our projects.

Maintenance costs mean all costs we incur to maintain and repair our irrigation projects and equipment of our irrigation projects and is a cost factor included in calculating your operation and maintenance (O&M) assessment.

Must means an imperative or mandatory act or requirement.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse our costs.

Operation or operating costs mean costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date, as stated on the bill. Beginning on the 31st day after the due date we begin assessing additional charges accruing from the due date.

Rehabilitation costs mean costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Total assessable acres mean the total acres served by one of our irrigation projects.

Total O&M cost means the total of all the allowable and allocatable costs we incur for administering, operating, maintaining, and rehabilitating our irrigation projects serving your farm unit.

Water means water we deliver at our projects for the general purpose of irrigation and other purposes we agree to in writing.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and our means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or you have a carriage agreement with one of our irrigation projects.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

Why Are You Publishing This Notice?

We are publishing this notice to notify you that we propose to adjust one or more of our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, specifically, 25 CFR 171.1. These sections provide for the fixing and announcing of the rates for annual assessments and related information for our irrigation projects.

What Authorizes You To Issue This Notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual and by memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

When Will You Put the Rate Adjustments Into Effect?

We will put the rate adjustments into effect for the 2004 irrigation season and subsequent years where applicable.

How Do You Calculate Irrigation Rates?

We calculate irrigation assessment rates in accordance with 25 CFR 171.1(f) by estimating the cost of normal operation and maintenance at each of our irrigation projects. The cost of normal operation and maintenance means the expenses we incur to provide direct support or benefit for an irrigation project's activities for administration, operation, maintenance, and rehabilitation. These costs are then applied as stated in the rate table in this notice.

What Kinds of Expenses Do You Include in Determining the Estimated Cost of Normal Operation and Maintenance?

We include the following expenses:

(a) Personnel salary and benefits for the project engineer/manager and project employees under their management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses;

(g) Maintenance of a reserve fund available for contingencies or emergency expenses for, and insuring, reliable operation of the irrigation project; and

(h) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When Should I Pay My Irrigation Assessment?

We will mail or hand deliver your bill notifying you of the amount you owe to the United States and when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill no later than the close of business on the 30th day after the due date stated on the bill.

What Information Must I Provide for Billing Purposes?

We must obtain certain information from you to ensure we can properly process, bill for, and collect money owed to the United States. We are required to collect the taxpayer identification number or social security number to properly bill the responsible party and service the account under the authority of, and as prescribed in, Pub. L. 104–143, the Debt Collection Improvement Act of 1996.

(a) At a minimum, this information is:

(1) full legal name of person or entity responsible for paying the bill;

(2) adequate and correct address for mailing or hand delivering our bill; and

(3) the taxpayer identification number or social security number of the person or entity responsible for paying the bill.

(b) It is your responsibility to ensure we have correct and accurate information for paragraph (a) of this section.

(c) If you are late paying your bill due to your failure to furnish such information or comply with paragraph (b) of this section, you cannot appeal your bill on this basis.

What Can Happen If I Do Not Provide the Information Required for Billing Purposes?

We can refuse to provide you irrigation service.

If I Allow My Bill To Become Past Due, Could This Affect My Water Delivery?

If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. Your bill will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any of your irrigated land on which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements that we agree to. Our authority to demand payment of your past due bill is 31 CFR 901.2, ''Demand for Payment.''

Are There Any Additional Charges If I Am Late Paying My Bill?

Yes. We will assess you interest on the amount owed and use the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of 6 percent per year and it will accrue from the date your bill initially became past due. Our authority to assess interest, penalties, and administration fees on past due bills is prescribed in 31 CFR part 901.9, ''Interest, penalties, and costs.''

What Else Can Happen to My Past Due Bill?

If you do not pay your bill or make payment arrangements that we agree to, we are required to send your past due bill to the Treasury for further action. We must send your bill to Treasury no later than 180 days after the original due date of your irrigation assessment bill. The requirement for us to send your unpaid bill to Treasury is prescribed in 31 CFR part 901.1, ''Aggressive agency collection activity.''

Who Can I Contact for Further Information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.	
Flathead Irrigation Project	Ernest T. Moran, Superintendent, Flathead Agency Irrigation Division, PO Box 40, Pablo, Montana 59855–5555, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Fort Hall Agency, PO Box 220, Fort Hall, Idaho 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, PO Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Keith Beartusk, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Ross Denny, Superintendent, Cliff Hall, Irrigation Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent; (406) 338–7519, Irrigation.
Crow Irrigation Project	Frank Merchant, Acting Superintendent, Dan Lowe, Irrigation Manager, PO Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent; (406) 638–2863, Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent, Dan Spencer, Irrigation Manager, R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent; (406) 353–2905, Irrigation.
Fort Peck Irrigation Project	Spice Bighorn, Superintendent, PO Box 637, Poplar, MT 59255, Rhonda Knudsen, Irrigation Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent; (406) 653–1752, Irrigation.
Wind River Irrigation Project	Ray Nation, Acting Superintendent, Hilaire Peck, Irrigation Manager, PO Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent; (307) 332–2596, Irrigation.
Southwest Region Contacts	
Rob Baracker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 615 First Street, NW., Albuquerque, New Mexico 87102, Telephone: (505) 346–7590/91.	
Pine River Irrigation Project	Michael Stancampiano, Superintendent, John Formea, Irrigation Engineer, PO Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–1017, Irrigation.

Project name	Project/agency contacts
Western Region Contacts	
Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, PO Box 10, Phoenix, Arizona 85001, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1 Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works.	Carl Christensen, Supervisory General Engineer, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works.	Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, PO Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Irrigation Assessments or Charges Are Proposed for Adjustment by This Notice?

The rate table below contains the current rates for all of our irrigation projects where we recover our costs for operation and maintenance. The table also contains the proposed rates for the 2004 season and subsequent years where applicable. The irrigation projects where rates are proposed for adjustment are noted by an asterisk immediately following the name of the project.

Project name	Rate category	Current 2003 rate	Proposed 2004 rate
Flathead Irrigation Project*	Basic per acre	$19.95	$21.45
Fort Hall Irrigation Project	Basic per acre	22.00	22.00
Fort Hall Irrigation Project Minor Units	Basic per acre	14.00	14.00
Fort Hall Irrigation Project Michaud	Basic per acre	30.00	30.00
	Pressure per acre	43.50	43.50
Wapato Irrigation Project Simcoe Units	Billing Charge Per Tract	5.00	5.00
	Farm unit/land tracts up to one acre (minimum charge).	13.00	13.00
	Farm unit/land tracts over one acre—per acre	13.00	13.00
Wapato Irrigation Project Ahtanum Units	Billing Charge Per Tract	5.00	5.00
	Farm unit/land tracts up to one acre (minimum charge).	13.00	13.00
	Farm unit/land tracts over one acre —per acre	13.00	13.00
Wapato Irrigation Project Satus Unit	Billing Charge Per Tract	5.00	5.00
	Farm unit/land tracts up to one acre (minimum charge).	51.00	51.00
	''A'' farm unit/land tracts over one acre—per acre	51.00	51.00
	Additional Works farm unit/land tracts over one acre—per acre.	56.00	56.00
	''B'' farm unit/land tracts over one acre—per acre	61.00	61.00
	Water Rental Agreement Lands—per acre	62.00	62.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic-per acre	13.00	13.00
Crow Irrigation Project	Basic-per acre	16.00	16.00
Fort Belknap Irrigation Project*	Indian per acre	7.00	7.75
	non-Indian per acre	14.00	15.50
Fort Peck Irrigation Project	Basic-per acre	14.00	14.00
Wind River Irrigation Project*	Basic-per acre	12.00	14.00
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	25.00	25.00
	Basic-per acre	8.50	8.50

Project name	Rate category	Current 2003 rate	Proposed 2004 rate	Proposed 2005 rate
Western Region Rate Table				
Colorado River Irrigation Project (See notes #1 and #2).	Basic per acre up to 5.75 acre-feet	$47.00	$47.00	.....
	Excess Water per acre-foot over 5.75 acre-feet.	17.00	17.00	.....
Duck Valley Irrigation Project	Basic-per acre	5.30	5.30	.....
Fort Yuma Irrigation Project (See note #3)	Basic-per acre up to 5.0 acre-feet	60.00	60.00	.....

Project name	Rate category	Current 2003 rate	Proposed 2004 rate	Proposed 2005 rate
	Excess Water per acre-foot over 5.0 acre-feet.	10.50	10.50	.....
San Carlos Irrigation Project (Joint Works)* ..	Basic-per acre	20.00	20.00	$30.00
San Carlos Irrigation Project (Indian Works) ..	Basic-per acre	56.00	56.00	(1)
Uintah Irrigation Project	Basic-per acre	11.00	11.00	.....
Walker River Irrigation Project	Indian per acre	7.32	7.32	.....
	non-Indian per acre	15.29	15.29	.....

[1] To be determined.

Note #1: For the Colorado River Irrigation Project, pursuant to a reconciliation of the operation and maintenance financial records as of December 31, 2002, funds in excess of the 700,000 reserve fund will be refunded to the excess water users in proportion to the amount of excess water purchased by each water user. The refund will be a credit against the 2004 irrigation season assessment for eligible excess water users.

Note #2: The Colorado River Irrigation Project's past practice of billing twice a year does not comply with the Debt Collection Improvement Act of 1996 and its supplementing regulations. Therefore, starting with the 2004 irrigation season, the full irrigation assessment will be due and payable in accordance with the procedures stated previously in this notice.

Note #3: The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rates assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation projects are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation projects by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting our irrigation rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires April 30, 2006.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Public Comment Solicitation

If you wish to comment on the proposed rate adjustments, you may mail or hand-deliver your written comments to the person listed in the **ADDRESSES** section of this notice. Comments may also be telefaxed to the following number: (202) 219–0006. We cannot accept electronic submissions at this time. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and fully considered before publication of a final notice.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from

organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Dated: September 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–24690 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Conservation Helium Sales

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice implementing second Conservation Helium sale.

SUMMARY: The purpose of this action is to continue implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the disposal of the Conservation Helium reserve. The Act requires the Department of the Interior to *offer for sale,* beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The Department of the Interior, in consultation with the private helium industry, has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region, and that given the current market, Conservation Helium sold in this Sale will likely minimize market disruption. The Bureau conducted a 30-day comment period prior to the first pilot sale of Conservation Helium in March 2003. Eight comments were received. The comments were generally supportive with mainly long-term concerns expressed. However, some of the comments expressed concern over the allocation process and pricing methodology. The Bureau made some modifications to address concerns expressed by those comments. Since the first sale was not fully subscribed, the appropriateness of the allocation percentage was not fully tested. The second sale will provide the Bureau with further information to assess the overall process.

DATES: Submit bids and other documentation as required in Notice on or before October 30, 2003.

ADDRESSES: You may submit your bids and other documentation as required in this Notice to the Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

FOR FURTHER INFORMATION CONTACT: Timothy R. Spisak, (806) 356–1002. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this Sale is to continue implementation of the terms of the HPA dealing with the disposal of the Conservation Helium Reserve. The Act requires the Department of the Interior to *offer for sale,* beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The Department of the Interior, in consultation with the private helium industry, has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the second of 12 annual sales that the Department will conduct to dispose of the Conservation Helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent pure helium market disruptions from occurring to end users; shortages of crude helium to pure helium refiners; and an oversupply of crude helium on the market for crude helium extractors. This second sale will be used to test the disposal process when the sales volume is expected to be fully subscribed. Subsequent sales may be adjusted as needed.

1.02 What Terms Do I Need To Know To Understand This Sale?

Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

Annual Conservation Helium Sale—The sale of a certain volume of Conservation Helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the Annual Conservation Helium Sale and has met the qualifications contained in part 1.05 in this Notice.

BLM—The Bureau of Land Management.

Conservation Helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude Helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may typically vary from 50 to 95 percent.

Crude Helium Refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid Helium Storage Contract as of the date of a Conservation Helium Sale.

Excess Volumes—Allocated sale volumes not requested by the Crude Helium Refiners.

Helium Storage Contract—A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA—The Helium Privatization Act of 1996.

In-Kind Crude Helium—Conservation Helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal agencies and their contractors in accordance with the HPA.

MMcf—One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be offered to all qualified Bidders.

1.03 What Volume of Conservation Helium Will Be Offered in the Year 2004 Annual Conservation Helium Sale?

The volume of helium available for this Sale is 2,100 MMcf. In accordance with the HPA, this volume was determined by dividing the total volume of stored Conservation Helium less the statutory required reservation of 600 MMcf for Government purposes less estimated In-Kind Crude Helium transfers for 12 years divided by 12. The volume represents a straight-line basis for offering the helium for sale in accordance with the HPA.

1.04 At What Price Will the Conservation Helium Be Sold?

The Conservation Helium will be sold at the same price as In-Kind Crude Helium. In accordance with the HPA, this price covers helium debt repayment

and its escalation by the Consumer Price Index since the helium debt was frozen in 1995. Additionally, the price includes administrative and storage costs associated with the Conservation Helium calculated on a per Mcf basis. For Fiscal Year 2004 that price is $54 per Mcf.

1.05 Am I Qualified To Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating partially or wholly within the United States who meets one or more of the following requirements are qualified to submit a purchase request:

- Operates a helium purification plant within the U.S., or
- Operates a crude helium extraction plant within the U.S., or
- Is a wholesaler of pure helium or purchases helium for resale within the U.S., or
- Is a consumer of pure helium within the U.S., or
- Has an agreement with a helium refiner to provide its helium processing needs, commonly referred to as a ''tolling agreement.''

All entities requesting participation in the Non-Allocated Sale must submit proof of being qualified to purchase Conservation Helium and must either have a Helium Storage Contract with the BLM or have a third-party agreement in place with a valid storage contract holder so that all Conservation Helium sold to the Bidder will be properly covered by a Helium Storage Contract (including associated storage charges).

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of Conservation Helium from final publication of this Notice until October 30, 2003. On the next business day after this Notice closes, requests to purchase Conservation Helium will be opened and evaluated. Thereafter, volumes of this Conservation Helium Sale will be apportioned and allocated according to the Sale rules described in this Notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

- Billing address information and name(s) of principle officers of the company.
- Proof of being an entity qualified to purchase Conservation Helium at this Sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, Helium Storage Contracts, or other relevant documents may be submitted as proof of qualification.
- The amount (in Mcf) of Conservation Helium requested and deferment request (see part 1.09 below), if applicable.
- Certified check or money order in the amount of $1,000 made payable to the Bureau of Land Management. This money will be used to cover administrative expenses to conduct this Sale and is nonrefundable.

1.08 Where Do I Send My Request for Purchase?

All requests for purchase of helium as part of this Sale must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

1.09 When Do I Need To Submit Payment for Any Conservation Helium Sold to Me?

Successful purchasers will submit payments according to the following schedule:

- 25 percent by October 30, 2003, or 30 days after notification of the award volumes, whichever is later.
- 25 percent by January 30, 2004.
- 25 percent by April 30, 2004.
- 25 percent by July 30, 2004.

Conservation Helium will not be transferred to the purchaser's storage account until payment is received for that portion. Successful purchasers may, at their option, accelerate the purchase schedule. Due to the transition of this annual sale from January to October, the successful purchaser may defer the first quarterly purchase from October 2003 to January 2004 upon written request in their request for purchase documents.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the Bureau of Land Management at the address listed in part 1.08 in this Notice.

1.11 What Are the Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If a payment is not received by the due date and after a written late notice by the BLM, the purchaser will forfeit the remainder of its allotment unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be accessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know if I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than 2 weeks after the close of this Notice with the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

2.02 Who Will Be Allowed To Purchase Conservation Helium in the Allocated Sale?

Only those who meet the definition of Crude Helium Refiners as defined in part 1.02 in this Notice.

2.03 What Volume of Conservation Helium Is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the Annual Conservation Helium Sale—1,890 MMcf.

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each Crude Helium Refiner will be based on its percentage share (rounded to the nearest 1/10th of 1 percent) of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What Is Offered for Sale?

- If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the excess volume based on proportionate shares of remaining refining capacities.
- Requests by the Crude Helium Refiners that are in excess of the amount available above will be carried over to the Non-Allocated Sale and considered a separate bid under the Non-Allocated Sale rules.

2.06 What Will Happen if the Total Amount Requested by the Crude Helium Refiners Is Less Than the 1,890 MMcf Offered in the Allocated Sale?

Any excess volume not sold to the Crude Helium Refiners will be added to the Non-Allocated Sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 90 percent available for Allocated Sale (1,890 MMcf).

Bidder—allocated sale	Installed refining capacity (in percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner A	10	225	189	36	20	36	225	0
Refiner B	50	750	750	0	0	0	750	0
Refiner C	40	985	756	229	80	156 +3	915	70
Total	100	1,960	1,695	265	100	195	1,890	0

*All volumes in MMcf

After the initial allocation, Refiner B has received all requested. However, 265 MMcf is deemed excess of the total in the first iteration of the Allocated Sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, Refiner A gets all requested, but Refiner C is still short by 73 MMcf. Additionally, 3 MMcf remains unallocated and without any other Refiners is awarded to Refiner C, who now has a remaining request of 70 MMcf that is posted into the Non-Allocated Sale. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Non-Allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be offered to all qualified Bidders.

3.02 What Is the Minimum Volume I Can Request?

The minimum request is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-Allocated Sale?

The total volume of Conservation Helium available for this portion of the Sale is 210 MMcf plus any additional helium that is not sold as part of the Allocated Sale.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the Annual Conservation Helium Sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the Conservation Helium is being offered as part of the Allocated Sale. Currently, *the Crude Helium Refiners have refining capacity roughly double what can be supplied* through the Annual Conservation Helium Sales. Although there are other crude helium supplies available to the Crude Helium Refiners, these supplies are declining each year. The BLM must be sensitive to the Crude Helium Refiner's requirements while maintaining a balance with other helium industry requirements. The exact ratio of Allocated to Non-Allocated Sale volumes may change for subsequent Annual Conservation Helium Sales.

3.05 How Will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The Conservation Helium will be apportioned equally in 1 Mcf increments among the Bidders with no prospective Bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of This Notice?

- If one or more Bidders request less than their apportioned amount, any other Bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this Sale.
- If all Bidders request more than their apportioned amount, each Bidder will receive its apportioned amount as determined in part 3.05 in this Notice.

3.07 What Will Happen if a Bidder Requests Less Than Its Apportioned Amount?

Any Bidder requesting less than the calculated apportioned volume will receive the amount of its request, and amounts remaining will be reapportioned in accordance with part 3.05 in this Notice.

3.08 What Will Happen if the Total Requests From All Bidders Are Less Than That Offered for Sale in the Non-Allocated Sale?

If the total non-allocated volume requested is less than the non-allocated volume offered for this portion of the Sale, the excess amount will not be sold and will be held in storage for future sales.

3.09 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 10 percent available for Non-Allocated Sale (210 MMcf).

Bidder—non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned	Total apportioned*	Amount requested not received*
Refiner C	70	52.5	17.5	50	15	67.5	2.5
Company D	100	52.5	47.5	50	15	67.5	32.5

Bidder—non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned	Total apportioned*	Amount requested not received*
Company E	50	50	0	0	0	50	0
Company F	25	25	0	0	0	25	0
Total	245	180	65	100	30	210	35

*All volumes in MMcf.

In this example, three companies submit a request, and there is a carryover amount from one of the Crude Helium Refiners in the Allocated Sale that is considered as a separate request. Each Bidder would be apportioned 52.5 MMcf, (*i.e.*, 210 MMcf of Non-Allocated Conservation Helium ÷ 4 Bidders = 52.5 MMcf per Bidder).

After the initial allocation, Companies E and F have received all they requested. However, 30 MMcf is deemed excess in the first iteration of the Non-Allocated Sale and reallocated to the two remaining Bidders. With the reallocation, Refiner C and Company D each receives an additional 15 MMcf. No more helium is available, Refiner C and Company D do not receive all that they requested, and the Sale is complete. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Dated: July 23, 2003.

Linda S.C. Rundell,

State Director, New Mexico.

[FR Doc. 03–24667 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP3–0299]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council (EWRAC) will meet on October 20, 2003, at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and adjourn about 4 p.m. Topics on the meeting agenda include:

- Sustaining Working Landscapes Initiative.
- Sagebrush Conservation Strategy.
- Washington State Land Exchange.

The RAC meeting is open to the public, and there will be an opportunity for public comment between 11 a.m. and 12 noon. Information to be distributed to Council members for their review is requested in written format 10 days prior to the Council meeting date.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: September 25, 2003.

Joseph K. Buesing,

District Manager.

[FR Doc. 03–24834 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–03–0158]

Notice of Proposed Supplementary Rules on Public Land In Oregon

AGENCY: Bureau of Land Management, Eugene District, Oregon.

ACTION: Proposed supplementary rules for public land within the West Eugene Wetlands, Eugene District, Oregon.

SUMMARY: The Bureau of Land Management (BLM)'s Siuslaw Resource Area is proposing supplementary rules. These rules will apply to the public lands within the West Eugene Wetlands in the Siuslaw Resource Area, Eugene District, Lane County, Oregon. The rules are needed in order to protect the area's natural resources and provide for public health and safety.

DATES: You should submit your comments by October 30, 2003. In developing final rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may comment on the proposed supplementary rules in 3 ways.

Personal delivery: Bureau of Land Management, Siuslaw Resource Area, 2890 Chad Drive, Eugene, Oregon, 97408;

Mail: Bureau of Land Management, Siuslaw Resource Area/Field Office, at P.O. Box 10226, Eugene, Oregon, 97440–2226; or Internet email: *Eugene_mail@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Calish, Siuslaw Resource Area Manager, 2890 Chad Drive, Eugene, Oregon, 97408, telephone (541) 683–6600.

I. Public Comment Procedures
II. Discussion of the Supplementary Rules
III. Procedural Matters

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Siuslaw Resource Area address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at

the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

These rules will apply to the public lands within the West Eugene Wetlands, including any lands acquired within the described lands subsequent to the adoption of these rules. The West Eugene Wetlands is located in the southern Willamette Valley, in and immediately west of the City of Eugene, Oregon, within Sections 27, 28, 29, 30, 31, 32, 33, 34 and 35 of Township 17 South, Range 4 West of the Willamette Meridian, and sections 4 and 5 of Township 18 South, Range 4 West of the Willamette Meridian. These rules will be applicable to BLM lands located south of Royal Avenue only. BLM has determined these rules necessary to protect the area's natural resources and to provide for safe public recreation, public health, and reduce the potential for damage to the environment and to enhance the safety of visitors and neighboring residents.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of personal conduct for public use of certain public lands. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) designated EA–08–01, dated June 18, 2001, which covers the West Eugene Wetlands Recreation, Access and Environmental Education Plan, and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain lands in Oregon. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **"ADDRESSES"** section. It can also be found at *http://www.edo.or.blm.gov/nepa/ea_archive.htm.* BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the "Public comment procedure" section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but merely contains rules of personal conduct for public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business'commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights because all rules are only effective on public lands. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism (Replaces Executive Orders 12612 and 13083)

The proposed supplementary rules 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, in accordance with Executive Order 13132, BLM has determined that this proposed supplementary rules does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed supplementary rules would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. The supplementary rules would not apply to Indian lands or resources, or trust lands or resources.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Pat Johnston, wetlands project manager, Bureau of Land Management, Siuslaw Resource Area.

Supplementary Rules for the West Eugene Wetlands

Sec. 1 Rules of conduct: Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rules on the public lands within the West Eugene Wetlands, Siuslaw Resource Area, Eugene District Office, Oregon. You must follow these rules:

a. You must not litter.

b. You must not enter areas that are posted or otherwise delineated, fenced, or barricaded to close them to public use.

c. You must not use or occupy any area one hour after sunset through one hour before sunrise, unless you are traveling on the Fern Ridge Bike Path.

d. You must not discharge fireworks, firearms, air guns, slingshots or use any other projectile launching device.

e. You must not leave personal property unattended.

f. You must not use or operate motorized vehicles on the Fern Ridge Bike Path, or operate motorized or non-motorized vehicles off those roads or paths or parking areas specifically designated for vehicle use. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM or BLM-authorized vehicles being used for official duties, are excepted.

g. You must not build or use campfires or other open flame fires. You must not smoke when it is determined by the authorized officer that smoking must be prohibited to protect natural resources and/or adjacent properties from wildfire hazard.

h. You must not possess, disturb, or collect any natural resource unless specifically permitted by the authorized officer.

i. You must not allow entry of pets or livestock into areas closed to pet or livestock use. Livestock are not permitted south of Royal Avenue. Pets must be restrained on a leash not to exceed six feet in length or be physically restricted at all times. Pet owners must clean up pet waste and pack it out or dispose of in garbage receptacle.

j. You must not possess or consume alcoholic beverages.

k. You must not possess glass beverage containers.

Sec. 2 Penalties: On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

Oregon State Director.

[FR Doc. 03–24668 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–5043]

ES–051993, Group No. 1, Rhode Island; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Rhode Island.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Eastern States Office, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs and the Narragansett Indian Tribe.

The lands we surveyed are:

Trust Lands of the Narragansett Indian Tribe, Washington County, Rhode Island, Survey of the Niles Land, designated Tract No. 8.

The plat of survey represents the survey of the Niles Land, designated Tract No. 8, a portion of the lands held in trust for the Narragansett Indian Tribe in Washington County, Rhode Island, and was accepted September 23, 2003.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 23, 2003.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 03–24686 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of an information collection (1010–0154).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is notifying the public that it has submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements under the Endangered Species Act Biological Opinions, issued by the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and is titled: ''Notices to Lessees and Operators Numbers 2003–G08, 2003–G10, and 2003–G11.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 30, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0154). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, at (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the Notices to Lessees that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Notices to Lessees and Operators Numbers 2003–G08, 2003–G10, and 2003–G11.

OMB Control Number: 1010–0154.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The Department of the Interior, MMS, as a Federal agency, has a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the FWS and NOAA Fisheries before engaging in a discretionary action that may affect a protected species.

The MMS follows these procedural requirements by conducting formal consultations with FWS and NOAA Fisheries prior to lease sales. Consultations on OCS lease sales 181, 184, and the 5-year multisale (2002–2007) program in the Central and Western Planning Areas of the Gulf of Mexico (GOM) resulted in no-jeopardy biological opinions from the FWS and NOAA Fisheries. In their biological opinions, NOAA Fisheries determined that some activities associated with the proposed action (lease sale and related exploration, development, and production activities) may adversely affect (harm) sperm whales and sea turtles in the action area and that certain reasonable and prudent measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA (which prohibits taking listed species), MMS must implement and enforce nondiscretionary terms and conditions. The ESA also requires monitoring and reporting. Monitoring programs resulting from ESA interagency consultations are designed to (1) detect adverse effects resulting from a proposed action, (2) assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion, (3) detect when the level of anticipated take is exceeded, and (4) determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements. To implement the nondiscretionary terms and conditions of these biological opinions, the MMS issued three NTLs, as follows (note that these NTLs have been renumbered and reissued):

- NTL 2003–G08—Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program
- NTL 2003–G10—Vessel Strike Avoidance and Injured/Dead Protected Species Reporting
- NTL 2003–G11—Marine Trash and Debris Awareness and Elimination

The MMS will use the information collected to report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3). MMS engineers, geologists, geophysicists, environmental scientists, and other Federal agencies (FWS, NOAA Fisheries, *etc.*) also will analyze the information and data collected under these NTLs to better evaluate the potential impacts to listed species and to plan operations in a manner that will further reduce and/or avoid adverse impacts to protected species in the OCS.

On March 26, 2003, the OMB approved MMS's request under emergency processing procedures to collect the information required by these NTLs and assigned OMB Control Number 1010–0154. Since the ''emergency'' processing of this information collection, MMS has worked with representatives from NOAA Fisheries, American Petroleum Institute, and the Offshore Operators Committee to fully develop these programs and has revised and renumbered the NTLs as follows:

- NTL 2003–G08, ''Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program'' (previously NTL 2002–G07 with Addendum 1), has been revised to include the entire Protected Species Observer Program section, adding criteria for visual observers, observer training, and methods of observing and reporting observations. It also provides for an experimental (voluntary) passive acoustic monitoring program.
- NTL 2003–G10, ''Vessel Strike Avoidance and Injured/Dead Protected Species Reporting'' (previously NTL 2003–G07), has been revised to list specific guidelines operators should follow to avoid death or injury to marine mammals and sea turtles in lieu of a formal observer program.
- NTL 2003–G11, ''Marine Trash and Debris Awareness and Elimination'' (previously NTL 2003–G06), has been

revised to allow options for training; require an annual training certification letter to MMS in lieu of individual certifications; and allow flexibility in posting placards.

The full development of these programs, and their subsequent requirements, has significantly increased the burden hours of the already approved information collection. Therefore, with this submission, MMS is requesting a renewal of the approved collection and the noted revisions.

Frequency: On occasion, annually, and on the 1st and 15th of each month for the marine mammal observation reports.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 22,305 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, MMS assumed that respondents perform certain requirements in the normal course of their activities. MMS considers these to be usual and customary and took that into account in estimating the burden.

NTL no. and name	Reporting, posting, or recordkeeping requirement	Hour burden	Average no. annual responses	Annual burden hours
2003–G08 Implementation of Seismic Survey Mitigation Measures and Protected Species Observer.	Submit protected species observation reports/forms (including observer, survey, sighting, shut-down, borehole, and passive acoustic monitoring reports).	1 hour/report	200 sightings reports	200
	Actual visual observation on duty	8 hours/day × 3 observers/vessel = 24.	8 vessels × 110 (30% in seismic mode × 365 days) = 880.	21,120
	Submit to MMS observer training requirement materials and information.	½ hour	24 reports × 8 vessels = 192.	96
	Observer training	8 hours	8 vessels × 9 observers (in vessel pool) = 72.	576
	Training certification and recordkeeping	½ hour	100	50
	Submit to MMS information on passive acoustic monitoring system before its use (voluntary program).	1 hour	3	3
2003–G10 Vessel Strike Avoidance and Injured/Dead Protected Species Reporting.	Submit injured/dead protected species report	½ hour/report	20 reports	10
2003–G11 Marine Trash and Debris Awareness and Elimination.	Write to obtain training video (optional)	½ hour/record	100 requests	50
	Submit annual report to MMS on training process and certification.	½ hour/record	200 records	100
	Training recordkeeping	½ hour/record	200 records	100
	Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the ''Surgeon General's Warning'' exemption.)			0
Total Burden			1,967 reports	22,305 hours

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: MMS has identified no ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) 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 use of automated collection techniques or other information technology.

To comply with the public consultation process, on May 14, 2003, MMS published a **Federal Register** notice (68 FR 25904) announcing that MMS would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In a letter dated July 10, 2003, the Offshore Operators Committee (OOC), an organization of some 115 companies that essentially conduct all of the OCS oil and gas exploration activities in the Gulf of Mexico, submitted comments on this collection. The following discusses the comments and MMS's responses.

Comment 1: OOC states that the reporting and compliance requirements used in the **Federal Register** notice are underestimated. OOC notes that no hour burden has been calculated for conducting the required observations; training the observers; and then reviewing, approving, and filing the reports with the MMS. *MMS Response:* Because the protected species observer program is now fully developed and constitutes a new requirement from the biological opinions from NOAA Fisheries, all observation time is now calculated into the burden. Time spent training observers to do the required tasks is also included, as well as time for industry review and approval of required reports. As a result of discussions, these three NTLs have been revised, and the total information collection burden has been adjusted to 22,305 hours.

Comment 2: OOC is especially concerned about original NTL 2003–G06, Marine Trash and Debris Awareness and Elimination (now revised to be NTL 2003–G11) and states that the recordkeeping requirements of this NTL are overly burdensome and unnecessary, that the hourly burden is underestimated, and that existing regulations and programs adequately address elimination of marine debris, placarding of facilities, and training of personnel. OOC states that NOAA Fisheries wants feedback from MMS on the effectiveness of existing programs rather than creation of new programs. *MMS Response:* MMS received biological opinions from NOAA Fisheries on Western Gulf of Mexico (GOM) Lease Sale 184, as well as on the multi-lease sale proposal for the Central and Western GOM. These opinions contain ''nondiscretionary terms and conditions'' requiring MMS to implement additional programs to eliminate marine trash and debris. Implementation of such programs is required in order for MMS to proceed with its proposed Federal action of holding lease sales. However, in the future, MMS will facilitate earlier dialogue with affected parties on such issues as addressed in these biological opinions; we will open discussion on ways to satisfy NOAA Fisheries requirements while working with affected industry.

After extensive meetings and discussions with OOC, industry, and NOAA Fisheries representatives, MMS had revised the original NTL. The revised NTL in this submission significantly reduces the burdens by allowing lessees and operators to use a slide show in conjunction with annual training and to certify compliance with these requirements by submitting an annual report to MMS that describes their training process and that they have followed this process for the previous calendar year.

Comment 3: OOC states that the time and cost of meeting the training and recordkeeping requirements are substantial. In addition, OOC states that there are ''non-hour cost'' burdens associated with these requirements. *MMS Response:* OOC refers to additional time incurred in the review, approval, and file keeping aspects of the reports. As stated above, MMS has revised the NTLs and has incorporated the training and recordkeeping aspects into the burden. MMS has also calculated the time for industry to review and approve required information. OOC also refers to ''non-hour cost'' burdens to generate, maintain, and disclose this information. Comments were not specific enough to include as an element of burden in this submission.

Comment 4: OOC is concerned with the NTL process in general and notes that the NTLs have been revised at least twice during the last 7 months. OOC states that these revisions have caused additional work to industry. OOC believes these NTLs exceed the scope of MMS regulations and create compliance requirements on industry without an opportunity to provide comments on the new requirements. *MMS Response:* MMS recognizes industry concerns about the use of NTLs and their associated burdens; however, the requirements in these NTLs are necessary because of the biological opinions issued. In the future, MMS will work with affected groups early in the process. We understand the burden these requirements place on industry. However, MMS has a continuing duty to comply with the ESA, including a substantive duty not to carry out any agency action that is likely to jeopardize protected species as well as a procedural duty to consult with the Services (FWS and NOAA Fisheries) before engaging in a discretionary action that may affect a protected species. Lessees and operators in the GOM also must comply with the ESA.

Prior to OCS Lease Sales 181, 184 and 185, the MMS followed these procedural requirements by conducting a formal consultation with FWS and NOAA Fisheries, after which both Services issued biological opinions. The biological opinions issued by NOAA Fisheries for Sale 184 and Sale 185 advised the MMS that the proposed action (lease sale and related exploration, development, and production activities) was expected to impact (harm) sperm whales and sea turtles in the action area as a result of such OCS activities and that certain measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA, MMS must comply with the nondiscretionary terms and conditions, which outline required reporting and monitoring requirements. In order to monitor the impact of incidental take, the MMS must report the progress of the action and its impact on the species to NOAA.

These three NTLs were issued in an effort to comply with the biological opinions and thus enable MMS and industry to proceed with OCS Lease Sale 184 as well as others in a timely manner. MMS has met often with representatives of OOC, industry, and NOAA Fisheries to address their concerns about these NTLs. Although all concerns were not resolved, changes were made to the subject NTLs. The majority of the revisions of the NTLs resulted from feedback from industry and MMS's effort to allow time and flexibility for lessees and operators to comply with NOAA's requirements.

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 October 30, 2003.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson, (202) 208–3976.

Dated: September 8, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–24654 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Task Force Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of task force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, Section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 4 p.m. at the following location and date:

DATES: Thursday, October 2, 2003.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith. The matters to be discussed at this meeting include the purpose of the committee, background and history of the area, discussion of the site visit and issues identified and scheduling future meetings. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: August 24, 2003.

Charlie Powell,

Acting Regional Director, Southeast Region.

[FR Doc. 03–24650 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Gates of the Arctic National Park Subsistence Resource Commission; Meeting Announcement

AGENCY: National Park Service, Interior.

ACTION: Announcement of Gates of the Arctic National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gates of the Arctic National Park Subsistence Resource Commissions will be held at Fairbanks, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will begin on Wednesday, November 12, at 9 a.m. and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Thursday, November 13, 2003, and adjourn at approximately 5 p.m.

LOCATION: The Commission plans to conduct the public meeting at Sophie's Station Hotel, telephone (907) 479–3650, in Fairbanks, Alaska.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Review and adopt minutes from May 22–23, 2003 meeting.
6. Review Commission Purpose and Status of Membership.
7. Superintendent's Report.
8. SRC, Public and Agency Comments.
9. Durational Residency.
10. John River Water Quality Study.
11. Alatna River Archeological Study.
12. North Slope/Anaktuvuk Pass Fishery Study.
13. Cultural Resources Update.
14. Backcountry Planning Update.
15. Kobuk River Management Issues.
16. 2003 SRC Chairs Workshop Update.
17. Western Arctic Caribou Herd Working Group Update.
18. Federal Subsistence Board Wildlife Proposals.
19. Set time and place of next SRC meeting.
20. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent, Gates of the Arctic National Park and Preserve, 201 First Ave., Fairbanks, Alaska, 99701.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, at (907) 457–5752 or Fred Andersen, Subsistence Manager, at (907) 455–0621.

Victor Knox,

Acting Regional Director, Alaska.

[FR Doc. 03–24652 Filed 9–29–03; 8:45 am]

BILLING CODE 4312–HK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Committee for the Preservation of the White House; Notice of Public Meeting

AGENCY: National Park Service; Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 11 a.m. on Friday, October 17, 2003.

DATES: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242. (202) 619–6344.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by October 10, 2003. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: September 22, 2003.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 03–24649 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–71–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability of the Draft Environmental Assessment for an Interim 602(a) Storage Guideline for Management of the Colorado River

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment for an interim 602(a) storage guideline for management of the Colorado River.

SUMMARY: The Secretary of the Department of the Interior (Secretary), acting through the Bureau of Reclamation (Reclamation), is proposing the adoption of a 602(a) storage guideline that will assist the Secretary in making a determination of the quantity of water considered necessary as of September 30 of each year, as required by article II (1) of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Long-Range Operating Criteria) pursuant to the Colorado River Basin Project Act of September 30, 1968. Section 602(a) of the 1968 Act requires that, under certain circumstances, storage equalization releases be made from Lake Powell to Lake Mead. The proposed 602(a) storage guideline would remain in effect through calendar year 2016.

The proposed 602(a) storage guideline is based upon information received from the Governors' representatives of the seven Colorado River Basin States (Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming) during the public comment period on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement. This information was published in the **Federal Register** on August 8, 2000 (65 FR 48531–38).

DATES: A 30-day public review period commences with the publication of this notice. Written comments on the draft EA are due by October 30, 2003 and should be submitted to the address given below.

ADDRESSES: Written comments on the draft EA and requests for copies should be addressed to Tom Ryan, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Salt Lake City, Utah 84138; telephone (801) 524–3732; faxogram (801) 524–5499; e-mail: *tryan@uc.usbr.gov.* The draft EA is also available on Reclamation's web site at *http://www.usbr.gov/uc/library/* (click on Environmental Assessment Documents).

Copies of the draft EA are also available for public review and inspection at the following locations:

- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7239, Salt Lake City, Utah 84138–1147.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225–0007.
- Bureau of Reclamation, Main Interior Building, Room 7060–MIB, 1849 C Street, NW., Washington, DC 20240–0001.

SUPPLEMENTARY INFORMATION: One component of the proposal by the Governors' representatives is Section V, ''Determination of 602(a) Storage in Lake Powell during the Interim Period,'' and reads as follows:

During the interim period, 602(a) storage requirements determined in accordance with Article II (1) of the Criteria [Long-Range Operating Criteria] shall utilize a value of not less than 14.85 million acre-feet (elevation 3,630 feet) for Lake Powell (65 FR 48537).

Reclamation published a **Federal Register** notice on January 28, 2003 (68 FR 4230–31) announcing its intention to consider the adoption of a specific interim 602(a) storage guideline. Public comments were received from January 28, 2003, to March 14, 2003. Reclamation received 13 comment letters.

In accordance with the National Environmental Policy Act (NEPA) of 1969 (as amended), Reclamation has prepared a draft Environmental Assessment (EA) that analyzes the environmental impacts of adopting the interim 602(a) storage guideline. The two alternatives considered in the draft EA are the No Action Alternative and the Action Alternative. The proposed federal action (Action Alternative) is based on the proposal submitted by the Governors' representatives.

The Colorado River Basin Project Act of 1968 required the Secretary of the Interior to adopt operating criteria for the coordinated long-range operation of Colorado River reservoirs by January 1, 1970. This requirement led to adoption of the Long-Range Operating Criteria which control operation of the Colorado River reservoirs in compliance with requirements set forth in the Colorado River Compact, Colorado River Storage Project Act, Boulder Canyon Project Act, Colorado River Basin Project Act, the United States and Mexico Water Treaty, and other applicable federal laws. The purpose of the Long-Range Operating Criteria is to control the coordinated long-range operation of the storage reservoirs of the Colorado River Basin. The Long-Range Operating Criteria established the minimum objective annual release of 8.23 million acre-feet from Lake Powell. This minimum objective release ensures that the downstream delivery requirements of the Upper Division States (Colorado, New Mexico, Utah, and Wyoming) are met on an annual basis.

The Colorado River Basin Project Act of 1968 also requires the development of an annual plan of operation. Accordingly, each year, the Secretary establishes an Annual Operating Plan (AOP) for the Colorado River reservoir system. The AOP describes how Reclamation will manage the reservoirs over a 12-month period, consistent with the Long-Range Operating Criteria. In compliance with applicable federal law, Reclamation consults annually with the Colorado River Basin States, Indian tribes, and other interested parties in the development of the AOP. As part of the AOP, the Secretary makes an annual determination under the Long-Range Operating Criteria regarding the quantity of water considered necessary as of September 30 of each year to be in storage as required by Section 602(a) of the Colorado River Basin Project Act. This determination is important because when projected storage in the Upper Basin reservoirs is greater than the 602(a) storage requirement, and when storage in Lake Powell is greater than Lake Mead, releases greater than the 8.23 million acre-foot are made to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell. These releases are commonly referred to as ''storage equalization'' releases. When projected storage is less than the 602(a) storage requirement, or Lake Powell storage is less than Lake Mead storage, annual releases from Lake Powell are limited to 8.23 million acre-feet. The proposed federal action analyzed in the draft EA could modify the volume of storage equalization releases from Glen Canyon

Dam and have an affect on water storage in Lakes Powell and Mead.

The Record of Decision for the Colorado River Interim Surplus Guidelines adopted specific objective elevation levels at Lake Mead at which surplus water (*i.e.*, amounts to satisfy consumptive use in excess of 7.5 million acre-feet) could be delivered to the Lower Division States (Arizona, California, and Nevada) from Lake Mead through the year 2016. The purpose of the proposed 602(a) storage guideline is to adopt a similar objective elevation level in Lake Powell during the time period that the Colorado River Interim Surplus Guidelines are in place. The Colorado River Interim Surplus Guidelines are applicable through 2016, and the proposed 602(a) storage guideline is proposed to remain in effect through that same period.

The need for the proposed 602(a) storage guideline arises because of the potential for additional surplus deliveries to the Lower Division States, during the period through 2016, to further draw down Lake Powell (through storage equalization releases), thus affecting Upper Basin resources such as water supply, recreation, and power generation. Just as the Interim Surplus Guidelines provide a lower limit at Lake Mead for declaration of surplus through the year 2016, the proposed 602(a) storage guideline would provide a lower limit for annual releases of water in excess of 8.23 million acre-feet from Lake Powell through the year 2016. The action is therefore needed to provide for coordinated operation of these two reservoirs on the Colorado River.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 disclosure in their entirety.

NEPA Process

Public comments on the draft EA will be considered as part of the Secretary's decision in determining whether to adopt an interim 602(a) storage guideline for management of the Colorado River. Written and/or oral comments already received in response to the January 28, 2003, **Federal Register** notice (68 FR 4230–31) soliciting public comments and initiating a NEPA process need not be resubmitted as they have been retained and will be considered during this open comment period. Although we have used information already received in formulating the draft EA, we will address that information as well as any new comments received in our final EA, as appropriate.

FOR FURTHER INFORMATION CONTACT: Tom Ryan, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Salt Lake City, Utah 84138, telephone (801) 524–3732.

Dated: September 24, 2003.

Darryl Beckmann,

Acting Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 03–24674 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

New Information Collection

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of Submission of Information Collection to the Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians announces the submission of an information collection concerning Individual Indian Money (IIM) Accounts. This is a new collection for the Office of the Special Trustee for American Indians. Previously, this information collection, Individual Indian Money (IIM), OMB Control No. 1076–0154, had been submitted and cleared as a Bureau of Indian Affairs responsibility. The Bureau of Indian Affairs collection will expire prior to or concurrent with the time the new collection is approved by the Office of Management and Budget and assigned a new control number. The request to the Office of Management and Budget is to approve the new collection for a period of three years.

DATES: Comments must be submitted on or before October 30, 2003.

ADDRESSES: You may telefax your comments to: Attention: Desk Officer for the Interior Department, Office of Management and Budget, at (202) 395–6566. You may also e-mail comments to: *OIRA DOCKET@omb.eop.gov*. Send a copy of your comments to: Sarah Yepa, Office of Trust Regulations, Policies and Procedures, Office of the Special Trustee for American Indians, 505 Marquette NW., Suite 1000, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Sarah Yepa, Telephone (505) 816–1003, Fax (505) 816–1377.

SUPPLEMENTARY INFORMATION: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) makes provision for the Office of the Special Trustee for American Indians to administer trust fund accounts for individuals and tribes. The collection of information is required to facilitate the processing of deposits, investments, and distribution of monies held in trust by the U.S. Government and administered by the Office of the Special Trustee for American Indians. The collection of information provides the information needed to establish procedures to: deposit and retrieve funds from accounts, perform transactions such as cashing checks, reporting lost or stolen checks, stopping payment of checks, and general verification of account activities.

The collection showed 1,577,125 total burden hours when it was maintained by the Bureau of Indian Affairs with the OMB Control Number 1076–0154. Upon review of the collection, a total of 990,211 burden hours have been removed from the public burden; 114,700 burden hours are part of the federal burden; the remaining burden is the result of re-evaluating the number of responses for each collection. The review by the Office of the Special Trustee for American Indians resulted in a reduction of responses from 1,997,500 to 677,675; this is a reduction of 1,329,825 responses. The reduction in the overall burden results from activity generated by the collection. We reviewed the number of respondents. To arrive at the number of total respondents, we added 500 tribes to the 285,000 IIM accounts, for a total of 285,500 respondents. As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the proposed renewal of this collection of information was published on June 19, 2003 (68 FR 36837); no comments were received.

Request for Comments: The Office of the Special Trustee for American Indians requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

OMB Control Number: 1035–000X.

Type of review: New collection.

Title: Trust Funds for Tribes and Individual Indians, 25 CFR 115.

Brief Description of collection: This information collection is used to process deposits, investments, and distribution of monies held in trust by the Special Trustee for individual Indians and tribal governments and in the administration of these accounts. The respondents submit information in order to gain or retain a benefit, namely, access to funds held in trust. This collection covers 12 different kinds of submissions with the burden ranging from ½ hour to 16½ hours.

Respondents: Individual tribal members or tribes who wish to initiate some activity on their account.

Number of Respondents: 285,500.

Estimated Time per Response: Varies from ½ hour to 16½ hours.

Estimated Number of Responses Annually: 677,675.

Frequency of Response: As needed.

Total Annual Burden to Respondents: 472,214 hours.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. OMB has up to 60 days to make a decision on the submission for renewal, but may make a decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

This regulation requires an information collection under the Paperwork Reduction Act. The existing OMB approval was originally submitted and cleared by the Bureau of Indian Affairs under OMB Control Number 1076–0154; it will be allowed to expire because the new collection of information will be assumed by the Office of the Special Trustee for American Indians. The information required is necessary for account holders to obtain and or retain benefits from Individual Indian Money (IIM) and tribal trust fund accounts. The collection of information hourly burden varies from ½ hour to 16½ hours, depending upon the specific need of the account holder and the form used for that purpose. The table below explains the collection activity.

TABLE OF BURDEN FOR 25 CFR 115

CFR section	# of respondents	Public respondents		
	# of annual responses	Hourly burden per response	Total annual hourly burden	$10.00 x total hourly burden = Total hourly burden cost
15.705	142,500	½	71,250	$712,500
115.813	500	16½	8,250	82,500
115 814				
115.806				
115.820	75	½	38	380
115.815	500	1¼	625	6,250
115.101	285,000	½	142,500	1,425,000
115.503	71,250	½	35,625	356,250
115.409	1,425	½	713	7,130
115.421				
115.427				
115.417	1,425	½	713	7,130
115.601	100,000	1	100,000	1,000,000
115.607	75,000	1½	112,500	1,125,000
Public total annual burden	677,675		472,214	$4,722,140

Documentation has been prepared and submitted to the Office of Management and Budget for review and approval of the information request.

We request comments on the information collection request. You may submit them to the locations in the **ADDRESSES** section. Your comments sent to the Office of the Special Trustee for American Indians will be available for public review at the Albuquerque location in the **ADDRESSES** section during regular business hours, Monday through Friday except for legal holidays. If you wish your name or address withheld, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. 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.

Ross O. Swimmer,

Special Trustee for American Indians.

[FR Doc. 03–24795 Filed 9–29–03; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Explosives Delivery Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 91, on page 25388 on May 12, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 30, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Explosives Delivery Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.8. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. Abstract: The ATF F 5400.8, Explosives Delivery Record will provide a record of to whom the explosive materials were given, as well as a positive identification verification for purposes of delivery to a Federal explosive licensee or permittee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 25,000 respondents, who will complete the form within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 7,500 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: September 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–24662 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 140, on page 43369 on July 22, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 30, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6, Part II (5330.3B). Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other

for-profit, Federal Government, State, Local, or Tribal Government. Abstract: The information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 9,000 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 4,500 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: September 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–24663 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Limited Permittee Transaction Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 81, on page 22415 on April 28, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 30, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF 5400.4, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. Abstract: The purpose of this collection is to enable ATF to determine whether limited permittees have exceeded the number of receipts of explosive materials they are allowed and to determine the eligibility of such persons to purchase explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 400 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 792 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: September 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–24664 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF Notice No. 4; ATF O 1100.75C, Docket No. 2003–39]

Delegation Order—Authority To Make Determinations on Applications for Restoration of Federal Firearms and/or Explosives

1. *Purpose.* This order delegates certain authorities of the Director to subordinate Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) officials to make determinations on applications for restoration of Federal firearms and/or explosives privileges.

2. *Cancellation.* This order cancels ATF O 1100.75B, Delegation Order—Authority to Affix Signature—Applications for Restoration of Privileges, dated April 6, 2001.

3. *Delegation.* Under the authority vested in the Director, ATF, by Department of Justice Final Rule [AG Order No. 2650–2003] as published in the **Federal Register** on January 31, 2003, and by title 28 CFR 0.130 and 0.131, the Assistant Director (Firearms, Explosives and Arson) is to make determinations on applications for restoration of Federal firearms and/or explosives privileges.

4. *Questions.* Questions regarding this order should be addressed to the Chief, Firearms Programs Division, 202–927–7770; or the Chief, Arson and Explosives Programs Division, 202–927–7930.

Dated: September 17, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–24738 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237F]

Controlled Substances: Final Revised Aggregate Production Quotas for 2003

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final aggregate production quotas for 2003.

SUMMARY: This notice establishes final 2003 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2003 published August 6, 2003 (68 FR 46664) and August 19, 2003 (68 FR 49843) [Corrections].

EFFECTIVE DATE: September 30, 2003.

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

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The 2003 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2003 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On August 6, 2003, a notice of the proposed revised 2003 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (68 FR 46664) and (68 FR 49843) [Corrections]. All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before August 27, 2003.

Seven companies commented on a total of 18 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for tetrahydrocannabinols, codeine (for conversion), dextropropoxyphene, diphenoxylate, fentanyl, hydrocodone (for sale), hydromorphone, meperidine, levo-desoxyephedrine (levo-methamphetamine), methamphetamine (for sale), methylphenidate, morphine (for sale), morphine (for conversion), noroxymorphone (for sale), oxycodone (for sale), pentobarbital, sufentanil and thebaine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2002 year-end inventories, initial 2003 manufacturing quotas, 2003 export requirements, actual and projected 2003 sales and use, and research and product development requirements. Based on this information, the DEA has adjusted the final 2003 aggregate production quotas for tetrahydrocannabinols, amobarbital, diphenoxylate, fentanyl, hydrocodone (for sale), hydrocodone (for conversion), hydromorphone, levo-desoxyephedrine (l-methamphetamine), methamphetamine (for sale), morphine (for sale), noroxymorphone (for sale), oxycodone (for sale) and thebaine to meet the legitimate needs of the United States.

Regarding codeine (for conversion), dextropropoxyphene, meperidine, methylphenidate, morphine (for conversion), pentobarbital, and sufentanil, the DEA has determined that the proposed revised 2003 aggregate production quotas are sufficient to meet the current 2003 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 2003 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established final 2003 quotas
Schedule I	
2,5-Dimethoxyamphetamine	9,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	4
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10
3,4-Methylenedioxymethamphetamine (MDMA)	19
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	7
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	3
Allylprodine	2

Basic class	Established final 2003 quotas
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	17
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	12
Codeine-N-oxide	352
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	20,000,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61
Marihuana	840,000
Mescaline	7
Methaqualone	9
Methcathinone	9
Methyldihydromorphine	2
Morphine-N-oxide	352
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	7
Normorphine	57
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	135,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	700
Alphaprodine	2
Amobarbital	1,000
Amphetamine	10,987,000
Cocaine	175,000
Codeine (for sale)	43,494,000
Codeine (for conversion)	43,559,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	741,000
Diphenoxylate	641,000
Ecgonine	33,000
Ethylmorphine	12
Fentanyl	858,000
Glutethimide	1,002
Hydrocodone (for sale)	30,622,000
Hydrocodone (for conversion)	1,500,000
Hydromorphone	1,651,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	12

Basic class	Established final 2003 quotas
Levomethorphan	2
Levorphanol	8,600
Meperidine	9,753,000
Metazocine	1
Methadone (for sale)	14,057,000
Methadone Intermediate	17,393,000
Methamphetamine	2,263,000
[825,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,420,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 18,000 grams for methamphetamine (for sale)]	
Methylphenidate	23,726,000
Morphine (for sale)	20,762,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	99,000
Noroxymorphone (for conversion)	4,400,000
Opium	1,000,000
Oxycodone (for sale)	41,182,000
Oxycodone (for conversion)	700,000
Oxymorphone	454,000
Pentobarbital	27,728,000
Phencyclidine	16
Phenmetrazine	2
Phenylacetone	21,975,000
Secobarbital	1,100
Sufentanil	3,000
Thebaine	58,832,000

The Acting Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

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

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

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

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

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

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: September 24, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–24653 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Annual Survey of Jails.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 68, Number 128, on page 39973, on July 3, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 30, 2003. This process is in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the Form/Collection:* The Annual Survey of Jails (ASJ).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–5, CJ–5A, CJ–5B, CJ–5B Addendum, and CJ–5C, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: County and City jail authorities and Tribal authorities. This form is the only collection effort that provides an ability to maintain important jail statistics in the years between the jail censuses. The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as track changes in the demographics and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Nine hundred and forty-six respondents each taking an average of 75 minutes to respond for collection forms CJ–5, CJ–5A, and, CJ–5B. Seventy respondents each taking an average of 30 minutes to respond for collection form CJ–5B Addendum. One hundred and twenty respondents each taking an average of 4 hours to respond for collection form CJ–5C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,698 annual total burden hours associated with the collection.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20503.

Dated: September 23, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–24665 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,509]

A.T. Cross Company, Lincoln, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003 in response to a worker petition which was filed by a company official on behalf of workers at A.T. Cross Company, Lincoln, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24715 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,595]

ACS Industries, Inc., Woonsocket, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed by a company official on behalf of workers at ACS Industries, Inc., Woonsocket, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24693 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,275]

State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T65905; Dillingham, AK; Notice of Revised Determination on Reconsideration

By letter of April 25, 2003, the company official requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility for Workers under State of Alaska Commercial Fisheries Entry Commission Permit Number SO4T65905, Dillingham, Alaska, to Apply for Worker Adjustment Assistance. The notice was published in the **Federal Register** on April 29, 2003 (68 FR 16834).

The initial petition was denied because there had been no employment decline. The company official however has provided information showing that workers are no longer producing salmon under State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T65905, Dillingham, Alaska. All workers have been separated.

The salmon processor to which the subject firm sold its salmon is no longer in business. Workers of the salmon processor are certified eligible to apply for adjustment assistance.

Conclusion

After careful review of the facts obtained in the reconsideration, I determine that workers covered by State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T65905, Dillingham, Alaska, qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended.

In accordance with the provisions of the Act, I make the following revised determination:

All workers of State of Alaska Commercial Fisheries Entry Commission, Permit Number SO4T65905, Dillingham, Alaska, who became totally or partially separated from employment on or after March 21, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24702 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,643]

Aran Mold and Die Company, Inc., Elmwood Park, NJ; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Aran Mold and Die Company, Inc.* v. *Elaine Chao, U.S. Secretary of Labor,* No. 03–00362.

The Department's initial denial for the workers of Aran Mold and Die Company, Inc., Elmwood, New Jersey (hereafter ''Aran Mold and Die''), issued on February 12, 2003 and published in the **Federal Register** on March 26, 2003 (68 FR 14708), was based on the finding that workers did not produce an article within the meaning of section 222 of the Trade Act of 1974. It was determined that the subject worker group were not engaged in the production of an article, but provided support services to workers producing plastic injection molding, and that production at the subject plant ceased more than one year prior to the date of the petition (January 14, 2003).

On April 2, 2003, the petitioner requested administrative reconsideration, asserting that workers were engaged in production work and, therefore, were not service providers.

On April 15, 2003, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, published in the **Federal Register** on April 24, 2003 (68 FR 20179), stating that the workers did produce a product (plastic injection molds).

The Department's Notice of Negative Determination on Reconsideration was issued on April 21, 2003 and published in the **Federal Register** on May 7, 2003 (68 FR 24505). During the reconsideration investigation, the Department conducted a survey of two of the subject company's customers regarding their purchases of plastic injection molds during 2001 and 2002. The survey revealed no import purchases of plastic injection molds during the surveyed time periods.

On remand, the petitioner requested that the Department review its reconsideration determination, stating that the subject company produced plastic injection molded components, not plastic injection molds as determined in the reconsideration investigation. The Department contacted the subject company official, requesting additional and detailed information regarding the subject plant's sales and production during 2001 and 2002, the closure of the subject plant, and the subject company's plastic injection molded components customers.

The remand investigation revealed that the subject plant ceased production of plastic injection molded components in October 2001 and that sales continued until February 2002.

A careful review of a survey conducted of the subject company's two major customers revealed that neither customer imported in 2001, one customer shifted reliance from the subject company to other domestic sources, and both customers did not purchase from the subject company in 2002.

However, even if there had been increased imports during the relevant time periods, the workers would not be eligible to apply for trade adjustment assistance because the there was no production within the relevant period. Because production at the subject plant ceased in October 2001, no production occurred at the subject plant during the relevant time period.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Aran Mold and Die Company, Inc., Elmwood Park, New Jersey.

Signed at Washington, DC this 11th day of September 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24716 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,582]

AT&T Wireless Services, Inc., Call Center, Livermore, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed by a state agency representative on behalf of workers at AT&T Wireless Services, Inc., Call Center, Livermore, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 3rd day of September, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24694 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,640]

Bend TEC, Inc., Duluth, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003, in response to a petition filed by an authorized State of Minnesota representative on behalf of workers at Bend Tec, Inc., Duluth, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24708 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,555]

Cherokee Hosiery Mills, Inc., An Affiliate of Prewett Associated Mills, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 14, 2003 in response to a worker petition filed a company official on behalf of workers at Cherokee Hosiery Mills, Inc., an affiliate of Prewett Associated Mills, Fort Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24714 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,547]

Cooper-Atkins Corp., Middlefield, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Cooper-Atkins Corporation, Middlefield, Connecticut (TA–W–52,547).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24724 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,452]

Elastex, A Facility of Elastic Corporation of America, Inc., Woolwine, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 5, 2003 in response to a worker petition filed by a company official on behalf of workers at Elastex, a facility of Elastic Corporation of America, Inc., Woolwine, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24696 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,750]

Federated Merchandising Group, a Part of Federated Department Stores, New York, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 2, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 10, 2003, and published in the **Federal Register** on June 19, 2003 (68 FR 36846).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Federated Merchandising Group, a part of Federated Department Stores, New York, New York was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met, nor did the subject firm shift production to a foreign source in the relevant period. The investigation revealed that the subject firm did not import products like or directly competitive with paper patterns and sample garments during the relevant period of 2001 to April of 2003, nor did it transfer production abroad.

The petitioner states that the company could not have replaced the manual labor eliminated through petitioning worker layoffs with a computer program, as revealed in the initial investigation. The petitioner concludes that because of the complexity of decision making required in pattern making and the physical demands required to construct sample garments, the company must have outsourced production to an outside (potentially foreign) source in order to offset the labor shortage.

A company official was contacted in regard to petitioner allegations. As a result, it was revealed that, in fact, a computer program had reduced the need for manpower, although a minimal number of workers were retained to input data and create samples. The official also stated unequivocally that production performed by the petitioning worker group had not been outsourced domestically or internationally.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 19th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24698 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,721]

Fishing Vessel (F/V) Towego, Ketchikan, AK; Notice of Revised Determination on Reconsideration

By letter of June 10, 2003, the company official requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility for workers and former workers of Fishing Vessel (F/V) Towego, Ketchikan, Alaska to apply for worker adjustment assistance, under petition number TA–W–51,721. The notice was issued on May 13, 2003, and published in the **Federal Register** on June 3, 2003 (68 FR 33197).

The initial petition was denied because the investigation found that the workers provided a service for an unaffiliated firm.

New information provided by the company shows that the subject firm workers were engaged in employment related to the production of processed salmon. The subject firm lost at least 20 percent of its business with a salmon processor whose workers were certified eligible to apply for Trade Adjustment Assistance.

Conclusion

After careful review of the facts obtained in the reconsideration, I determine that workers of Fishing Vessel (F/V) Towego, Ketchikan, Alaska, qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended.

In accordance with the provisions of the Act, I make the following revised determination:

All workers of Fishing Vessel (F/V) Towego, Ketchikan, Alaska, who became totally or partially separated from employment on or after May 5, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24700 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,604]

Fishing Vessel (F/V) Seven Sons, Cordova, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003 in response to a petition filed by a company official on behalf of workers of F/V Seven Sons, Cordova, Alaska.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of August 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24712 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,605]

Fishing Vessel (F/V) The Valli, Naknek, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a petition filed by a company official on behalf of workers of the Fishing Vessel (F/V) The Valli, Naknek, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC, this 26th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24720 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,578]

Goodyear Tire & Rubber Co., Cartersville, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003, in response to a worker petition filed jointly by the company and the Union of Needletrades, Industrial and Textile Employees on behalf of workers at Goodyear Tire & Rubber Company, Cartersville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24722 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,611]

Guardian Industries Corporation, Lewistown, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a petition filed by a company official on behalf of workers at Guardian Industries Corporation, Lewistown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24711 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,039]

Heraeus Electro-Nite Company, Philadelphia, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 31, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 14, 2003, and published in the **Federal Register** on August 5, 2003 (68 FR 46230).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Heraeus Electro-Nite Company, Philadelphia, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, was not met, nor was there a shift in production to a foreign source. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported molten metal sensors. The company did not import molten metal sensors, nor did they shift production abroad during the relevant period.

In the request for reconsideration, the company official contests the negative decision on the basis that ''the increasing amount of foreign steel being sent to this country has caused a number of major steel companies to declare bankruptcy, which has shrunk our business.'' The official appears to be claiming that, because the subject firm business depends completely on U.S. steel production, the subject firm workers are import impacted through this association.

When addressing the issue of import impact, the Department is directed by the Trade Act to consider imports of products ''like or directly competitive'' in the case of primary impacted firms, or whether the subject firm supplied a component in a product produced by a trade certified firm in the case of secondary impact. As neither the subject firm nor its major declining customers reported imports like or directly competitive with the molten metal sensors produced at the subject firm, primary import impact did not occur. As the subject firm did not produce a component used in the products of their customers, the possibility of secondary import impact is equally invalid.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 22nd day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24697 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,501]

Hexcel Corporation, Kent, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003, in response to a worker petition filed by the South Carolina Employment Services, on behalf of a worker at Hexcel Corporation, Kent, Washington. The worker was separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation may be terminated.

Signed in Washington, DC, this 2nd day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24695 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,636]

Hilti North America, A Division of Hilti Corporation, Plant 5, Tulsa, OK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003 in response to a petition filed on behalf of workers at Hilti North America, a division of Hilti Corporation, Plant 5, Tulsa, Oklahoma.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24709 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,593]

Implementation Strategies, Inc., Brooklyn, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003, in response to a petition filed by a company official on behalf of workers at Implementation Strategies, Inc., Brooklyn, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of August 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24713 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,405]

Itronix Corporation, Spokane, WA; Notice of Revised Determination on Reconsideration

By application of July 11, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 9, 2003, based on the finding that the petitioning workers of this firm do not produce an article within the meaning of Section 222 of the Trade Act of 1974. The denial notice was published in the **Federal Register** on June 19, 2003 (68 FR 36846).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the company filed the original petition on behalf of the entire facility, and not only the product development group that was investigated initially for TAA eligibility.

As a result of this clarification, it was established that the petitioning worker group was engaged in activities related to the production of rugged laptops and handheld devices. Consequently, information obtained in the initial investigation indicating employment, sales and production declines in the relevant period could be used to verify TAA eligibility criteria. Finally, it was established that these declines could be attributed to a shift in production of initial assembly of rugged laptops and handheld devices to a foreign facility, and that this production was imported back to the subject facility for further processing.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Itronix Corporation, Spokane, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Itronix Corporation, Spokane, Washington, who became totally or partially separated from employment on or after April 3, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 22nd day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24701 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,554]

Johnco Hosiery, Inc., an Affiliate of Prewett Associated Mills, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 14, 2003, in response to a worker petition filed a company official on behalf of workers at Johnco Hosiery, Inc., an affiliate of Prewett Associated Mills, Fort Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24723 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,600]

Kelly Services, Inc., Sherman, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003, in response to a petition filed on behalf of workers at Kelly Services, Inc., Sherman, Texas.

The petitioning group of workers is covered by an earlier petition filed on August 5, 2003 (TA–W–52,467), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24721 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,635]

North American Battery Company, Including Leased Workers of Remedy Staffing, San Diego, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 2003, in response to a petition filed on behalf of workers at North American Battery Company, San Diego, California, and leased workers of Remedy Staffing, San Diego, California.

This petitioning group of workers is covered by an active certification issued on July 16, 2003 and which remains in effect (TA–W–52,140). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24717 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,653]

Progressive Processing, Elyria, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2003, in response to a petition filed by the United Steelworkers of America, District 1/Sub-District 1, on behalf of workers at Progressive Processing, Elyria, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24692 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,497]

Renfro Corp., Pulaski Plant, Pulaski, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Renfro Corporation, Pulaski Plant, Pulaski, Virginia (TA–W–52,497).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24725 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,449]

Springs Industries, Inc., Baby Products Division, Gainesville, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 1, 2003, in response to a petition filed by a company official on behalf of workers at Springs Industries, Inc., Baby Products Division, Gainesville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24726 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,646]

Tetonics, Inc., Jackson, WY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 14, 2003 in response to a petition filed by a company official on behalf of workers of Tetonics, Inc., Jackson, Wyoming.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of August, 2003.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24707 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,628]

V.I. Prewett & Son, Inc., an Affiliate of Prewett Associated Mills, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 20, 2003 in response to a worker petition filed a company official on behalf of workers at V.I. Prewett & Son, Inc., an affiliate of Prewett Associated Mills, Fort Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24718 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,614]

Watlow Controls, Winona, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003, in response to a worker petition filed on behalf of workers at Watlow Controls, Winona, Minnesota.

The petitioner has withdrawn this petition; thus, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 26th day of August, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24719 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,617]

Wee Socks, An Affiliate of Prewett Associated Mills, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2003 in response to a petition filed by a company official on behalf of workers at Wee Socks, an affiliate of Prewett Associated Mills, Fort Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 27th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–24710 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Meeting

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

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) has been established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the first meeting of the committee.

DATES: The committee will meet on October 15 and 16, 2003. On October 15, the committee will meet from 9 a.m. until 5 p.m.; on October 16, the committee will meet from 8:30 a.m. until approximately 2 p.m.

ADDRESSES: The committee will meet at the U.S. Department of Labor, located at 200 Constitution Avenue, NW., Washington, DC; however, public participants must enter the DOL building at its main entrance at 3rd and C Streets. On October 15, the committee will meet in rooms N–3437A–C; on October 16, the committee will meet in C–5320 Room 6.

Mail comments in response to this notice to the Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2086; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: (Press inquiries) Bonnie Friedman, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meeting of MACOSH. Individuals with disabilities wishing to attend should contact Vanessa L. Welch at (202) 693–2080 no later than October 6 to obtain appropriate accommodations. Entry into the Department of Labor will require screening through security and requires a photo ID.

The meeting's agenda will include discussion of the role of the advisory committee; the committee's goals; current program activities; industry hazards; and organizational and administrative matters.

Public Participation: Written or a request to make an oral presentation on an agenda item may be submitted to Paul Bolon at Office of Maritime, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3609, Washington, DC 20210. A request to make an oral presentation to the commmittee may be granted if time permits. The request should state the amount of time permits. The request should state the amount of time desired, the capacity in which the person will appear, and an outline of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656, the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC, this 22nd day of September, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–24660 Filed 9–20–03; 8:45 am]

BILLING CODE 4510–26–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 9, 2003, and Friday, October 10, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on October 9, and at 9 a.m. on October 10.

Topics for discussion include: beneficiaries' access to care in Medicare; hospital outpatient prospective payment issues; growth and variation in the use of physician services; Medicare+Choice and Medigap; disease management; preliminary data and workplans for payment adequacy analyses, including ambulatory surgical centers, post-acute care providers.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–24767 Filed 9–29–03; 8:45 am]

BILLING CODE 6820–BW–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Notice of Public Review Period Extension for Draft Environmental Impact Statement for Alternative Vegetation Maintenance Practices for the Lower Rio Grande Flood Control Project in Cameron, Hidalgo, and Willacy Counties, TX

AGENCY: International Boundary and Water Commission, United States and Mexico, United States Section.

ACTION: Notice of public review period extension for Draft Environmental Impact Statement.

SUMMARY: The United States Section, International Boundary and Water Commission (USIBWC), received a request from Department of Interior (DOI) on August 27, 2003 for an extension of the public review period for the Draft Environmental Impact Statement (DEIS) on Alternative Vegetation Maintenance Practices for the Lower Rio Grande Flood Control Project in Cameron, Hidalgo, and Willacy Counties, Texas. The DOI indicated they did not receive the DEIS until August 25, 2003 and requested a 45-day extension from that date. The USIBWC has extended the public comment period for the DEIS to Thursday, October 9, 2003 to accommodate DOI s request.

DATES: Written comments are now requested by October 9, 2003.

ADDRESSES: Comments should be addressed to: Carolyn Murphy, Chief, Environmental Section, CESWG-PE-PR, Department of the Army, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553–1229.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Acting Chief, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or call (915) 832–4741, e-mail: *dougechlin@ibwc.state.gov.*

Dated: September 24, 2003.

Mario Lewis,

General Counsel.

[FR Doc. 03–24833 Filed 9–29–03; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–117]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 30, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Application for a Patent License.

OMB Number: 2700–0039.

Type of Review: Extension of a currently approved collection.

Need and Uses: An application for a license under a patent or a patent application owned by NASA is required by 35 U.S.C. 209 and 37 CFR part 404. The information supplied by an applicant for a patent license is used NASA to make agency determinations that NASA should either grant or deny a request for a patent license, and whether the license should be exclusive, partially exclusive, or nonexclusive.

Affected Public: Business or other for-profit; Individuals or households.

Number of Respondents: 85.

Responses Per Respondent: 1.

Annual Responses: 85.

Hours Per Request: 8.

Annual Burden Hours: 680.

Frequency of Report: Once.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24784 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–118]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 30, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Patent License Report.

OMB Number: 2700–0010.

Type of review: Extension of a currently approved collection.

Need and Uses: All federal agencies are authorized under 35 U.S.C. 209 and 37 CFR 404.5 to require patent licensees to periodically submit reports which describe the steps taken to achieve and maintain practical application of the licensed inventions. The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

Affected Public: Business or other for-profit; Individuals or households.

Number of Respondents: 90.

Responses Per Respondent: 1.

Annual Responses: 90.

Hours Per Request: ½ hour.

Annual Burden Hours: 45.

Frequency of Report: Annually.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24785 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–119]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 30, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700–0048.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information collected is required to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. The requirement is codified in 14 CFR 1260.28.

Affected Public: Not-for-profit institutions; Business or other for-profit; State, local, or tribal government.

Number of Respondents: 9082.

Responses Per Respondent: 1.

Annual Responses: 9082.

Hours Per Request: 20–60 minutes each.

Annual Burden Hours: 16,150.

Frequency of Report: Annually.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24786 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–120]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 30, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Small Business and Small Disadvantaged Business Concerns (Mentor-Protégé Program).

OMB Number: 2700–0078.

Type of Review: Extension of a currently approved collection.

Need and Uses: Information is required by NASA to monitor the performance and progress of both the mentor and the protege firms in this developmental assistance program, as delineated in the Mentor-Protege Agreement. Semi-annual reports will serve as an internal control measure to achieve Agency objectives and by serving as a check and balance against undesired action or consequences. This requirement is codified at 48 CFR 1819.72.

Affected Public: Business or other for-profit.

Number of Respondents: 26.

Responses Per Respondent: 2.

Annual Responses: 52.

Hours Per Request: 1.5.

Annual Burden Hours: 78.

Frequency of Report: Semi-annually.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24787 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–121]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 30, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Uncompensated Overtime.

OMB Number: 2700–0080.

Type of review: Extension of a currently approved collection.

Need and Uses: Information collected is required to evaluate the use of ''uncompensated overtime'' in bids and proposals submitted to NASA for the award of contracts for technical and professional services in support of NASA's mission and in response to contractual requirements. The requirement is based on section 834 of Public Law 101–510 (10 U.S.C. 2331) and FAR 37.115.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Responses Per Respondent: 1.

Annual Responses: 300.

Hours Per Request: 3.25.

Annual Burden Hours: 975.

Frequency of Report: On occasion.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24788 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–122]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before December 1, 2003.

ADDRESSES: All comments should be addressed to Ms. Amy Williams, NASA Langley Research Center, Mail Stop 400, Hampton, VA 23681–2199.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Evaluating the Effectiveness of the 2003–2004 NASA Science Files/Connect Program Series.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: Surveying the registrants of NASA educational programs is necessary in order to determine the programs' effectiveness.

Affected Public: State, local, or tribal government; Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 250.

Responses Per Respondent: 1.

Annual Responses: 250.

Hours Per Request: 15 minutes.

Annual Burden Hours: 62.5.

Frequency of Report: Randomized.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24789 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–123]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its

continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before December 1, 2003.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Financial Monitoring and Control—Grants and Cooperative Agreements.

OMB Number: 2700–0049.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information collected is required to ensure the proper accounting of Federal funds provided under grants and cooperative agreements with institutions of higher education and other non-profit organizations.

Affected Public: Not-for-profit institutions.

Number of Respondents: 1,172.

Responses Per Respondent: varies.

Annual Responses: 47,710.

Hours Per Request: varies.

Annual Burden Hours: 291,326.

Frequency of Report: As needed.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–24790 Filed 9–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make these materials described in this notice available to the public beginning November 14, 2003. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before October 30, 2003.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–837–3290.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on November 14, 2003, consist of 34 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

1. Subject Category: Volume: 30 cubic feet

Federal Government (FG)

FG 107 District of Columbia Redevelopment Land Agency
FG 108 Eleanor Roosevelt Memorial Foundation
FG 110 Export Administration Review Board
FG 111 Export Expansion Advisory Committee
FG 112 Export-Import Bank of the United States
FG 113 Farm Credit Administration
FG 114 Father [Jacques] Marquette Tercentenary Commission
FG 171 National Commission on Product Safety
FG 172 National Commission on Reform of Federal Criminal Laws
FG 205 President's Council on Physical Fitness and Sports
FG 206 President's Council on Recreation and Natural Beauty
FG 207 President's Council on Youth Opportunity
FG 208 President's Foreign Intelligence Advisory Board
FG 346 President's Advisory Committee on Environmental Merit Award Program
FG 347 National Center for Housing Management
FG 348 National Advisory Council on Drug Abuse Prevention
FG 349 Advisory Panel on Heart Disease
FG 350 Interagency Classification Review Committee
FG 351 National Commission on the Financing of Postsecondary Education
FG 352 National Commission on International Radio Broadcasting
FG 353 National Advisory Council on Equality of Educational Opportunity.
FG 354 Commission on the Organization of Government for the Conduct of Foreign Policy
FG 355 Cabinet Committee to Combat Terrorism
FG 356 Old West Regional Commission
FG 357 Pacific Northwest Regional Commission
FG 358 Commission on the Review of the National Policy toward Gambling
FG 359 Student Loan Marketing Association
FG 360 National Study Commission on Water Pollution
FG 361 Inter-American Foundation
FG 362 National Commission for Industrial Peace
FG 363 Consumer Product Safety Commission
FG 364 Pennsylvania Avenue Development Corporation
FG 365 Marine Mammal Commission
FG 366 National Advisory Council on Indian Education
FG 367 Ad Hoc Advisory Group on Commonwealth Status (Puerto Rico)
FG 368 President's Export Council
FG 369 President's Interagency Committee on Export Expansion
FG 370 American Revolution Bicentennial Administration
FG 371 National Commissions for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance
FG 372 Defense Manpower Commission
FG 373 National Commission for the Observance of World Population Year

FG 374 United States Railway Association

FG 375 Federal Council on the Aging

FG 376 National Commission on Manpower Policy

FG 378 President's Committee on Food

FG 379 President's Committee on East-West Trade Policy

2. One file group from the Staff Member and Office Files, listed below will also be made available to the public. This consists of materials that were transferred to the Central Files but were not incorporated into the Subject Files.

File Group: William Rhatican; Volume: 1 Cubic Foot.

3. White House Central Files, Name Files: Volume: 2 Cubic Feet.

Three files are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files. The Name Files relating to the following three individuals will be made available with this opening.

Hebert, Mabel L.

Moore, Peter

Stern, Albert

4. White House Motion Picture Film:

In addition, this opening consists of seventy two rolls of motion picture film. The film was located among previously released textual materials. The motion picture film primarily chronicles the activities of the President and the White House staff.

5. Previously restricted materials Volume: 1 cubic foot.

A number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, or in accordance with 36 CFR 1275.56 (Public Access Regulations).

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: September 23, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–24623 Filed 9–29–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision of a Previously Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 1, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0154.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Prompt Corrective Action Regulation; Risk-Based Net Worth Requirement.

Description: This collection merges to include the former 3133–0161 Prompt Corrective Action Regulation. Section 216 of the Federal Credit Union Act, 12. U.S.C. 1790d(d) requires the NCUA Board to adopt by regulation a system of prompt corrective action indexed to five capital categories which section 216 establishes. Section 216 of the Federal Credit Union Act, 12. U.S.C. 1790(d) also requires the NCUA Board to adopt, as a separate component of its system of prompt corrective action, a risk-based net worth requirement to apply to credit unions defined as ''complex''. The regulation issued to meet this mandate includes mandates for collection of information in certain cases.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 885.

Estimated Burden Hours Per Response: 52.4 hours.

Frequency of Response: Recordkeeping, reporting on occasion, quarterly and semi-annually.

Estimated Total Annual Burden Hours: 48,476 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–24763 Filed 9–29–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to Previously Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). These information collections were originally published on April 29, 1999. No comments were received.

DATES: Comments will be accepted until December 1, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: *jbaylen@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0155.

Form Numbers: CLF–8700 CLF–8705 CLF–8706 NCUA–7005.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Central Liquidity Facility group/agent membership and loan activity forms.

Description: Forms used in conjunction with agent member's request for facility advances, to request agent membership in the Central Liquidity Facility and/or to establish terms of relationship between credit unions, agent members and agent group representatives.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 248.

Estimated Burden Hours Per Response: 1.9 hours.

Frequency of Response: Reporting and other.

Estimated Total Annual Burden Hours: 128.

Estimated Total Annual Cost: none.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–24764 Filed 9–29–03; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Exelon Generation Company, LLC, Byron Station, Units 1 and 2; Exemption

1.0 Background

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License Nos. NPF–37 and NPF–66 which authorizes operation of the Byron Station, Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Ogle County in Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of 10 CFR 50.44, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA) by:

(1) Metal-water reaction involving the fuel cladding and the reactor coolant.

(2) Radiolytic decomposition of the reactor coolant, and

(3) Corrosion of metals.

Section 50.46 of Title 10 of the Code of Federal Regulations, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding, must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated LOCAs conforms to the criteria set forth in paragraph (b) of 10 CFR 50.46. Section 50.46 also requires that ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated. Section 50.46 provides further that an acceptable evaluation model may be developed in conformance with the features of 10 CFR part 50, appendix K models.

Appendix K to part 50 of Title 10 of the Code of Federal Regulations, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation.

In summary, 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, make no provisions for use of fuel rods clad in a material other than Zircaloy or ZIRLO. The licensee has requested the use of a limited number of ''lower tin'' ZIRLO clad replacement fuel rods in one lead test assembly (LTA) with a tin composition that is less than the licensing basis for ZIRLO tin composition, as defined in Westinghouse design specifications.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant an exemption from the requirements of 10 CFR part 50 only if (1) the exemption is authorized by law, will not present an undue risk to public health or safety, and is consistent with the common defense and security; and (2) special circumstances are present. Special circumstances are present if application of the regulation is not necessary to achieve the underlying purpose of the rule.

The licensee here requests an exemption in order to use newly developed low tin ZIRLO that is an improved version of the ZIRLO material, and is not described in WCAP–12610–P–A, ''VANTAGE+ Fuel Assembly Reference Core Report,'' which describes the use of ZIRLO clad fuel. The staff examined the licensee's rationale to support the exemption request(s) and, for the reasons set forth below, concludes that the licensee would meet the underlying purpose of 10 CFR 50.44, 50.46 and part 50, appendix K.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. The LTA rods containing the lower tin ZIRLO (LT–2) cladding are similar in chemical composition to zircaloy cladding. Accordingly, previous calculations of hydrogen production resulting from a metal-water reaction will not be significantly changed. As such, application of 10 CFR 50.44 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

The underlying purpose of 10 CFR 50.46, and 10 CFR part 50, appendix K, is to establish requirements for the calculation of ECCS performance. The ECCS performance requirements include peak cladding temperature, maximum cladding oxidation, hydrogen generation, and coolable geometry. With respect to 10 CFR 50.46, the licensee has previously performed a LOCA safety analysis using the approved Westinghouse methodology including the Byron Station ECCS Model Safety Analysis of Record for LTAs of lower tin ZIRLO (LT–1) cladding. The unique features of the LTAs were evaluated for

effects on the LOCA analysis. The result showed that the Byron Station ECCS Model Safety Analysis of Record remained bounding for those LTAs. The staff recognizes that the current LTAs will be located at non-limiting core locations, and the ZIRLO (LT–2) is very similar to the approved ZIRLO and the previously exempted ZIRLO (LT–1) in chemical composition and mechanical behavior. Accordingly, the currently approved methodology for analyzing ECCS performance is acceptable to apply for the low tin ZIRLO (LT–2) LTAs, as is further discussed below with respect to the Baker-Just equation. As also discussed below, results of comparative LOCA calculations with the same plant operating parameters will be performed in the reload analysis for Cycle 13 to verify that the current ECCS Model Safety Analysis of Record remains bounding for these four LTAs for Byron Station Unit 1 Cycle 13.

Paragraph I.A.5 of appendix K to 10 CFR part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the ZIRLO (LT–2) cladding for determining acceptable fuel performance. The underlying intent of this portion of the Appendix K, however, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. Due to the similarities in the chemical composition of the ZIRLO (LT–2) and zircaloy, the application of the Baker-Just equation in the analysis of the improved ZIRLO (LT–2) clad fuel will conservatively bound all post–LOCA scenarios. Thus, application of appendix K, paragraph I.A.5, is not necessary for the licensee to achieve the underlying purpose of the rule in these circumstance.

According to the submittal, the licensee will perform reload analysis to demonstrate adequate ECCS performance, and show that the LTAs do not have a significant impact upon the analysis for Byron Station Unit 1. In the Cycle 13 reload analyses, the licensee will verify that the predicted peak cladding temperature of the LTAs are significantly lower than that predicted for the resident fuel. The licensee will also verify that the Baker-Just equation conservatively predicts local cladding oxidation of the LTAs of only a few percent. Also, the licensee will verify that maximum hydrogen generation is unchanged with the inclusion of the LTAs, and the coolable geometry is maintained following a LOCA. As such, application of 10 CFR 50.46 and 10 CFR part 50, appendix K is not necessary to achieve their underlying purposes in these circumstances.

To summarize, based on the previously acceptable performance of the LTAs in Byron Station Units 1 and 2, the staff concludes that the licensee has demonstrated that the LTAs will perform adequately under LOCA conditions, and thus the LTAs are acceptable for operation in Byron Station Unit 1 Cycle 13.

Therefore, application of 10 CFR 50.44, 10 CFR 50.46, and appendix K to 10 CFR part 50 is not necessary to achieve their underlying purposes and that special circumstances are present. Thus, it is acceptable to grant an exemption, pursuant to 10 CFR 50.12(a)(2), from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 for the irradiation of the lower tin ZIRLO (LT–2) clad fuel rods in Byron Station Unit 1 during Cycle 13.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon Generation Company, LLC, an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, for irradiation of low tin ZIRLO (LT–2) clad fuel rods in Byron Station Unit 1 during Cycle 13.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 54246).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of September, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24670 Filed 9–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, North Anna Power Station, Units 1 and 2; Exemption

1.0 Background

The Virginia Electric and Power Company (the licensee) is the holder of Renewed Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station, Units 1 and 2. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The North Anna units are pressurized-water reactors located in Louisa County in the Commonwealth of Virginia.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.44, ''Standard for Combustion Gas Control in Light-Water-Cooled Power Reactors,'' requires, in part, reactors fueled with Zircaloy or ZIRLO cladding to provide means to control any hydrogen gas that may be generated after a postulated loss-of-coolant accident (LOCA). 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light Water Nuclear Power Reactors,'' requires that emergency core cooling systems (ECCSs) for reactors containing fuel with Zircaloy or ZIRLO fuel cladding material be designed such that their performance, as calculated as set forth in that section, meets specified acceptance criteria. Finally, 10 CFR Part 50, Appendix K, ''ECCS Evaluation Models,'' requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal water reaction for reactors using Zircaloy fuel cladding.

By letter dated March 28, 2002, as supplemented by letters dated May 13, June 19, and November 15, 2002, and May 6, May 9, May 27, June 11 (2 letters), July 18, August 26, September 4, and September 5, 2003, the licensee requested an exemption from the requirements of 10 CFR 50.44 and 10 CFR 50.46 to use an advanced zirconium-based alloy, designated as M5, for the fuel cladding material instead of the ZIRLO or Zircaloy fuel cladding material specified in these regulations. The licensee's exemption request was submitted in conjunction

with an application for license amendments to use Framatome Advanced Mark-BW fuel containing M5 cladding material at North Anna, Units 1 and 2. The proposed amendment is currently under NRC staff review. Together, the exemption and amendments would allow Framatome Advanced Mark-BW fuel with M5 cladding to be used at North Anna, Units 1 and 2.

In addition, in accordance with 10 CFR 50.12(a), the NRC staff, upon its own initiative, has developed an exemption from the requirements of 10 CFR part 50, appendix K, with respect to the use of Framatome Advanced Mark-BW fuel containing M5 cladding at North Anna, Units 1 and 2. In its submittal dated March 28, 2002, the licensee indicated that an exemption from 10 CFR part 50, appendix K, was not necessary to use M5 fuel cladding since Framatome Advanced Nuclear Power (ANP) had demonstrated in the NRC staff-approved Topical Report BAW–10227P, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' dated February 11, 2000, that the Baker-Just equation can be used to conservatively predict the metal-water reaction rates for M5 fuel cladding. However, after reviewing its Safety Evaluation Report (SER) dated February 4, 2000, for Topical Report BAW–10227P, the NRC staff has determined that an exemption from 10 CFR part 50, appendix K, was also needed in order to use M5 fuel cladding at North Anna, Units 1 and 2. The NRC staff's rationale for developing this exemption on its own initiative is explained in the following section.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. In accordance with 10 CFR 50.12(a)(2)(ii), special circumstances exist whenever application of a particular regulation under the circumstances is not necessary to achieve the underlying purpose of the rule.

The licensee proposes to use M5 material for fuel rod cladding and fuel assembly structural tubing and grids at North Anna, Units 1 and 2. On February 4, 2000, the NRC staff approved Topical Report BAW–10227P. This topical report provided the basis for the use of Framatome ANP's M5 cladding and structural material in pressurized-water reactor cores. In its SER dated February 4, 2000, for Topical Report BAW–10227P, the NRC staff concluded that M5 properties and the mechanical design methodology as defined in this topical report, ''are in accordance with Standard Review Plan Section 4.2, 10 CFR 50.46, and 10 CFR part 50, appendix K, and therefore are acceptable for reload licensing applications up to rod average burnup levels of 62,000 MWd/MTU and 60,000 MWd/MTU for Mark B and Mark–BW fuel designs, respectively.'' The NRC staff's SER and the approved topical report were published on February 11, 2000, as Topical Report BAW–10227P–A. By letter dated March 28, 2002, the licensee presented a mixed core analysis methodology and a transition core penalty to account for the differences in the core geometry between the Mark–BW fuel and the Advanced Mark–BW fuel proposed for use at North Anna, Units 1 and 2. The NRC staff has determined that Topical Report BAW–10227P–A is applicable to the use of Advanced Mark–BW fuel at North Anna, Units 1 and 2, because the core geometrical differences are consistent with the range of conditions for which analyses of fuel performance are documented in the NRC staff-approved topical report regarding the use of M5 fuel cladding.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for control of hydrogen gas following a LOCA. However, this rule applies only to reactors using Zircaloy or ZIRLO cladding. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. Furthermore, in its NRC staff-approved Topical Report BAW–10227P–A, Appendix A, Framatome ANP demonstrated that M5 fuel cladding material is similar in chemical composition to Zircaloy cladding. Accordingly, this chemical similarity ensures that the previous calculations of hydrogen production resulting from metal-water reaction will not be significantly changed. As such, application of 10 CFR 50.44 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities meet appropriate acceptance criteria for calculated ECCS performance. However, this rule applies only to reactors using Zircaloy or ZIRLO cladding. In its topical report, Framatome ANP demonstrated that ECCS acceptance criteria are also applicable to reactors that use M5 fuel rod cladding and structural material. The NRC staff has determined that this finding is applicable to North Anna because the fuel designs are consistent with the range of conditions for which analyses of fuel performance are documented in the NRC staff-approved topical report. Thus, the performance of M5 material is similar to that of Zircaloy and ZIRLO fuel cladding, and application of the regulation (*i.e.*, using Zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of 10 CFR 50.46.

In its submittal dated March 28, 2002, the licensee stated that Framatome ANP had conducted oxidation testing to demonstrate that the Baker-Just equation can be used to conservatively predict the metal-water reaction rates for M5 fuel cladding, and these test results had demonstrated that paragraph I.A.5 of 10 CFR part 50, appendix K, was applicable to M5. The licensee indicated that since these test results were documented in the NRC staff-approved Topical Report BAW–10227P–A, an exemption from the requirements of 10 CFR part 50, appendix K, was not necessary to use M5 fuel cladding. However, based upon the review of the NRC staff's SER for Topical Report BAW–10227P–A, the NRC staff has determined that an exemption from the requirements of 10 CFR part 50, appendix K, is necessary in order for the licensee to use M5 fuel cladding. In section 7.0 of the SER on Topical Report BAW–10227P–A, the NRC staff concluded that while it is appropriately conservative to apply the criteria of 10 CFR 50.46 and 10 CFR part 50, appendix K, to M5 fuel applications, the criteria in the SER are specifically identified for only Zircaloy fuel cladding material. Furthermore, as set forth in that SER, the NRC staff found that an exemption from the requirements of 10 CFR part 50, appendix K, must be obtained in order to use M5 fuel cladding. In short, as set forth in 10 CFR part 50, appendix K, I.A.5, the Baker-Just equation, by its terms, applies only to fuel cladding made of Zircaloy material. As a result, the NRC staff, upon its own initiative, developed an exemption from the requirements of 10 CFR part 50, appendix K, for the requested use of M5 fuel cladding at North Anna, Units 1 and 2.

The underlying purpose of 10 CFR part 50, appendix K, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. This regulation sets forth

requirements for plants that use either Zircaloy or ZIRLO fuel cladding. Specifically, paragraph I.A.5 of 10 CFR part 50, appendix K, requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, hydrogen generation, and cladding oxidation. This equation conservatively bounds all post–LOCA scenarios. In the SER that approved Topical Report BAW–10227P, the NRC staff concluded that the Baker-Just correlation is conservative for determining high temperature M5 oxidation for LOCA analysis, and that the correlation is acceptable for LOCA ECCS analysis up to the currently approved burn-up levels. The NRC staff has determined that this finding is applicable to North Anna because the fuel designs are consistent with the range of conditions for which analyses of fuel performance are documented in the NRC staff-approved topical report. Therefore, when M5 is used as fuel rod cladding and structural material, the Baker-Just correlation bounds post–LOCA scenarios, and ECCS evaluation model criteria will be met. Accordingly, application of the rule requirements to use Zircaloy or ZIRLO is not necessary to achieve the underlying purpose of 10 CFR part 50, appendix K.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Based on the above, the Commission has determined that pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and appendix K to 10 CFR part 50 for North Anna, Units 1 and 2, with respect to the use of fuel incorporating M5 material as cladding and structural material at North Anna, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 55070).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of September, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24669 Filed 9–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 29, October 6, 13, 20, 27, November 3, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 29, 2003

Thursday, October 2, 2003

9:30 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

9:30 a.m. Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Claudia Craig, 301–415–7276)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 13, 2003—Tentative

Wednesday, October 15, 2003

1:30 p.m. Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Jimi Yerokun, 301–415–2292)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 20, 2003—Tentative

Thursday, October 23, 2003

10 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 27, 2003—Tentative

Wednesday, October 29, 2003

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of November 3, 2003—Tentative

There are no meetings scheduled for the Week of November 3, 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 person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 3–0 on September 17 and 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues (Closed—Ex. 9)'' be held September 22, and on less than one week's notice to the public.

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 be 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: September 25, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–24843 Filed 9–26–03; 10:07 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 September 5, 2003, through September 18, 2003. The last biweekly notice was published on September 18, 2003 (68 FR 54747).

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 October 30, 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.*

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of amendment request: June 11, 2003.

Description of amendment request: The proposed amendment would add a license condition to increase the completion time (CT) from 72 hours to 144 hours required to restore a unit specific essential service water (SX) train to operable status. The proposed change would be a one time change applicable to Braidwood Station, Unit 1, and both units at Byron Station.

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 have been evaluated using the risk informed processes described in 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 Decisionmaking: Technical Specifications, ''dated August 1998. The risk associated with the proposed change was found to be acceptable.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The SX system is not considered an initiator for any of these previously analyzed events. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiated an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The unit-specific SX system consists of two separate, electrically independent, 100% capacity, safety related, cooling water trains. Each train consists of a 100% capacity pump, piping, valving, and instrumentation. The pumps and valves are remote and manually aligned, except in the unlikely event of a loss of coolant accident (LOCA). The pumps are automatically started upon receipt of a safety injection signal or an undervoltage on the engineered safety features (ESF) bus, and all essential valves are aligned to their post accident positions. The SX system is also the backup water supply to the auxiliary feedwater system and fire protection system.

The design basis of the SX system is for one SX train, in conjunction with the component cooling water (CC) system and a 100% capacity containment cooling system, to remove core decay heat following a design basis LOCA as discussed in the UFSAR, Section 6.2, ''Containment Systems.'' This prevents the containment sump fluid from increasing in temperature during the recirculation phase following a LOCA and provides for a gradual reduction in the temperature of this fluid as it is supplied to the reactor coolant system by the emergency core cooling system pumps. The SX system is designed to perform its function with a single failure or any active component, assuming the loss of offsite power. The proposed one-time increase in the CT of the operating unit's SX pump is consistent with the philosophy of the current Technical Specification LCO which allows one train of SX to be inoperable for 72 hours. This change only extends the 72 hour perspective; therefore, the proposed change does not involve a significant increase in the 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 changes do not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Based on this evaluation, the proposed change does 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 proposed change does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operations of the SX system remains unchanged. The risk associated with the proposed increase in the time an SX pump is allowed to be inoperable was evaluated using the risk informed processes described in 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 Decisionmaking: Technical Specifications,'' dated August 1998. The risk was shown to be acceptable. Based on this evaluation, 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 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. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of amendment request: June 27, 2003.

Description of amendment request: The proposed amendment would revise TS 3.4.10, ''Pressurizer Safety Valves,'' by changing the existing pressurizer safety valve (PSV) lift settings from '' ³ 2460 psig and £ 2510 psig,'' to '' ³ 2411 psig and £ 2509 psig.'' The existing TS represents a ±1% tolerance band around a lift setting of 2485 psig. The proposed lift setting range of '' ³ 2411 psig and £ 2509 psig'' represents a ±2% tolerance band around a lift setting of 2460 psig.

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 TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Reanalysis/evaluations were performed to assess all transients that could be potentially impacted by the proposed PSV lift setting and tolerance band change. The proposed change in the PSV tolerance from ±1% to ±2% with a reduction in the lift setting from 2485 psig to 2460 psig allows a decrease in the valve minimum opening pressure and therefore, provides earlier pressurizer relief and a reduced RCS pressure. The proposed change does not affect the maximum opening pressure assumed in the non-LOCA analyses since the proposed change in maximum PSV opening pressure is insignificant and in the conservative direction. Therefore, only those transients for which it is conservative to minimize the RCS pressure (*i.e.*, DNB and pressurizer overfill concerns) are potentially impacted by the proposed change. The reanalyses/evaluations of all the affected transients demonstrated acceptable results with no significant increase in the probability or consequences.

Further, any evaluations performed on an overpressure transient conservatively assume the upper limit of the PSV tolerance. The proposed change to the lower tolerance limit of the PSV lift setting means that an overpressure transient may be terminated at a pressure that is lower than assumed in the analysis. It has also been determined that the transient analyses are not adversely affected because the limiting transients are not sensitive to the pressure tolerance decrease. Therefore, the primary system pressure boundary is not challenged by the PSV lower tolerance limit change. The assumed maximum PSV lift setting was not changed, and therefore, does not impact analyses performed for overpressure transients. It has been determined that the design relieving capacity of the PSVs can still be met with the reduction in PSV setpoint. Except for the PSV lower lift setting and increased tolerance, the design and operation of the PSVs remains unchanged.

Based on this analysis, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the Byron/Braidwood Stations Updated Final Safety Analysis Report.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in the PSV tolerance from ±1% to ±2% with a reduction in the lift setting from 2485 psig to 2460 psig allows a decrease in the valve minimum opening pressure and therefore provides earlier pressurizer relief and a reduced RCS pressure. The proposed change does not affect the maximum opening pressure assumed in the accident analyses since the proposed change in maximum PSV opening pressure is insignificant and in the conservative direction. The pressurizer PORVs serve to minimize challenges to the PSVs. An assessment of the impact of reducing the PSV lift setpoint and increasing the tolerance has determined that the resulting margin is sufficient to ensure that the PORVs will actuate prior to the PSVs. Except for the PSV lower lift setting and increased tolerance, the design and operation of the PSVs remain unchanged.

The proposed change does not involve the use or installation of new equipment and all currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed change will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The PSVs provide, in conjunction with the reactor protection system, overpressure protection for the RCS. The PSVs are designed to prevent the system pressure from exceeding the system safety limit, 2735 psig, which is 110% of the design pressure. The change in the upper limit of the PSV tolerance from +1% to +2% with a reduction in the nominal setpoint from 2485 psig to 2460 psig does not challenge the upper limit of the overpressure protection. The change in PSV maximum opening lift setting is insignificant and in the conservative direction with respect to overpressure protection, therefore, the proposed change does not impact analyses performed for overpressure transients. For all non-LOCA events, the analyses/evaluations support the change in PSV lift setting and tolerance from 2485 psig ±1% to 2460 psig ±2%. The LOCA analyses are not impacted because the transient results in a decrease in RCS pressure and therefore, will not challenge the PSV opening pressure lift setting. The change in the PSV lift setting and tolerance also has no effect on the reactor protection or engineered safety features systems trip set points. Thus, the proposed change does not involve a significant reduction in any margin of safety.

Based on the above discussions, it has been determined that the requested TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or 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 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, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio.

Date of amendment request: August 25, 2003.

Description of amendment request: The proposed amendment would revise the Steam and Feedwater Rupture Control System (SFRCS) instrumentation Technical Specifications (TSs) to clearly identify the appropriate actions to be taken if an SFRCS instrumentation channel's output logic becomes inoperable; relocate the SFRCS instrumentation trip setpoints from the TSs to the Updated Safety Analysis Report; and decrease the SFRCS instrument channel functional test frequency from monthly to quarterly and make associated changes to the trip setpoint allowable values.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensees have 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 proposed changes do not change any accident initiator, initiating condition, or assumption, and do not involve a significant change to plant design or operation. In addition, the proposed changes do not increase the likelihood of a malfunction of any plant structures, systems, or components, do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter radiological consequences. 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 a new or different accident initiator or introduce a new or different equipment failure mode or mechanism. Therefore, the 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?

Response: No.

The SFRCS instrumentation setpoint analyses will continue to adequately preserve the margin of safety. In addition, there are no new or significant changes to the initial conditions contributing to accident severity or consequences. 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 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.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska.

Date of amendment request: August 25, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) Surveillance Requirement (SR) 3.3.2.1.4 and TS Table 3.3.2.1–1 for mathematical symbols and use of Allowable Values in the place of Analytical Limits.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the Cooper Nuclear Station (CNS) Technical Specifications (TS) corrects the mathematical symbols for the RBM [Rod Block Monitor] LPSP [Low Power Setpoint], IPSP [Intermediate Power Setpoint], and the HPSP [High Power Setpoint] to clarify the power ranges at which the RBM upscale trips are in affect. In addition, the change incorporates the use of Allowable Values in the place of Analytical Limits.

Calculation NEC 98–024 Rev. 3, which documents the Analytical Limits and calculates the Allowable Values for the [RBM LPSP, IPSP, and HPSP] have not been altered. The calculation results implemented in procedures 6.1/2RBM.302 remain unchanged. The proposed TS change does not change or invalidate the Analytical Limits.

Based on the above, NPPD [Nebraska Public Power District] concludes that the proposed TS change to modify the mathematical symbols in TS SR 3.3.2.1.4 and TS Table 3.3.2.1–1 footnotes (a), (b), (c), and (e) does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the [CNS TS] corrects the mathematical symbols for the RBM LPSP, IPSP, and the HPSP to clarify the power ranges at which the RBM upscale trips are in affect. In addition, the change incorporates the use of Allowable Values in the place of Analytical Limits. The values for the RBM trip setpoints, Analytical Limits, and Allowable Values are not being altered in any way.

Based on the above, NPPD concludes that the proposed TS change to modify the mathematical symbols in TS SR 3.3.2.1.4 and TS Table 3.3.2.1–1 footnotes (a), (b), (c), and (e) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed change to the [CNS TS] corrects the mathematical symbols for the RBM LPSP, IPSP, and the HPSP to clarify the power ranges at which the RBM upscale trips are in affect. In addition, the change incorporates the use of Allowable Values in the place of Analytical Limits. This TS change does not change any Analytical Limits or Allowable Value calculations. The methodology by which the RBM Trip Setpoints, Analytical Limits, and Allowable Values are derived has not changed.

Based on the above, NPPD concludes that the proposed TS change to modify the mathematical symbols in TS SR 3.3.2.1.4 and TS Table 3.3.2.1–1 footnotes (a), (b), (c), and (e) 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nine Mile Point Nuclear Station, LLC (NMPNS), Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: August 22, 2003.

Description of amendment request: The licensee proposed to revise Section 3.7.1, ''Service Water (SW) System and Ultimate Heat Sink (UHS),'' of the Technical Specifications (TS) to allow continued operation with short-term elevated UHS temperatures. The proposed revision is based on an NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification change, identified as TSTF–330, ''Allowed Outage Time—Ultimate Heat Sink,'' Revision 3, dated October 16, 2000. Adoption of TSTF–330 would allow continued plant operation with UHS temperatures that temporarily exceed the 82 °F limit.

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 change allows plant operation to continue if the temperature of the UHS exceeds the TS limit of 82 °F provided that (1) the water temperature, averaged over the previous 24 hour period, is at or below 82 °F, and (2) the UHS temperature is less than or equal to 84 °F. This increase in UHS temperature will not affect the normal operation of the plant to the extent that it would make any accident more likely to occur. The UHS is not an accident initiator. In addition, the proposed change assures adequate margin in the safety systems

and safety-related heat exchangers to meet the design safety functions at the higher temperature. Thus, the proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. Furthermore, the proposed change cannot cause an accident, nor will the change significantly affect the plant response to any accidents. Therefore, there will be no 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 will not alter the current plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed change will not alter the way any structure, system, or component functions and will not cause an adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following a design-basis accident is unaffected by the change. The proposed change does not introduce any new failure modes and the design basis heat removal capability of the affected safety-related components is maintained at the increased UHS temperature limit. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

NMPNS has performed an evaluation of the safety systems to ensure their safety functions can be met with a UHS water temperature of 84 °F. The higher UHS temperature represents a slight reduction in the margins of safety in terms of these systems' abilities to remove accident heat loads. As part of the evaluation, however, it was verified that these safety systems will still be capable of performing their design-basis functions. The proposed change will have no adverse effect on plant operation or equipment important to safety. The plant responses to accidents will not be significantly affected and the accident mitigation equipment will continue to function as assumed in the accident analysis. Therefore, there will be no 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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: August 28, 2003.

Description of amendment request: The licensee proposed to change Section 3.1.7, ''Standby Liquid Control (SLC) System,'' of the Technical Specifications (TS) to raise the required average boron concentration in the reactor, resulting from injection of sodium pentaborate solution by the SLC system, to support a transition to the General Electric (GE) 14 fuel design. This design change includes the use of sodium pentaborate solution enriched with the boron-10 isotope. The proposed amendment would add a new surveillance requirement to verify the required boron-10 enrichment of the sodium pentaborate solution prior to addition to the SLC tank. It would also revise the figure that depicts acceptable values of SLC storage tank volume and sodium pentaborate solution concentration by adding a notation regarding the required boron-10 enrichment, and by making a minor adjustment to one of the coordinates that define the Acceptable Operation region on the figure.

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 SLC system is designed to provide sufficient negative reactivity to bring the reactor from full power to a subcritical condition at any time in a fuel cycle, without taking credit for control rod movement. The proposed changes to the SLC sodium pentaborate solution requirements maintain the capability of the SLC system to perform this reactivity control function, and assure continued compliance with the requirements of 10 CFR 50.62 for anticipated transients without scram (ATWS). The SLC system is provided to mitigate ATWS events and, as such, is not considered to be an initiator of the ATWS event or any other analyzed accident. The use of sodium pentaborate solution enriched with the Boron-10 isotope, which is chemically and physically similar to the current solution, does not alter the design or operation of the SLC system or increase the likelihood of a system malfunction that could increase the consequences of an accident.

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.

Injection of sodium pentaborate solution into the reactor vessel has been considered in the plant design. The proposed changes revise the SLC boron solution requirements such that the capability of the SLC system to bring the reactor to a subcritical condition without taking credit for control rod movement is maintained, considering operation with an equilibrium core of GE14 fuel. The use of sodium pentaborate solution enriched with the Boron-10 isotope, which is chemically and physically similar to the current solution, does not alter the design, function, or operation of the SLC system. The correct Boron-10 enrichment is assured by the proposed revisions to the TS surveillance requirements. The impact on the solubility limit of enriching the sodium pentaborate solution with the Boron-10 isotope is insignificant; thus, the existing minimum solution and piping temperature specified in the TS will ensure that the boron remains in solution and does not precipitate out in the SLC storage tank or in the SLC pump suction piping. Therefore, the 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?

Response: No.

The proposed changes revise the SLC boron solution requirements to maintain the capability of the SLC system to bring the reactor to a subcritical condition without taking credit for control rod movement. These changes support operation with an equilibrium core of GE14 fuel and assure continued compliance with the requirements of 10 CFR 50.62. The minimum required average boron concentration in the reactor core, resulting from the injection of sodium pentaborate solution by the SLC system, has been determined using approved analytical methods. The analysis demonstrates that sufficient shutdown margin is maintained in the reactor such that the reactivity control function of the SLC system is assured. The additional quantity of boron included to allow for imperfect mixing and leakage is being increased from 20 percent to 25 percent. Thus, additional safety margin is provided to bring the reactor subcritical in the event of an ATWS. 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 request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: September 3, 2003.

Brief description of amendments: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee

performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, 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 April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated September 3, 2003.

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 allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change 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). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina.

Date of amendment request: July 23, 2003.

Description of amendment request: The proposed change will revise the near-end of life (EOL) Moderator Temperature Coefficient (MTC) Surveillance Requirement 4.1.1.3.b by placing a set of conditions on core operation, which if met, would allow exemption from the required MTC measurement. The conditional exemption will be determined on a cycle-specific basis by considering the margin predicted to the surveillance requirement MTC limit and the performance of other core parameters, such as beginning of life MTC measurements and the critical boron concentration as a function of cycle length. The conditional exemption will improve plant availability and minimize disruptions to normal plant operations. Plant safety criteria will not be compromised by the conditional exemption of this one measurement.

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?

The probability or consequences of accidents previously evaluated in the VCSNS FSAR [Final Safety Analysis Report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. 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?

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of the safety-related systems and components. A change to the surveillance requirement is proposed, but the limiting conditions for operation required by TS [technical specifications] are not changed.

The TS Bases are founded in part on the ability of the regulatory criteria to be satisfied assuming the limiting conditions for operation are met for the various systems. Conformance to regulatory criteria for operation with the conditional exemption from the near-EOL MTC measurement is demonstrated and the regulatory limits are not exceeded. Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the

proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

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: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Southern California Edison Company, et al., Docket No. 50–361, San Onofre Nuclear Generating Station, Unit 2, San Diego County, California.

Date of amendment requests: August 26, 2003.

Description of amendment requests: The proposed change would revise Technical Specifications (TS) 1.1 ''Definitions,'' 3.4 ''Reactor Coolant System [RCS],'' and 5.7 ''Reporting Requirements. Specifically, the licensee requests to relocate the RCS pressure-temperature curves and limits from the TSs to a licensee-controlled document identified as the PTLR [Pressure and Temperature Limits Report].

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.

Updating the Reactor Coolant System (RCS) pressure and temperature curves and limits in accordance with 10 CFR [Part] 50 Appendices G and H ensures the reactor coolant system's pressure boundary integrity will be protected until End Of Life (EOL) and does not contribute to the probability of or the initiation of accidents. There is no change to the safety analysis.

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.

These changes are required to maintain the RCS pressure boundary integrity until EOL. Changes to the RCS pressure and temperature curve and limits will not create a new or different kind of accident. There is no change to the safety analysis.

Therefore, the proposed 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.

Pressure and temperature curves and limits are provided as limits to plant operation for ensuring RCS pressure boundary integrity is maintained until EOL. No margin of safety is impacted by changes to the RCS pressure and temperature curves and limits. There is no change to the safety analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SCE 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 amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan.

Date of amendment request: September 3, 2003.

Brief description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.6.5.1.d to replace the phrase ''Each ice basket'' with the phrase ''Ice baskets.'' This change would make the LCO consistent with associated TS Surveillance Requirement (SR) 4.6.5.1.b.2 and would allow the SR to define the detailed requirements for ice basket weight.

Date of publication of individual notice in ***Federal Register:*** September 10, 2003 (68 FR 53402).

Expiration date of individual notice: October 10, 2003.

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 e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: February 19, 2003.

Brief description of amendments: The amendments revised the Technical Specifications (TS) 5.5.10, ''Steam Generator (SG) Tube Surveillance Program.'' Specifically, the proposed changes would revise the SG surveillance requirements in the Oconee Units 1, 2, and 3 TSs. Since steam generator replacement outages are respectively scheduled for Fall 2003, Spring 2004, and Fall 2004, the licensee proposes to relocate the program requirements applicable to the original SGs, existing TS 5.5.10 requirements, to TS 5.5.21 and to provide program requirements applicable to the replacement SGs, in TS 5.5.10.

Date of Issuance: September 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 334, 334, & 335.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12949).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of application for amendment: September 19, 2002, as supplemented by letter dated July 18, 2003.

Brief description of amendment: The proposed amendment extends the allowed outage time (AOT) for a single inoperable low pressure safety injection (LPSI) train from 72 hours to 7 days. In addition, an AOT of 72 hours is included for other conditions where the equivalent of a single emergency core cooling system (ECCS) subsystem flow is still available to both the LPSI and high pressure safety injection (HPSI) trains. Also, an action statement is added to restore at least one of each HPSI and LPSI train to operable status within one hour if 100% of ECCS flow is unavailable due to two inoperable HPSI or LPSI trains.

Date of issuance: September 11, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 251.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002.

The July 18, 2003, supplemental letter 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 amendment is contained in a Safety Evaluation dated September 11, 2003.

No significant hazards consideration comments received: No.

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: December 20, 2002, as supplemented May 30, 2003.

Brief description of amendments: The amendments revise the licensing basis as described in the Updated Final Safety Analysis Report to implement the Boiling-Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program as the basis for demonstrating compliance with the requirements of Appendix H to 10 CFR part 50.

Date of issuance: August 28, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 217/211.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the licensing basis.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5669).

The supplement dated May 30, 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 amendments is contained in a Safety Evaluation dated August 28, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania.

Date of application for amendments: June 5, 2002, as supplemented August 19 and December 2, 2002, and January 30, February 14, March 19 and 31, June 6 and 24, and September 5, 2003.

Brief description of amendments: The amendments approved selective implementation of an alternative source term methodology for the loss-of-coolant accident (LOCA) and the control rod ejection accident (CREA), incorporation of ARCON96 methodology for release points associated with the LOCA and CREA, elimination of the control room emergency bottled air pressurization system, changes to the control room emergency ventilation system (CREVS), and a change to the BVPS–1 CREVS filter bypass leakage acceptance test criteria.

Date of issuance: September 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 257 and 139.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75876). The supplements dated August 19 and December 2, 2002, and January 30, February 14, March 19 and 31, June 6 and 24, and September 5, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed except as noted below, and did not change the staff's original proposed no significant hazards consideration determination. The February 14, 2003, submittal requested the scope of the review be expanded by including in the scope of the review related Updated Final Safety Analysis Report (UFSAR) page changes, but this request was withdrawn in the March 31, 2003, submittal. Additionally, a portion of the requested review was withdrawn in the March 19, 2003, submittal, as these changes were no longer necessary. The portion of the proposed application related to conversion of the BVPS–1 and 2 containments from subatmospheric to atmospheric operating conditions was withdrawn by letter dated September 5, 2003.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio.

Date of application for amendment: May 14, 2003, as supplemented by letters dated June 16, August 2, August 7, and August 20, 2003.

Brief description of amendment: This amendment revised the Technical Specifications to allow a one time exception, only during the Restart Test Plan, to allow entry into Mode 3 of operation without the high-pressure injection pumps being able of taking suction from the low-pressure injection trains when aligned for containment sump recirculation. The exception cannot be used for entry into Mode 2 or Mode 1.

Date of issuance: September 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 257.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34668).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2003.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida.

Date of application for amendment: February 17, 2003.

Brief description of amendment: The amendment revises Technical Specification (ITS) 3.6.3 ''Containment Isolation Valves,'' to allow verification by administrative means of isolation devices in high radiation areas, and isolation devices that are locked, sealed or otherwise secured.

Date of issuance: September 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 209.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18277).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 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: October 11, 2002, as supplemented by letter dated May 29, 2003.

Description of amendment request: The amendment revises Technical Specification (TS) 3.4.9.1, ''Reactor Coolant System [RCS]—Pressure/Temperature Limits,'' and TS 3.4.9.3, ''Reactor Coolant System—Overpressure Protection Systems'' and their associated Bases sections. Specifically, the changes replace TS Figures 3.4–2 ''Reactor Coolant System Heatup Limitations,'' 3.4–3 ''Reactor Coolant System Cooldown Limitations,'' and 3.4–4 ''RCS Cold Overpressure Protection'' to allow operation to 20 Effective Full Power Years.

Date of issuance: September 11, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 89.

Facility Operating License No. NPF–86: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75879). The May 29, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 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: April 24, 2002.

Description of amendment request: The amendment revises surveillance requirements (SRs) in Technical Specification (TS) 4.6.2.1, ''Containment Spray System,'' and TS 4.7.1.2.1b, ''Auxiliary Feedwater System,'' and associated Bases Section 3/4.7.1.2. Specifically, the proposed changes would move SR acceptance criteria for containment spray and auxiliary feedwater pumps from the TSs to the Seabrook Station Technical Requirements Manual.

Date of issuance: September 12, 2003.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 90.

Facility Operating License No. NPF–86: The amendment revises the TSs.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40024).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 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: September 12, 2002, as supplemented March 27 and May 30, 2003.

Brief description of amendments: The amendments add surveillance requirements for Technical Specification (TS) 3.5.2, ''ECCS—Operating,'' and TS 3.5.3, ''ECCS—Shutdown,'' to verify, every 31 days, that the emergency core cooling system piping is full of water.

Date of issuance: September 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 209 and 214.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5679).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama.

Date of application for amendments: February 13, 2003, as supplemented April 14, 2003.

Description of amendment request: The amendments revised Technical Specification (TS) 4.2.1 ''Fuel assemblies,'' to modify the fuel design description to encompass Framatome Advanced Nuclear Power fuel assemblies, and also to modify TS 4.3 ''Fuel Storage,'' to remove nomenclature specific to Global Nuclear Fuels analysis methods.

Date of issuance: September 5, 2003.

Effective date: September 5, 2003.

Amendment Nos.: 247, 284, 242.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68. Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15763). The April 14, 2003, letter provided clarifying information that did not

change the scope of the original request or the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee.

Date of application for amendment: May 1, 2003, as supplemented on July 8, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.7, ''Inverters—Operating.'' The revised TS requires only one inverter for each of the four 120V AC Vital Instrument channels. This amendment is the initial phase of a project that will update the 120V AC Vital Instrument Power System.

Date of issuance: September 8, 2003.

Effective date: As of the date of issuance and shall be implemented prior to Mode 4 entry following the next refueling outage in the fall of 2003.

Amendment No.: 45.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28859). The supplemental letter provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 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: June 2, 2003.

Brief description of amendment: The amendment revises the technical specifications (TSs) to increase the specified minimum fuel oil inventories maintained in the fuel oil storage tanks for the diesel generators.

Date of issuance: September 9, 2003.

Effective date: September 9, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 22, 2003 (68 FR 43393).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia.

Date of application for amendments: September 5, 2002, as supplemented on April 16, June 9, and July 7, 2003.

Brief Description of amendments: These amendments revise the Technical Specifications to add provisions to permit inspection and related repair of a buried fuel oil storage tank during plant operation by extending the allowed outage time for a buried fuel oil storage tank to 7 days from 24 hours for this purpose.

Date of issuance: September 10, 2003.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 236 and 235.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 5, 2003 (68 FR 46247).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 22nd day of September 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24477 Filed 9–29–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 138; Docket No. A2003–1]

Notice of Appeal of Post Office Closing in Birmingham Green, AL

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: Several petitioners have filed an appeal of a post office closing in Birmingham Green, Alabama. The Commission has assigned this appeal a docket number, informed the Postal Service and the public of the appeal, and established a procedural schedule. A decision on the merits, including whether the Commission has jurisdiction over this appeal, has not yet been made.

DATES: The Postal Service is to file the administrative record by October 3, 2003.

ADDRESSES: For further information contact Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

See **SUPPLEMENTARY INFORMATION** for other deadlines.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: In notice and order No. 1384, issued September 24, 2003, the Commission provided notice that certain petitioners had filed an appeal of a post office closing in Birmingham Green, Alabama 35237. It also identified, among other things, the categories of issues that appeared to have been raised in the petition and noted that a 120-day statutory deadline applied to issuance of a decision. A subsequent errata notice (issued September 24, 2003) stated that a deadline had been inadvertently omitted from order no. 1384. Specifically, it indicated that ordering paragraph (a) in order no. 1384 should have specified ''October 3, 2003'' as the deadine for the Postal Service to file the administrative record. The text of the first notice, captioned Notice and Order Accepting Appeal and Establishing ProceduraI Schedule Under 39 U.S.C. 404(b)(5), appears in part I, as corrected by order no. 1384 (errata notice). Part II includes the procedural schedule published as an appendix to order no. 1384.

I. Text of Order No. 1384

Name of affected post office: Birmingham Green, AL 35237.

Name(s) of petitioner(s): George Prince, Terry Finch and James E. Roberts.

Type of determination: Closing.

Date of filing of appeal papers: September 17, 2003.

Categories of issues apparently raised: 1. Observance of procedure required by law [39 U.S.C. 404(b)(5)(B)]. 2. Effect on the community [39 U.S.C. 404(b)(2)(A)]. 3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date

this appeal was filed (39 U.S.C. 404 (b)(5)). The attached procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 14 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

II. Procedural Schedule (Appendix to Order No. 1384)

September 17, 2003: filing of appeal.

September 23, 2003: Commission notice and order of filing of appeal.

October 20, 2003: last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

October 13, 2003: petitioner's participant statement or initial brief [*see* 39 CFR 3001.115(a) and (b)].

November 3, 2003: Postal Service's answering brief [*see* 39 CFR 3001.115(c)].

November 18, 2003: petitioner's reply brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

November 25, 2003: deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

January 25, 2004: expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

III. Ordering Paragraphs

The Commission orders:

(a) The Postal Service shall file the record in this appeal by October 3, 2003.

(b) The secretary of the Postal Rate Commission shall publish this notice and order and procedural schedule in the **Federal Register**.

By the Commission.

Issued: September 23, 2003.

Dated: September 24, 2003.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 03–24659 Filed 9–29–03; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension

Rule 27e–1 and Form N–27E–1, SEC File No. 270–486, OMB Control No. 3235–0545.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the collection of information under the Investment Company Act of 1940 (''Act'') summarized below.

Rule 27e–1 [17 CFR 270.27e–1] is entitled ''Requirements for Notice to be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to section 27(d) of the Act.'' Form N–27E–1 is entitled ''Notice to Periodic Payment Plan Certificate Holders of 18 Month Surrender Rights with Respect to Periodic Payment Plan Certificates.'' Form N–27E–1, which is prescribed by rule 27e–1 in order to implement the statutory mandate in section 27(e) of the Act, serves to notify holders of periodic payment plan certificates who have missed certain payments of their surrender rights with respect to the certificates. The Form N–27E–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are fewer than five issuers of periodic payment plan certificates affected by rule 27e–1. The frequency with which each of these issuers or their representatives must file the Form N–27E–1 notice varies with the number of periodic payment plans sold and the number of certificate holders who miss payments. The staff spoke with representatives of a number of firms in the industry that currently have periodic payment plan accounts. Based upon these conversations, the staff estimates that 3 respondents through completely automated processes send out approximately 2,965 notices a year. These estimates are based on an informal survey of representatives of several entities and are not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments within eighteen months after issuance. The information provided pursuant to rule 27e–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days after this notice.

Dated: September 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24747 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 23c–1 [17 CFR 270.23c–1], SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 23c–1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set

forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on rule 23c–1 annually to undertake approximately 132 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 330 hours.

In addition, the fund must file with the Commission, during the first ten days of the calendar month following any month in which a purchase permitted by rule 23c–1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that Form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of the rule is mandatory. The filings that the rule requires to be made with the Commission are available to the public. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Mr. Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24748 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension

Rule 13f–1, SEC File No. 270–22, OMB Control No. 3235–0006.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collection of information described below.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 2,472 respondents make approximately 9,888 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 294 respondents file approximately 1,176 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 245,409.6 hours ((2,472 filers × 98.8 hours) + (294 filers × 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24750 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48528; File No. SR–Amex–2003–10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC, Relating to Its After-Hours Trading Facility

September 24, 2003.

On February 24, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the operation of its After Hours Trading Facility (''AHTF''). Notice of the proposed rule change was published for comment in the **Federal Register** on August 20, 2003.[3] No comments were received on the proposed rule change.

Current Amex rules provide that only specialists registered in Portfolio Depositary Receipts, Index Fund Shares or unit investment trusts may participate in the AHTF for their dealer account in these securities. In brief, Amex now proposes to permit specialists in stocks or other equity-traded securities to do so in order to offset an imbalance of orders in the AHTF. In such a case, if any open agency orders to buy or sell on the specialist's book limited to the closing price remain unexecuted after the specialist buys or sells the security at its price in the AHTF, the specialist will be required to offer that execution to each such order in time priority until it is accepted or all such orders have rejected it.

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.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change appears to be reasonably designed to reduce volatility on the close by allowing Amex specialists to offset order imbalances in the AHTF with orders for their dealer accounts.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Amex–2003–10) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24752 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–48334 (August 13, 2003), 68 FR 50200.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48534; File No. SR–Amex–2003–75]

Self-Regulatory Organizations; Order of Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Eight Series of the iShares Trust Based on a Specified Fixed Income Index

September 24, 2003.

On August 20, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to list under Rule 1000A the following eight additional series of the iShares Trust (each a ''New Fund'') based on indexes of fixed income securities selected to correspond generally to the performance of a specified U.S. bond index (each, an ''Underlying Index''): (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3–7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10–20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S. Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

On September 2, 2003, the proposal was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposal. This order grants accelerated approval to the proposed rule change.

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 (''1940 Act'') as well as the Exchange Act. The Commission previously approved amendments to Rule 1000A to accommodate the listing of Index Fund Shares based on an index of fixed income securities, and in particular, series of the iShares Trust based on indexes of fixed income securities.[4]

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Exchange Act[5] and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act.[7] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act.[8] The Commission believes that the availability of the New Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Bond Index. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities.

Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48398 (August 22, 2003), 68 FR 52245 (''Notice'').

[4] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (''Previous Approval Order'').

[5] 15 U.S.C. 78f.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] *Id.*

unfair discrimination between customers, issuers, brokers, or dealers.[9]

The Commission has granted the New Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each New Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of New Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a New Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[10]

The Commission notes that the New Funds will operate in substantially the same manner as the funds that were the subject of the Previous Approval Order. The Commission notes one difference is that with respect to the Lehman Aggregate Fund, approximately 35% of its assets will be invested in TBA transactions, which is a purchase or sale of a pass-through security for future settlement at an agreed upon date. The Exchange represented that the use of TBA transactions is not intended to help the Lehman Aggregate Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Lehman Aggregate Fund's exposure to its Underlying Index. Since the intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the Commission agrees that the use of TBA agreements should help maintain the efficiency of the Lehman Aggregate Fund's arbitrage mechanism.

For the reasons stated in the Notice, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including the New Funds. For the reasons stated in the Notice, the Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the New Funds (*i.e.*, U.S. Government securities, investment grade corporate bonds, and TBA prices), the pricing information should be available. However, the Commission notes that differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the New Funds than have been experienced by Equity ETFs because arbitrators may wait for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission has also granted the issuer, Barclays, exemptive relief from section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser.[11] Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a ''product description,'' describing the ETF and its shares.[12] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the New Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the New Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each New Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 (''know your customer rule'') regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[13] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in New Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the New Funds is consistent with section 6(b)(5) of the Exchange Act.[14]

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based. Lehman has represented that it has procedures in place to prevent the misuse of material, non-public information relating to the index.[15] The Commission believes that these provisions should help to address concerns raised by Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the New Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The New Funds will trade on the Exchange in the same manner as the funds that were the subject of the Previous Approval Order, and the proposed rule change. The proposed rule change raises no novel issues. The Commission noticed the proposed rule change for the 21-day comment period and received no comments. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

[9] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[10] Investment Company Act Release No. 25622 (June 25, 2002).

[11] See Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

[12] Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks (''ECNs'') would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of New Funds.

[13] Amex Rule 411.

[14] 15 U.S.C. 78f(b)(f).

[15] Telephone call on September 24, 2003 between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission. The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[16] that the proposed rule change (SR-AMEX–2003–75) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24754 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48525; File No. SR–CBOE–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Firm Quote Rule

September 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2003 the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a clarifying amendment to its firm quote rule (CBOE Rule 8.51). The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE 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

CBOE Rule 8.51(d)(6)(i)(B) generally provides that a responsible broker or dealer (''BD'') shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in ''such class and/or series'' of option and immediately thereafter communicates a revised quotation size. Similarly, CBOE Rule 8.51(d)(6)(ii)(B) generally provides that a responsible BD shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in ''such class or series'' of option and immediately thereafter communicates a revised bid or offer.

The literal language of these two rules indicates that it would be permissible for a responsible BD after a transaction in an option class to revise its quotations in all series of that class prior to effecting subsequent transactions pursuant to paragraph (6) of CBOE Rule 8.51(d). The Exchange proposes to amend these two provisions to clarify that transactions in one series will enable a responsible BD to avail itself of the exception provided in paragraph (6) of CBOE Rule 8.51(d) in that same series only. Accordingly, the Exchange removes the language ''such class or'' from these two sections.

Despite this seemingly permissive language, the Exchange feels compelled to note that it has always interpreted CBOE Rule 8.51(d)(6) such that each series of option was deemed a separate security. As such, the responsible BD on CBOE was not allowed to rely on transactions in one series of a class to revise its quotations in a separate series within the same class and still avail itself of the paragraph (6) exception. This SEC-requested amendment brings the rule language into conformity with the practice on the floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR–CBOE–2003–38 and should be submitted by October 21. 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24751 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48524; File No. SR–CBOE–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifying the Designated Primary Market-Maker Membership Ownership Requirement

September 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Designated Primary Market-Maker (''DPM'') membership ownership requirement. The proposed rule text follows:

(Additions are *italicized*)

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 8.85(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM. For purposes of this Rule, a trading location is defined as any separate identifiable unit of a DPM organization that applies for and is allocated option classes by the appropriate Allocation Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. The same Exchange membership(s) may not be used to satisfy this ownership requirement for different DPM organizations or different trading locations operated by the same DPM organization. Each DPM shall have until May 12, 2003 to satisfy this ownership requirement, but each DPM organization must continually own at least one membership until that date.

* * * *Interpretations and Policies:*

.04 A DPM organization shall be deemed to own an Exchange membership for purposes of paragraph (e) of this Rule if a natural person owner of the DPM organization owns an Exchange membership that would otherwise qualify under paragraph (e) and such individual meets the following criteria: (1) Owns at least a 45% equity interest in the DPM organization; (2) maintains at least a 45% profit participation in the DPM organization; (3) is actively involved in the management of the DPM operation; and (4) maintains a constant presence on the Exchange trading floor as a primary DPM designee of the DPM organization.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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

On August 21, 2000, the Commission approved a CBOE rule filing adopting a DPM membership ownership requirement.[3] This requirement, contained in CBOE Rule 8.85(e), provided, among other things, that each DPM must own at least one Exchange membership, and that the requirement would be deemed satisfied if a senior principal of the DPM owned the required membership (what constituted a ''senior principal'' was not defined).

On February 10, 2003, the Commission approved changes to CBOE Rule 8.85(e) to make clear that the requirements of the Rule are applicable to each DPM trading location (as opposed to each DPM organization), and to eliminate the concept that a senior principal can own a membership in place of the DPM organization.[4]

CBOE now seeks to again allow a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. More specifically, the senior principal must be a natural person owner of the DPM organization who: (i) Owns at least 45% equity interest in the DPM organization; (ii) maintains at least a 45% profit participation in the DPM organization; (iii) is actively involved in the management of the DPM operation; and (iv) maintains a constant presence on the Exchange floor as a DPM designee of the DPM organization.

When CBOE first proposed the DPM membership ownership requirement, most DPMs were smaller, local operations and the owners of the DPMs were floor traders who were long-time market makers on the CBOE. Many of these individuals owned memberships (seats) and the Exchange believed that these seats should qualify for purposes of compliance with the intent of proposed CBOE Rule 8.85(e)[5] because these individuals were the primary owners of the DPMs. However, once the Rule was actually in place, a consolidation of DPMs on the trading floor had already taken place (with larger, more national firms operating multiple DPM stations more prevalent on CBOE) and the Exchange observed that some firms were asserting that non-equity employees who were nominally involved in the operation of the DPM and who happened to own seats were ''senior principals'' of the DPM for purposes of the Rule. This prompted the Exchange to eliminate the senior principal component of the Rule. Unfortunately, by eliminating the senior principal provision, certain DPM

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR–CBOE–99–37).

[4] *See* Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR–CBOE–2002–18).

[5] CBOE states that the intent of the Rule is to ensure that DPMs maintain a long-term commitment to the Exchange.

organizations that are largely owned and managed by individual seat owners, were no longer able to satisfy the provisions of the Rule despite the fact that their seat ownerships previously complied and were originally intended to count towards compliance with the Rule when it was originally proposed.

As proposed, the revised rule would allow an individual seat owner who has a significant ownership and profit interest in a DPM organization (*i.e.*, at least 45%), and who is actively involved in the management of the DPM operation and maintains a constant presence on the trading floor as a DPM designee, to use his seat to comply with the requirements of the Rule. CBOE notes that, for purposes of the proposed rule, a ''constant presence'' would not mean every minute of every trading day, but rather that the individual is primarily working on the trading floor as a DPM designee.

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the CBOE believes it is consistent with section 6(b) of the Act, [6] in general, and further the objectives of section 6(b)(5) in particular,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24756 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48530; File No. SR–ISE–2003–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the International Securities Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On May 29, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide that the Options Clearing Corporation (''OCC'') will have no liability to ISE Members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage (''Linkage''). The ISE filed Amendment No. 1 to the proposal on July 30, 2003.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.[4] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6(b) of the Act [6] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the ISE, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or ''hub'' to and from which all Linkage orders are routed.[8] In the Agreement, the ISE committed to file a proposed rule change with the Commission that would limit the liability of the OCC to ISE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a technical correction to clarify that the proposed rule change would establish ISE Rule 1905.

[4] Securities Exchange Act Release No. 48321 (August 12, 2003), 68 FR 49829.

[5] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] Linkage Project and Facilities Management Agreement (''the Agreement'') (January 30, 2003).

Members. The Commission believes that this proposed rule change, as amended, should foster cooperation and promote a relationship between the ISE and the OCC that is conducive to the effective operation of the Linkage.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change, as amended, (File No. SR–ISE–2003–15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24755 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48501; File No. SR–NASD–2003–128]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Establishing a Maximum ECN Access Fees in SuperMontage and Elimination of SuperMontage's Price/Time With Fee Consideration and Price/Size Execution Algorithms

September 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 August 11, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to 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 Nasdaq. On September 10, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on September 15, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rules 4623 and 4710 to: (1) establish a maximum level of quote/order access fees for Electronic Communications Networks (''ECNs'') that elect to participate in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''); (2) eliminate SuperMontage's Price/Time with access fee consideration execution algorithm; and (3) eliminate SuperMontage's Price/Size execution algorithm. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (5) No Change.

(6) not charge to broker-dealers that access the ATS or ECN through *The* Nasdaq *National Market Execution System (SuperMontage)* any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) *or that exceeds $0.003 per share.*

(c) No Change.

* * * * *

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (v) No Change.

(w) The term ''NNMS Order Entry Firm'' shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS. *This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.*

(x) through (jj) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed

---

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 9, 2003, replacing Nasdaq's original Form 19b–4 filing in its entirety (''Amendment No. 1'').

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 12, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made technical corrections to its rule text.

Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order [is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule),] and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. [Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.] The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm[s] described [in paragraphs (i), (ii) and (iii)] below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) [Default] Execution AlgorithmPrice/Time—The system will [default to a strict price/time priority within Nasdaq, and will attempt to] access interest in the system in the following priority and order:

a. through c. No Change.

[(ii) Price/Time Priority Considering Quote-Access Fees—If this option is chosen, the system will attempt to access interest in the system in the following priority and order:

a. Displayed Quotes/Orders of NNMS Market Makers, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, displayed Quotes/Orders of NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

b. Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

c. Reserve Size of NNMS Market Makers and NNMS Order Entry Firms, and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order is equal to or exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quotes/Orders;

d. Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders; and

e. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be executed in price/size/time priority against:

a. Displayed Quotes/Orders of NNMS Market Makers, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, displayed Quotes/Orders of NNMS ECNs, and non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders;

b. The Reserve Size of Nasdaq Quoting Market Participants and NNMS Order Entry Firms, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

c. Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.]

[(iv)] *(ii)* Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. This exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms. Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order[, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order] *in price/time priority*. The I value described above shall be available for the use of Nasdaq Quoting Market Participants on May 12, 2003.

b. through c. No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at

the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The rules of Nasdaq's SuperMontage system allow the participation of ECNs. Many of these ECNs charge, as permitted by the Securities and Exchange Commission, a separate fee to other market participants that access the ECN's quote/order. There is, however, substantial disparity in the level of these fees among ECNs participating in SuperMontage, with some ECNs charging access fees, in some instances, three times as high as other participating ECNs.

Nasdaq believes that these gross fee disparities are of particular concern in a system like SuperMontage that extensively automates the matching of buy and sell trading interest using neutral execution algorithms that limit the ability of users to select or anticipate exactly who their counter-party, or counter-parties, to particular trade will be. The result is that users enter orders into SuperMontage and end up executing against a variety of market participants including, in some cases, ECNs that charge access fees significantly higher than others. In turn, Nasdaq believes that the inability of system users to reasonably anticipate their trading costs, due to these large access fee disparities, discourages those users from entering their quote/orders into the SuperMontage system thereby depriving all SuperMontage participants of beneficial liquidity.

In response to the above, Nasdaq has determined to establish, as explicitly permitted by Rule 301(b)(4) of Regulation ATS,[5] a maximum permissible quote/order access fee amount for ECNs that elect to participate and execute transactions in the SuperMontage system. Nasdaq proposes to establish the maximum SuperMontage ECN access fee amount at $0.003 (three mils) per share. Participating ECNs will be free to charge quote/order access fees less than the $0.003 maximum. Nasdaq notes that the $0.003 maximum proposed here is equivalent to the execution fee Nasdaq imposes on parties automatically executing against quotes/orders through SuperMontage. Nasdaq believes that this access fee level is also generally in keeping with the level of access fee imposed by most ECNs today. In addition, Nasdaq believes that the $0.003 access fee cap retains transparency in the system by maintaining a reasonable nexus between displayed prices in the montage and actual execution prices obtained by market participants that interact with fee-charging ECNs. As such, Nasdaq believes that $0.003 maximum access fee is designed to maintain consistency in Nasdaq's market and provide equivalent and fair access to available quotes/orders.

ECNs that desire to charge more than $0.003 amount for access to its quote/orders will not be permitted to post liquidity in SuperMontage as an NNMS ECN. They will, however, be permitted to continue to participate in SuperMontage as NNMS Order Entry Firms as a method to access or post liquidity in the system. As NNMS Order Entry Firms, those ECNs will have any quotes/orders entered into the system displayed and processed in the same manner as other NNMS Order Entry Firms. This will include having such quote/orders be represented only via the SIZE MMID and also making them subject to automatic execution. As NNMS Order Entry Firms, these ECNs will not be allowed to impose *any* fee on a broker-dealer that accesses them through the SuperMontage system. As NNMS Order Entry Firms, such ECNs will be eligible for Nasdaq's liquidity provider rebate.

In concert with establishing a maximum ECN quote access fee amount, Nasdaq has also determined to eliminate the Price/Time with fee consideration execution algorithm currently available in SuperMontage. Nasdaq believes that, having rationalized ECN access fees through the establishment of a maximum fee amount, it is also now appropriate to eliminate the Price/Time with fee consideration execution algorithm within the system for all ECNs that have agreed to participate in SuperMontage and comply with the ECN $0.003 maximum fee standard. Nasdaq views the proposals to establish a maximum ECN quote/order access fee in SuperMontage and to eliminate the above execution algorithm as linked and will implement them at the same time.

Finally, Nasdaq has also determined to eliminate SuperMontage's Price/Size execution algorithm. This algorithm is rarely used in SuperMontage, with a recent analysis indicating that it accounts for less than 7% of orders entered into the system. In addition, elimination of the Price/Size algorithm reduces system complexity within SuperMontage. In order to efficiently manage Nasdaq programming resources, elimination of the Price/Size execution algorithm will take place on the same date as the elimination of the Price/Time with fee consideration algorithm.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the creation of a maximum ECN access fee put forth in this proposal is explicitly permitted by Regulation ATS' Rule 301(b)(4) which provides in relevant part "* * * if the national securities exchange or national securities association to which an alternative trading system provides the prices and sizes of orders * * * establishes rules designed to ensure consistency with standards for access to the quotations displayed on such national securities exchange, or the market operated by such national securities association, the alternative trading system shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules."

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

[5] 17 CFR 242.301(b)(4).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–128 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24746 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48527; File No. SR–NASD–2003–85]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, 5, and 7 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

September 23, 2003.

I. Introduction

On May 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add a post-trade anonymity feature to SuperMontage. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 2, 2003.[5] The Commission received five comment letters on the proposal, as amended by Amendment Nos. 1 and 2.[6] On August 6, 2003, Nasdaq filed a response to the comment letters.[7] On August 11, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.[8] On September 8, September 16, September 17, and September 22, 2003, Nasdaq filed Amendment Nos. 4,[9] 5,[10] 6,[11] and 7[12] respectively, to the proposed rule change. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment Nos. 3, 4, 5, and 7.

II. Description of the Proposed Rule Change

Nasdaq's current pre-trade anonymity feature allows market makers, electronic communication networks (''ECNs'') and order entry firms (''OE Firms'') to submit anonymous orders to SuperMontage for display under the ''SIZE'' market participant identifier

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 29, 2003 (''Amendment No. 1'').

[4] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated June 20, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) (''Notice'').

[6] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Jim Dyer, Senior Vice President & Trading Room Manager, Brokerage America, LLC, dated July 24, 2003 (''BAMM Letter''); Kim Bang, Bloomberg Tradebook LLC, dated July 24, 2003 (''Bloomberg Letter''); William O'Brien, Chief Operating Officer, Brut, LLC, dated July 29, 2003 (''Brut Letter''); C. Thomas Richardson, Managing Director, Citigroup Global Capital Markets, Inc., dated July 25, 2003 (''Citigroup Letter''); and John Hughes, Chairman, and John C. Giesea, President and Chief Executive Officer, Security Traders Association, dated July 23, 2003 (''STA Letter''). The letters are described in Section III, *infra.*

[7] *See* Letter from Edward S. Knight, Executive Vice President, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated August 4, 2003 (''Nasdaq Response Letter'').

[8] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated July 31, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq clarified in certain NASD rules that Nasdaq will remove a member from Nasdaq's systems when the member loses its clearing relationship. Members removed from a Nasdaq system can invoke their right to seek redress under the NASD Rule 9700 Series. The amendment also contains non-substantive changes to NASD Rules 4705, 5012, and 6120 to reflect that indirect participation in a clearing agency occurs through a ''participant,'' as such term is defined in Section 3(a)(24) of the Act.

[9] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division, Commission, dated September 4, 2003 (''Amendment No. 4''). In Amendment No. 4, Nasdaq created an additional exception to the anonymous processing of orders; made technical corrections in its rule text clarifying that Nasdaq must reveal member's identity in certain circumstances; explained how the help desk will operate to assist members with anonymous trades; and clarified Nasdaq's record keeping obligations.

[10] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated September 15, 2003 (''Amendment No. 5''). In Amendment No. 5, Nasdaq codified its earlier representations regarding retention of information on behalf of its members to satisfy the members' books and records obligation. See Amendments 2 and 4, *supra* notes 4 and 9, respectively.

[11] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 16, 2003 (''Amendment No. 6''). In Amendment No. 6, Nasdaq made a technical correction to its rule text to clarify those circumstances when members would be required to retain their recordkeeping obligations.

[12] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 17, 2003 (''Amendment No. 7''). In Amendment No. 7, Nasdaq, in essence, withdrew Amendment No. 6 since it replaced in its entirety proposed Rule 4719(e)(ii), which was initially proposed in Amendment No. 5 and subsequently amended by Amendment No. 6.

(''MPID'').[13] When a trade is executed with an order that resides under the SIZE MPID, the identity of the member that anonymously submitted the order is revealed immediately to the other member involved in the trade.[14] SuperMontage produces an execution report that is sent to the parties to the trade and also creates a report in Nasdaq's Automated Confirmation Transaction Service (''ACT''). These reports contain the MPIDs for the members that executed the trade.

The proposed anonymity feature builds upon the pre-trade anonymity feature available today using the Non-Attributable Quote/Order feature and generally extends anonymity beyond the time of execution by masking the identities of the members executing the trade. Under the proposal, when a member uses the Non-Attributable Quote/Order feature, instead of revealing the members' MPIDs, SuperMontage will generally substitute a four-letter identifier that indicates the trade is anonymous (*i.e.*, SIZE). Therefore, instead of seeing its contra-party's MPID on the reports, the reports will indicate SIZE as the contra-party.[15] Replacing the members' MPIDs with SIZE would not alter how information is reported to the consolidated tape or Nasdaq's surveillance systems or the type of information reported to the consolidated tape or Nasdaq's surveillance systems. In addition, clearing firms would continue to receive immediate notification of trades executed by their correspondent firms,[16] and, except as described below, the new anonymity feature would not change how trades would be processed and settled through the National Securities Clearing Corporation (''NSCC'').[17]

The ACT reports that the NSCC receives from Nasdaq for anonymous trades would contain the identities of the parties to the trade. This measure would enable the NSCC to continue its normal risk management functions and settle anonymous trades in the same manner as trades that are executed without the anonymity feature with one exception. The ACT report sent to the NSCC would contain an indicator noting that the trade is anonymous. The effect of this indicator is that, on the contract sheets the NSCC issues to its participants, the NSCC would substitute SIZE for the MPID of the contra-party. The purpose of this masking is to preserve anonymity through settlement.

Nasdaq also proposes to offer members additional risk management tools for monitoring their exposure to members they have traded with on an anonymous basis. First, Nasdaq would provide members with an intra-day concentration report that would disclose a member's aggregate dollar value of purchases and sales with other members with whom it has traded anonymously. Second, Nasdaq would reveal after 4 p.m. Eastern Time the identities of the members listed on the intra-day concentration report. With this information, members would know the exact dollar value of their aggregate purchases and sales with individual contra-parties Third, Nasdaq would begin providing trade information to the NSCC in real-time as trades are executed in SuperMontage. With real-time submission, the NSCC would possess trade information within seconds after a trade is executed and can incorporate this information into its risk analysis of its participants. Once the NSCC ceases to act for a participant, that firm, and any other firm that clears through the participant, would not be able to continue trading.[18] Fourth, once the NSCC has ceased to act for a participant and determined not to guarantee the settlement of the participant's trades, Nasdaq would coordinate with the NSCC and Nasdaq would promptly disclose to members each trade executed anonymously with the firm the NSCC ceased to act for and any firms that cleared through that NSCC participant.[19]

Nasdaq would also reveal contra-party identities on a trade-by-trade basis when a member whose Quote/Order is decremented (*i.e.*, the liquidity providing member) is an Order Delivery ECN that charges an access fee. The ultimate result is that members would not trade with complete anonymity when accessing liquidity provided by Order Delivery ECNs that charge access fees. Order Delivery ECNs would generally be prohibited, however, from disclosing the identity of the member that submitted the Non-Attributable Quote/Order that decremented their Quote/Order.[20]

Nasdaq would also disclose contra-party information when a member executes an order by matching against other trading interest it has in the system on the other side of the market (*e.g.*, internalizes) on a trade-by-trade basis,[21] including if a member executes a Preferenced Order[22] sent to the same or another MPID used by that member.[23] If the buying and selling interest submitted under the same MPID matches, Nasdaq would reveal, in all cases, to the member at the time of

[13] Market makers and ECNs may also display Attributable Quotes/Orders under the market participant's MPID. However, OE Firms can only post Non-Attributable Quotes/Orders for display in SuperMontage. *See* Securities Exchange Act Release No. 47830 (May 12, 2003), 68 FR 27126 (May 19, 2003).

[14] For the purpose of execution reports, OE Firms have distinct MPIDs. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on June 24, 2003.

[15] Nasdaq will know the identities of the members executing an anonymous trade and will provide a ''help desk'' that members can call to assist them in resolving disputed anonymous trades. Nasdaq staff's role will be limited to helping members resolve disputes, such as erroneous trades, when the members choose not to utilize the clearly erroneous trade adjudication process provided in NASD Rule 11890. *See* Amendment No. 4, *supra* note 9.

[16] When a correspondent firm executes an anonymous order in SuperMontage, its clearing firm would continue to receive a real-time SuperMontage execution report and ACT report containing all the trade details (*e.g.*, the number of shares and the price of the trade), except the identity of the correspondent's contra-party. The details of anonymous trades also would be included in ACT's risk management tools.

[17] Nasdaq would not assume any responsibility to settle anonymous trades and the NSCC's settlement guarantee, and close-out procedures for failed firms, would not be affected by Nasdaq's anonymity proposal. Therefore, as required today by NASD Rules 4712 and 6160, members would be obligated to settle matched trades reported to the NSCC, including trades executed anonymously that have been matched and reported to the NSCC, but not yet guaranteed by the NSCC.

[18] *See* Amendment No. 3, *supra* note 8. In Amendment No. 3, Nasdaq clarified the process through which its members may be removed from SuperMontage for failure to maintain a clearing relationship. Members who are removed from a Nasdaq system can invoke their right to seek redress under the NASD 9700 series.

[19] Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on September 11, 2003.

[20] Under the proposed rule change, Non-Attributable Quotes/Orders would contain an indicator noting that the order is to be processed anonymously. As such, Order Delivery ECNs would be able to distinguish Non-Attributable Quotes/Orders from those orders for which the prohibition would not apply. The prohibition contains an exception, however, if the ECN is requested to provide such information to regulators or is ordered to disclose the information by a court or arbitrator. NASD would also be entitled to reveal a members' identity for regulatory purposes, including enabling a member to pursue arbitration, or to comply with an order of an arbitrator or a court. *See* Amendment No. 4, supra note 9.

[21] *See* Amendment No. 4, supra note 9.

[22] *See* NASD Rule 4701(aa).

[23] Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on September 10, 2003, clarifying that a Preferenced Order may be sent to the same MPID or another MPID of the member. Members cannot submit anonymous orders through the SuperMontage Directed Order process. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, on September 18, 2003. *See also* Letter from Edward S. Knight, Executive Vice President, Nasdaq, to Catherine McGuire, Associate Director and Chief Counsel, Division, Commission, dated September 15, 2003 (''Rule 10b-10 Exemption Request'').

execution, that it has internalized a trade through SuperMontage. Nasdaq would also reveal to the member at the end of the day when it has internalized across MPIDs.[24]

Nasdaq also committed to retain, for the period specified in Rule 17a–4(a), the actual identities of the members that executed anonymous trades through SuperMontage in its original form or a form approved under Rule 17a–6.[25] For anonymous trades, Nasdaq would possess the information necessary under Rule 17a–3(a)(1) and would retain member identities for the period of time that broker-dealers are required to by Rule 17a–4(a) under the Act. However, for the universe of trades for which Nasdaq reveals to members the identities of the contra-parties, including when the contra-party is themselves, members would retain the record keeping obligation because the members would have the information to comply with Rule 17a–3(a) under the Act.[26] In addition, members that submit, and receive an execution of, a Non-Attributable Quote/Order that is a Preferenced Order would have to comply with Rules 17a–3(a)(1) and 17a–4(a) since they would possess the identity of their contra-party.[27]

III. Summary of Comments and Nasdaq's Response

The Commission received five comment letters on the proposed rule change.[28] BAMM, Citigroup and STA supported the proposed rule change. Bloomberg expressed support for Nasdaq's goals, but expressed reservations regarding the proposal in its current form. Brut did not explicitly state whether it supported or opposed the proposal, but advised the Commission to review compliance, risk management and administrative issues carefully prior to taking action.

BAMM, Citigroup and STA generally believed that post-trade anonymity is commonplace today. Specifically, Citigroup noted that exchanges and ECNs currently offer anonymity through execution and BAMM stated that anonymity has become a core feature of execution systems. As a result, these commenters believed that allowing Nasdaq to provide post-trade anonymity would level the competitive playing field.[29] Citigroup also suggested that the proposal would improve the Nasdaq market because the current pre-trade anonymity feature does not adequately minimize market impact, and post-trade anonymity would assist brokers and dealers in obtaining better executions for their customers. [30] According to Citigroup, ''Nasdaq's proposal should promote efficiency, reduce trading costs, and increase competition in the market, as broker/dealers will now be able to represent and execute their customer orders on an anonymous basis directly through a Nasdaq facility.'' BAMM stated that by increasing choice and competition, the proposal would increase liquidity in the marketplace, reduce fragmentation, and further reduce transaction costs.

A. ECN Participation

Bloomberg believed that the proposal ''unnecessarily denies [ECNs] the opportunity to use SuperMontage's facilities in the way all other market participants can use them.'' The basis of Bloomberg's assertion was that market makers and OE Firms receive post-trade anonymity when taking and posting liquidity, but ECNs benefit from post-trade anonymity only when taking liquidity and not when posting liquidity. Bloomberg suggested that a viable solution would be to keep the execution report anonymous while providing broker-dealers with information after settlement disclosing an aggregate total of fees a broker-dealer had accumulated through an ECN. Bloomberg also opined that the disparate treatment puts ECNs at a competitive disadvantage, which is in contravention of sections 15A(b)(6) and 15A(b)(9) of the Act.[31]

Nasdaq responded to Bloomberg's concerns regarding the disparate treatment of ECNs.[32] Nasdaq stated that the proposal balances the need for post-trade anonymity with an ECN's ability to charge quote access fees and not accept automatic executions in SuperMontage. Nasdaq opined that there is a reasonable distinction between how ECNs and other members participate in SuperMontage, and that the special accommodations that have been made to allow ECNs to participate in SuperMontage are not discriminatory. According to Nasdaq, the anonymity feature is designed to provide ECNs the information they need to administer their access fees. Similarly, revealing the ECN's identity provides other members information they desire to monitor these fees. In contrast, market makers and OE Firms are not permitted to charge quote access fees, and they must accept automatic executions in SuperMontage. Accordingly, similar accommodations are not necessary when these parties execute trades with each other in SuperMontage.

Furthermore, Nasdaq asserted that its proposal cannot be deemed discriminatory when it is the ECN's decision that would result in the inability to remain anonymous. In Nasdaq's view, an ECN's ability to retain anonymity when its quote is hit through SIZE is a result of the way the ECN chooses to participate in SuperMontage (charging a quote access fee and not accepting automatic executions), and not a result of Nasdaq's unfair discrimination. Nasdaq stated that Bloomberg's suggestion to preserve the contra-party anonymity for SIZE trades that hit the quote of Order Delivery ECNs, would ''impose additional costs and burdens on other members and Nasdaq, not to mention that it would be unfair to those members that traded with Bloomberg to expose their identities immediately while masking Bloomberg's identity until the end of the day. Nasdaq believes these costs and burdens are unnecessary in light of the other options available to ECNs seeking full anonymity.''

B. Risk Management

BAMM and Citigroup believed that Nasdaq adequately addressed certain operational or regulatory issues in its proposal, such as back office processing [33] and risk exposure.[34] For example, Citigroup believed that the intra-day concentration report would assist members with measuring their exposure if one or all of their contra-parties failed to settle all trades

[24] *See* Amendment No. 4, *supra* note 9. Nasdaq also is studying the feasibility of immediately revealing to members when they internalize across MPIDs.

[25] *See* Amendment Nos. 2 and 5, supra notes 4 and 10.

[26] *See* Amendment Nos. 4 and 7, *supra* notes 9 and 12.

[27] *Id.*

[28] *See supra* note 6. Citigroup and STA also commented on ECN access fees in general. STA reiterated its view that ECN access fees should be abolished. Citigroup stated that ''either all broker/dealers that represent orders as agent or riskless principal in the public market should be permitted to charge an access fee, or none should.'' The Commission notes that ECN access fees are not at issue in the current proposal, instead what is at issue is whether post-trade anonymity feature, as proposed herein, is consistent with the Act.

[29] *See* BAMM Letter and Citigroup Letter. *See also* STA Letter.

[30] *See also* BAMM Letter.

[31] Furthermore, Bloomberg noted that they are not currently able to use the SIZE facility, because SuperMontage does not provide a ''locked/crossed'' warning message as SuperMontage does for quotations entered by Order Delivery ECNs under their own acronyms. Without such warning, Bloomberg stated they will not be able to avoid the possibility of double execution. *See* Bloomberg Letter. Nasdaq, in its response, stated that it would be implementing a systems change to address the double execution issue. *See* Nasdaq Response Letter.

[32] *See* Nasdaq Response Letter.

[33] *See* BAMM Letter.

[34] *See* Citigroup Letter.

executed anonymously. According to Citigroup, members could then determine whether any risk-limiting actions should be taken. Additionally, by revealing the identities of those listed on the intra-day concentration report, members would know the exact dollar value of their aggregate purchases and sales with individual contra-parties. Citigroup believed that this added level of information about risk concentration and exposure should give members and their clearing firms better tools to limit their risk. Citigroup also believed that risk to clearing member firms should be reduced substantially because SuperMontage would provide trade information to the NSCC on a real-time basis.

Bloomberg and Brut expressed concern, however, that the proposal imposes new or increased financial risk on market participants. The commenters noted that from the time of the transaction until midnight of T+1, when the NSCC steps in as guarantor, the broker-dealer would be exposed to the risk of the anonymous contra-party's failure to settle a transaction. Brut questioned whether the proposal was worth such incremental risk, and whether Nasdaq should assume fiscal responsibility for such trades like ECNs and other providers of anonymous transaction services. Bloomberg also noted that specialists stand as guarantors of trades on SuperDot on the New York Stock Exchange (''NYSE''), and ECNs stand as the guarantors of anonymous trades within their internal systems.

In response to comments that the proposal increases risk, Nasdaq stated that there would be ''little, if any, effect on a clearing firm's ability to monitor trading by itself or its correspondents.'' [35] Specifically, Nasdaq asserted that Nasdaq and the NSCC would know the identities of the members who traded using the anonymity feature. Furthermore, Nasdaq noted that members trading anonymously and individual trades executed anonymously, would be subject to NSCC's full risk management systems and included in ACT's risk management calculations. Nasdaq stated that a member's ability to assess its contra-party risk through the use of intra-day reports would be affected only to the degree the member uses its contra-parties' identities on a trade-by-trade intra-day basis. Nasdaq also disagreed with the assertion that a systemic risk is created by Nasdaq's unwillingness to guarantee settlement of anonymous trades in the period between execution and the attachment of the NSCC guarantee. Nasdaq asserted that currently members are subject to the same risk that their contra-party, including ECNs, will default before the NSCC guarantee attaches.

C. Books and Records

Brut also commented that broker-dealers have certain recordkeeping requirements, such as recording the name or other designation of the person that is the contra-party to the transaction. Brut recommended, notwithstanding Nasdaq's representation that it would retain records to satisfy the recordkeeping requirements under Rule 17a–3 under the Act, that the Commission explicitly grant broker-dealers relief from the rule for transactions effected through SIZE. With regard to Brut's concerns regarding a broker-dealers obligations under Rule 17a–3, Nasdaq stated that it was a matter for the Commission to resolve.[36]

D. Operation of Help Desk

Brut also expressed concern that completely anonymous trades between broker-dealers could create difficulties in resolving erroneous or disputed trades, which typically are resolved through direct broker-to-broker communication. Brut suggested that the Commission should ensure that the help desk has adequate resources and procedures to prevent unfair discrimination by Nasdaq in the resolution of disputes among SIZE users.

In response to Brut's concerns regarding the resolution of disputed trades, Nasdaq noted that erroneous trades, whether anonymous or not, may be resolved in accordance with NASD Rule 11890.[37] Further, Nasdaq clarified that the Market Operations Department would also be responsible for responding to requests from members.[38] Nasdaq staff would resolve disputes when the members choose not to utilize the clearly erroneous trade adjudication process provided in NASD Rule 11890. According to Nasdaq, Nasdaq staff would only effectuate the resolutions agreed to by the members who are the parties to the trade; Nasdaq staff will not issue independent decisions.[39]

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters, and Nasdaq's response and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[40] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A of the Act.[41] Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[42]

The Commission finds that Nasdaq's proposal to generally extend anonymity through clearance and settlement of a trade, subject to certain exceptions, to be consistent with the Act. The Commission notes that post-trade anonymity is not new [43] and is offered by other market participants, including the Pacific Stock Exchange Equities (''PCXE'').[44] As a result, the Commission does not believe that Nasdaq should be prohibited from offering similar services. The Commission believes that the SuperMontage post-trade anonymity feature should allow Nasdaq to offer some of the same benefits associated with anonymity, such as minimizing the market impact of institutional orders. As expressed by commenters, trading information can have an impact on the price of a security.[45] For example, Citigroup stated that other market participants will adjust their trading

[35] *See* Nasdaq Response Letter.

[36] *Id. See infra* discussion at note 56 and accompanying text.

[37] *Id.*

[38] *See* Amendment No. 4, *supra* note 9.

[39] According to Nasdaq, the existence of the help desk does not preclude members from pursuing other means to resolve disputed anonymous trades. For example, a member can seek arbitration to resolve a disputed trade. Nasdaq would reveal a contra-party's identity upon receiving a written request from a member, who is a party to the disputed trade, which indicates the information is being requested for the purposes of pursuing a claim in arbitration. According to Nasdaq, revealing a contra-party's identity so that a member can pursue its right to arbitrate is consistent with Nasdaq's authority, under proposed Rule 4719(c)(2), to reveal a contra-party's identity for regulatory purposes. *See* Amendment No. 4, *supra* note 9.

[40] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78*o*–3.

[42] 15 U.S.C. 78*o*–3(b)(6).

[43] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48310, note 243 and accompanying text (September 12, 1996) (adopting Rule 11Ac1–4 and amending Rule 11Ac1–1) (discussing the benefits of anonymous trading).

[44] *See* PCXE Rules 7.7 and 7.36(b).

[45] *See* BAMM, Citigroup and STA letters.

strategy, if they see a pattern in which they see Citigroup or another broker or dealer that normally handles institutional orders actively buying a stock, in anticipation of a strong buy demand. Citigroup compared this to the full anonymity offered by ECNs and exchanges that prevents market sensitive data from being disseminated on a real-time basis.

The Commission recognizes that in certain securities, specific market makers may be viewed as price leaders, and other market participants may follow the quoting patterns of such market makers, which could result in price changes that frustrate a firm's ability to efficiently work large orders for its customers or obtain executions at improved prices. Therefore, the Commission believes that Nasdaq's proposal may reduce the type of market intelligence that can contribute to market impact. Further, the Commission believes that the proposal may assist broker-dealers in their efforts to satisfy their duty of best execution in working customer orders.

The Commission notes that one commenter stated that the proposal ''discriminates unfairly'' against ECNs because the execution reports would reveal contra-party identity when the quote of an Order Delivery ECN is decremented.[46] Another commenter, however, expressed concern that Nasdaq and market participants must make special accommodation for fee-charging ECNs.[47] The Commission believes that the contra-party identity exception does not unfairly discriminate against Order Delivery ECNs. Instead, the Commission believes that Nasdaq has attempted to accommodate the business models of ECNs and the manner that they participate in SuperMontage.

In the Notice, Nasdaq explained that trades executed with Order Delivery ECNs are processed differently because they have the discretion to reject trades with certain contra-parties if the ECN is in dispute with the contra-party concerning its quote access fee.[48] Thus, to provide fee-charging Order Delivery ECNs with the opportunity to reject trades with certain members, Nasdaq determined to continue to disclose each contra-party's identity in trades through SIZE where one of the contra-parties is a liquidity providing, fee-charging Order Delivery ECN. Nasdaq believes that this exception also benefits members that execute against the fee-charging Order Delivery ECN by enabling them to track the fee charges accumulated with each Order Delivery ECN. OE Firms and market makers must accept automatic executions in SuperMontage and do not charge access fees. Therefore, the same disclosure of contra-party information is not required.

As a result, the Commission believes that the proposed rule change reasonably accommodates the different entities; Order Delivery ECNs that charge access fees, market makers, OE Firms, and ECNs that do not charge a fee. As noted by Nasdaq, an ECN may alter the way it participates in SuperMontage to achieve full anonymity. Further, the Commission notes the original SuperMontage filing was amended, in response to ECN comments, to reveal the identity of Nasdaq market participants trading through SIZE by affixing the MPID of the sender on delivered orders and identifying the contra-parties in execution reports.[49] With regard to trade reports, the system will essentially work in the manner that it does today for Order Delivery ECNs when their quote is hit, which permits them to evaluate their risk on a trade-by-trade basis.[50] Accordingly, the Commission believes that Nasdaq has reasonably balanced the divergent interests of its members in a manner that is consistent with the Act.

The Commission believes that Nasdaq has also adequately addressed concerns related to risk management. In particular, under the proposed rule change, Nasdaq will: (1) Provide an intra-day concentration report that will disclose a member's aggregate dollar value of purchases and sales with other members with whom it has traded anonymously; (2) report the identities of the members and the aggregated trading listed on the intra-day concentration reports after 4 p.m. Eastern Time; (3) provide the NSCC with real-time trade information for trades executed in SuperMontage; and (4) coordinate disclosure with the NSCC of trades executed anonymously with a firm that the NSCC has ceased to act for and any firms that cleared through that the NSCC participant.

The Commission believes that this information will assist market participants in managing their risk. The Commission emphasizes that the NSCC and Nasdaq will continue to maintain the identities of all contra-parties for trades that occur through SIZE. In particular, the NSCC will be able to continue its normal risk management functions and settle anonymous trades in the manner that it does today. The only difference will be that the NSCC will withhold the identities of the contra-parties on the contract sheets issued to participants to preserve anonymity through settlement.

The Commission also believes that the proposal should enhance NSCC's ability to incorporate trade execution information into its risk analysis since Nasdaq will be providing this information on a real-time basis. The Commission believes that this may assist the NSCC in deciding sooner to cease to act for a participant, which would prevent other members from executing any additional trades with the firm or a firm that clears through that participant. The Commission notes that Nasdaq developed this process in conjunction with the NSCC and believes that it is consistent with section 15A(b)(6), which requires, in part, that the rules of the NASD foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.[51]

The Commission notes that Bloomberg and Brut stated that the proposal created a systemic risk due to Nasdaq's failure to guarantee trades prior to the attachment of the NSCC guarantee at T + 1.[52] After carefully considering these comments and Nasdaq's response, the Commission does not believe that the proposed rule change adds new risk that does not currently exist for Nasdaq market participants. Currently, Nasdaq does not act as a guarantor of trades prior to the NSCC guarantee attaching, [53] and

[46] *See* Bloomberg Letter.

[47] *See* Citigroup Letter.

[48] *See* Notice, *supra* note 5.

[49] Specifically, Nasdaq amended the original SuperMontage filing, in response to comments regarding credit risk by Bloomberg and Island, so that execution reports immediately revealed the identities of contra-parties for trades that occurred through SIZE. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020, 8033 (January 26, 2001) (''Original SuperMontage Approval Order'').

[50] Bloomberg suggested that Nasdaq could have opted to reveal the contra-party identity through an execution file at the end of the trading day. Nasdaq, however, believed it would be unfair to those members that traded with Bloomberg to expose their identities immediately while masking Bloomberg's identity until the end of the day. *See* Nasdaq Response Letter.

[51] *See* Securities Exchange Act Release Nos. 48122 (July 2, 2003), 68 FR 41410 (July 11, 2003) (Notice of File No. NSCC–2003–14) and 48526 (September 23, 2003) (Order approving File No. NSCC–2003–14 to allow NSCC to list an acronym instead of the actual contra-side for a trade in its report of trade data to members).

[52] Generally, transactions are guaranteed as of the later of: (i) Midnight of T + 1, and (ii) midnight of the day they are reported as compared or as of midnight on the day they appear on T-Contracts for locked-in trades *See* Addendum K to NSCC Rules and Procedures for additional explanation.

[53] *See* NASD Rule 4705(g). The Commission notes that other self-regulatory organizations expressly

Continued

Nasdaq members are obligated to settle all matched trades reported to the NSCC prior to the NSCC guarantee.[54] This proposal does not change the responsibilities of Nasdaq, its members, or the NSCC. The Commission notes that, like today, a firm's primary exposure prior to T + 1, when the NSCC guarantee attaches, would be its contra-party defaulting on the trade. This risk exists today. Further, to the extent that market participants are concerned with their ability to effectively monitor and manage their risk exposure as a result of anonymous trades, the Commission notes that Nasdaq will provide intra-day concentration reports that will disclose a member's aggregate dollar value of purchases and sales with other members with whom it has traded anonymously. This information should assist members in calculating a worst-case scenario and allow them to take risk-limiting actions, if desired.

The Commission has long held the view that competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system. The Commission believes that the post-trade anonymity feature being proposed by Nasdaq is a reasonable effort by the NASD to enhance the quality of the Nasdaq market and provide market participants with the benefits of anonymity currently being offered by ECNs and PCXE. The Commission notes that to the extent that market participants are unwilling to trade in SuperMontage because of concerns regarding risk, broker-dealers may continue to use other alternative order routing and execution services such as ECNs, which guarantee trades executed through their systems, exchanges trading Nasdaq securities pursuant to unlisted trading privileges, and the NASD's alternative display facility.

Brut also requested that the Commission clarify a broker-dealer's obligations under Rule 17a–3 under the Act with respect to completely anonymous transactions on SuperMontage. Rule 17a–3(a)(1) under the Act requires that broker-dealers make and keep current records of all purchases and sales of securities, including ''the name or other designation of the person from whom purchased or received or to whom sold or delivered.'' Rule 17a–4(a) under the Act requires that the records be preserved for six years, the first two years ''in an easily accessible place.'' Nasdaq has represented and codified in its rules that it will, except in limited circumstances, retain for the period specified in Rule 17a–4(a) a record of the identities of the members that execute anonymous trades through SuperMontage in its original form or a form approved under Rule 17a–6.[55] Commission staff will not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, the broker-dealer relies on Nasdaq's retention of the identities of members that execute anonymous trades through SuperMontage to satisfy the requirements of Rules 17a–3(a)(1) and 17a–4(a) under the Act.[56]

Brut also suggested that the Commission review the procedures and resources that Nasdaq will dedicate to the help desk to coordinate the resolution of erroneous or disputed trades for anonymous contra-parties. The Commission believes that Nasdaq has adequately responded to Brut's comments. As Nasdaq clarified, market participants involved in anonymous trades can use NASD Rule 11890 to resolve erroneous transactions, as well as the help desk. Further, market participants will continue to be able to arbitrate trades since Nasdaq will provide the identity of a contra-party in those instances where one party wishes to arbitrate a dispute.[57] The Commission expects that Nasdaq will continue to monitor its procedures and the adequacy of the help desk resources as post-trade anonymity is utilized and, if necessary, provide additional resources to ensure the maintenance of a fair and orderly market.

The Commission finds good cause for accelerating approval of Amendment Nos. 3, 4, 5, and 7 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 merely clarifies the process by which the Nasdaq would remove a member from SuperMontage if the member failed to maintain a clearing relationship, and makes non-substantive conforming changes to NASD Rules 4705, 5012, and 6120. Amendment No. 4 merely: (1) Conforms its rule text to reflect the mandatory nature of certain disclosures as described in the Notice, (2) responds to comments regarding the operation of the help desk, (3) clarifies Nasdaq's commitment to retain certain records, and (4) ensures that members will be able to satisfy their obligations under Rule 10b–10.[58] Amendment Nos. 5 and 7 merely codify Nasdaq's earlier representation in Amendment Nos. 2 and 4 regarding its retention of information on behalf of its members. The Commission notes Amendment No. 2, which includes Nasdaq's general representation that it would retain contra-party information on behalf of its members, was published for notice and comment. Only one comment, that the Commission be explicit in granting relief, was received on the issue. The Commission believes that these amendments merely clarify the recordkeeping obligations of Nasdaq and its market participants, assist Nasdaq members in complying with their Rule 10b–10 obligations, and do not raise any substantive issues. The Commission finds specifically that Amendment Nos. 3, 4, 5, and 7 are consistent with section 15A(b)(6) of the Act as they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[59] Accordingly, pursuant to section 19(b)(2) of the Act,[60] the Commission finds good cause to approve Amendment Nos. 3, 4, 5, and 7 prior to the thirtieth day after notice of the Amendment is published in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4 5, and 7, including whether Amendment Nos. 3, 4, 5, and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary,

disclaim any liability that arises from the use of their facilities. *See e.g.*, NYSE Constitution, Article II, Section 6, American Stock Exchange Constitution, Article 4, Section 1(e), and PCXE Rules 7.42 and 13.2.

[54] *See* NASD Rules 4712 and 6160.

[55] *See* Amendment Nos. 2, 4, 5, and 7, *supra* notes 4, 9, 10, and 12, respectively.

[56] The Commission notes that a broker-dealer has the responsibility to make, keep current, and preserve records of all purchases and sales of securities in accordance with Exchange Act Rules 17a–3 and 17a–4 for trades through SuperMontage if the broker-dealer knows the identity of the contra-party, including those instances where Nasdaq discloses the contra-party to a trade (*e.g.*, internalized trades). Also, a member that submits a Non-Attributable Quote/Order that is a Preferenced Order to another member retains the recordkeeping responsibilities described above because that member would know the identity of the contra-party to which it sent the Preferenced Order. In addition, even where the broker-dealer does not know the identity of the contra-party, the broker-dealer retains the responsibility to maintain such records, except for a record of the identity of the contra-party.

[57] *See* Nasdaq Response Letter.

[58] *See also* Rule 10b–10 Exemption Request, *supra* note 23. The Division, pursuant to delegated authority, granted limited exemptive relief from the contra-party identity requirement of Rule 10b–10(a)(2)(i)(A) to NASD members using the post-trade anonymity feature. Letter from Brian A. Bussey, Assistant Chief Counsel, Division, Commission, to Edward S. Knight, Executive Vice President, Nasdaq, dated September 23, 2003.

[59] 15 U.S.C. 78*o*–3(b)(6).

[60] 15 U.S.C. 78s(b)(2).

Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 3, 4, 5, and 7 that are filed with the Commission, and all written communications relating to Amendment Nos. 3, 4, 5, and 7 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–85, and should be submitted by October 21, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[61] that the proposed rule change (SR–NASD–2003–85), as amended, be, and hereby is, approved.[62]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24757 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[61] 15 U.S.C. 78s(b)(2).

[62] Nasdaq intends to implement the proposed rule change on September 29, 2003. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on September 23, 2003.

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48526; File No. SR–NSCC–2003–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Anonymity Features on Trading Systems

September 23, 2003.

I. Introduction

On June 19, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 23, 2003, amended proposed rule change SR–NSCC–2003–14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on July 11, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Pursuant to the rule filing, NSCC is adding language to Section II.C.1 of NSCC Rules and Procedures[3] whereby NSCC may receive locked-in trade data from a self-regulatory organization (''SRO'') that operates a trading system that provides trade anonymity.[4] If trade data received from an SRO is from an anonymous trade, NSCC in reporting back to its members may report such trades identifying as the countraside an acronym selected by the SRO instead of naming the actual contraside. In the case of anonymous trades, the contraside shall be deemed to be one of the entities the SRO includes as an entity eligible to participate in the anonymous trading system. New language is also being added to Section II.C.1 to provide that if NSCC ceases to act for a member which is the unnamed contraside of an anonymous trade or trades and if NSCC determines that the anonymous trade or trades should be exited from trade processing, the SRO providing the anonymous trading system will be responsible for identifying to other members which of their trades are with the member for which NSCC has ceased to act.

In connection with this filing, the National Association of Securities Dealers, Inc. (''NASD'') filed and the Commission approved a proposed rule change that allows the NASD to add an anonymity feature to the Nasdaq Stock Market's SuperMontage trading system.[5]

I. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The trade anonymity feature is a valued service that trading systems like the Nasdaq want to be able to provide to their members. The Commission finds that by amending its rules to provide for the clearance and settlement of anonymous trades, NSCC's proposed rule change should help to promote the prompt and accurate clearance and settlement of such transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24749 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48122 (July 2, 2003), 68 FR 41410.

[3] NSCC recently added a new Section II.C.1 to its rules. Securities Exchange Act Release No. 48141 (July 8, 2003), 68 FR 42153 (July 16, 2003) [File No. SR-NSCC–2003–12].

[4] In a trading system that provides trade anonymity, the identity of at least one side of a trade is not revealed to the other side at the time of the trade.

[5] Securities Exchange Act Release Nos. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) [File No. SR–NASD–2003–85] and 48526 (September 23, 2003).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48533; File No. SR–PCX–2003–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Posting Period for Membership Applications

September 24, 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 August 26, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Exchange, Inc. (''PCX'' or ''Exchange'') is proposing to amend its rules to modify the period during which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the name of an applicant for membership must be published to other Exchange members. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX 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 PCX reviewed its membership posting requirements relative to those of other option exchanges. In doing so, the PCX concluded that the current membership posting requirements were enacted at a time when electronic communication was not as fast or as prevalent as it is today. As a result, the Exchange's current rule requiring a new applicant for membership be posted for ten (10) calendar days is antiquated and unduly burdensome on the potential applicant. Therefore, the Exchange is proposing to amend its Rule 1.6(b) and Rule 6.44(a). The proposed rule will require that following receipt of a membership application, the Exchange shall post the applicant's name for a period of three (3) business days. The PCX Membership Committee may shorten or waive the posting period for an applicant if it determines that extenuating circumstances warrant such action. Applicants seeking to shorten or waive the posting period are required to submit a written statement that sufficiently describes the basis for their request. In reviewing a request to shorten or waive the three (3) business day posting period, the Membership Committee will consider factors such as the applicant's capitalization, options industry experience, disciplinary history, affiliations with other self regulatory organizations and any other factors deemed relevant by the Committee. An applicant whose request to shorten or waive the three (3) business day posting period is denied will not be given the opportunity to appeal such decision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(i) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

Pursuant to Rule 19b–4(f)(6)(iii),[9] a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.[10]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] Accelerating the operative date will allow for a more efficient and effective market operation by enabling Exchange access to new members in a more timely manner. For this reason, the Commission designates the proposed rule change to be effective and operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] In its original filing, PCX inadvertently also had requested that the Commission waive the five day pre-filing period. PCX had, in fact, already provided the Commission with the appropriate five day notice. Telephone conference among Steven B. Matlin, Peter D. Bloom, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission (September 16, 2003).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 the File No. SR–PCX–2003–44 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24753 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48532; File No. SR–PCX–2003–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for New ETP Holder Applicants and To Eliminate PCXE Rule 2.3(b)

September 24, 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 August 26, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 22, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by eliminating PCXE Rule 2.3(b) that provides for a ten-day posting period of the name of new ETP Holder applicants in the Exchange's Weekly Bulletin. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX 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

As part of its continuing efforts to enhance participation on the Archipelago Exchange (''ArcaEx'') facility, the PCX is proposing to expedite the timeframe in which new ETP Holders[4] shall be granted approval for an ETP[5] to effect transactions on the Exchange's trading facility. The Exchange is proposing to eliminate PCXE Rule 2.3(b) so that the required posting period for new ETP Holders is eliminated.

The Exchange's current rules governing application procedures for ETP Holders are set forth in PCXE Rule 2.3. Presently, Rule 2.3(b) provides that upon receipt of an application for an ETP, the applicant's name will be published for at least a ten calendar day period in the Exchange's Weekly Bulletin before approving or rejecting the application. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities utilized posting rules to notify members of parties interested in joining the exchange. The Exchange believes that because PCXE is a demutualized organization in which there are no ownership or voting rights, the posting period is not a critical part of the application process. Accordingly, the Exchange proposes to amend PCXE Rule 2.3 to eliminate subsection (b) that defines the posting period. The Exchange intends to retain all other aspects of the application process as noted in PCXE Rule 2.3 with respect to determining whether to approve an application for an ETP Holder.

The Exchange believes that the elimination of the aforementioned posting process promotes a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act.[8] While PCXE is demutualized and therefore does not contain the traditional approval process for its applicants as a membership based exchange, the fair representation requirements of Section 6(b)(3) of the Act would still be satisfied after the proposed rule change is approved through the ETP representative on the PCX Board of Governors.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Regulatory Policy, PCX, to Geoffrey Pemble, Special Counsel, Division of Market Regulation (''Division''), Commission, dated September 17, 2003. In Amendment No. 1, the PCX noted that a sentence contained in its original filing (''Furthermore, the Exchange believes the elimination of this requirement is consistent with Section 6(b)(3) of the Act'') should have been placed in the ''Basis'' section of the filing, rather than the ''Purpose'' section. In addition, the Exchange provided additional justification for its proposal under Section 6(b)(3) of the Act. This additional text is contained in the ''Basis'' section below.

[4] *See* PCXE Rule 1.1(n) (definition of ''ETP Holder'').

[5] *See* PCXE Rule 1.1(m) (definition of ''ETP'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(3).

[9] *See* Amendment No. 1, *supra* note 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act [10] and subparagraph (f)(6) of Rule 19b-4 thereunder.[11] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

Pursuant to Rule 19b–4(f)(6)(iii),[14] a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.[15]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] Accelerating the operative date will allow for a more efficient and effective market operation by enabling Exchange access to new ETP Holders in a more timely manner. For this reason, the Commission designates the proposed rule change to be effective and operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2003–43 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24759 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b-4(f)(6)(iii).

[15] In its original filing, PCX inadvertently also had requested that the Commission waive the five day pre-filing period. PCX had, in fact, already provided the Commission with the appropriate five day notice. Telephone conference among Steven B. Matlin, Peter D. Bloom, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission (September 16, 2003).

[16] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 22, 2003, the date that the Exchange filed Amendment No. 1.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48531; File No. SR–Phlx–2003–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On June 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to Exchange By-Law 12–11 to provide that the Options Clearing Corporation (''OCC'') will have no liability to Phlx members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage (''Linkage''). The proposed rule change was published for comment in the **Federal Register** on August 19, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6(b) of the Act [5] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Phlx, along with the other exchanges that are Participants in the Linkage Plan, entered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48323 (August 12, 2003), 68 FR 49835.

[4] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

into an agreement with the OCC, which operates the central core or ''hub'' to and from which all Linkage orders are routed.[7] In the Agreement, the Phlx committed to file a proposed rule change with the Commission that would limit the liability of the OCC to Phlx members. The Commission believes that this proposed rule change should foster cooperation and promote a relationship between the Phlx and the OCC that is conducive to the effective operation of the Linkage.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Phlx–2003–43) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24758 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

[7] Linkage Project and Facilities Management Agreement (''the Agreement'') (January 30, 2003).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3544]

State of Indiana (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 15, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on August 26, 2003 and continuing through September 15, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 4, 2003, and for economic injury the deadline is June 7, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 24, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–24689 Filed 9–29–03; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3550]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration for Public Assistance on August 23, 2003, and subsequent amendments closing the incident period effective September 12, 2003 and adding Individual Assistance on September 19, 2003, I find that Lackawanna County in the Commonwealth of Pennsylvania constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred on July 21, 2003 and continuing through September 12, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 18, 2003 and for economic injury until the close of business on June 21, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Luzerne, Monroe, Susquehanna, Wayne, and Wyoming in the Commonwealth of Pennsylvania.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available Elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 355011. For economic injury, the number is 9X1200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 23, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24687 Filed 9–29–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3546]

Commonwealth of Virginia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 22, 2003, the above numbered declaration is hereby amended to include the Independent Cities of Colonial Heights, Danville, Falls Church, Fairfax, Petersburg, Richmond, Staunton, and Waynesboro, and the counties of Arlington, Augusta, Brunswick, Caroline, Chesterfield, Essex, Fairfax, Fluvanna, Goochland, Henrico, Mecklenburg, Orange, Page, Prince William, Rockbridge, Spotsylvania, and Stafford Counties in the Commonwealth of Virginia as disaster areas due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Albemarle, Alleghany, Amelia, Amherst, Bath, Bedford, Botetourt, Buckingham, Charlotte, Culpeper, Cumberland, Fauquier, Greene, Halifax, Hanover, Highland, King William, Loudoun, Louisa, Lunenburg, Madison, Nelson, Nottoway, Pittsylvania, Powhatan, Rappahannock, Rockingham, Shenandoah, and Warren in the Commonwealth of Virginia; Pendleton County in the State of West Virginia; Charles and Montgomery Counties in the State of Maryland; and Granville, Vance, and Warren Counties in the State of North Carolina may be filed until the specified date at the previously designated location. All other counties contiguous to the above named independent cities and primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 23, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24688 Filed 9–29–03; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 4413]

Defense Trade Advisory Group; Notice of Membership

AGENCY: Department of State.

ACTION: Notice.

The U.S. Department of State's Bureau of Political-Military Affairs' Defense Trade Advisory Group (DTAG) is accepting membership applications.

The DTAG was established as a continuing committee under the authority of 22 U.S.C. 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. I *et seq.* (''FACA'').

The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for munitions exports. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the U.S. continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) policy issues on commercial defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, services, and technical data; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions relating to actions designed to carry out the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs on the basis of individual substantive and technical expertise and qualifications, and are drawn from a representative cross-section of U.S. defense industry, association, academic, and foundation personnel, including appropriate technical and military experts. All DTAG members shall be aware of the Department of State's mandate that arms transfers must further U.S. national security and foreign policy interests. DTAG members also shall be versed in the complexity of commercial defense trade and industrial competitiveness, and all members must be able to advise the Bureau on these matters. Further, DTAG members will not be advocates for or consider themselves as representatives on behalf of their employers or organizations when serving as a member of the DTAG. While members are expected to use their expertise and provide candid advice, national security and foreign policy interests of the U.S. shall be the basis for all policy and technical recommendations.

DTAG members' responsibilities include:

- Service for a consecutive two-year term which may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs (Membership shall automatically terminate for members who fail to attend three consecutive DTAG plenary meetings, which ideally are held bi-annually).
- Making recommendations in accordance with the DTAG Charter and the FACA.
- Making policy and technical recommendations within the scope of the U.S. commercial export control regime as mandated in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed for travel, per diem, and other expenses incurred in connection with their duties as DTAG members.

How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) e-mail address; (7) résumé; (8) summary of qualifications for DTAG membership.

This information may be provided via two methods:

- E-mailed to the following address: *SweeneyMF@state.gov.* In the subject field, please write, ''DTAG Application.''
- Sent in hardcopy to the following address: Mary F. Sweeney, PM/DTCM, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

All applications must be postmarked by October 31, 2003. Also, current DTAG members need not submit an application package in order to be considered for membership in 2004–2006.

Michael T. Dixon,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. 03–24769 Filed 9–29–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

Delegation of Authority 261; Intercountry Adoption Act of 2000

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA) give the Secretary of State authority to serve as head of the United States Central Authority and to perform all functions related to IAA and Convention implementation. The functions of the Secretary of State under the Convention, and the IAA that may be delegated by law, are hereby delegated to the Assistant Secretary for Consular Affairs to ensure that she or he has the necessary and appropriate authority to perform those functions vested in the Secretary of State by the Convention, the IAA, or any implementing regulations.

1. General Delegation

(a) By virtue of the authority vested in me as Secretary of State and except as provided in section 1(b), I hereby delegate to the Assistant Secretary for Consular Affairs, to the extent authorized by law, all functions relating to intercountry adoptions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order now or hereafter issued, including the Intercountry Adoption Act of 2000, Public Law 106–279 (October 6, 2000) (hereinafter referred to as the ''IAA'').

(b) There are hereby excluded from the authorities delegated under section 1(a) the functions conferred by section 403(b) of the IAA, relating to the establishment of fees for certain intercountry adoption services undertaken by the Department of State, which functions are hereby delegated to the Under Secretary for Management.

(c) Nothing in this delegation shall be construed to delegate the authority vested in the Secretary of State by section 502(b) of the IAA, relating to case-by-case waivers in individual adoption cases of the requirements of the IAA or regulations issued under the IAA, or of any other authority that by law may not be delegated.

2. Technical Provisions

(a) Notwithstanding this delegation of authority, the Secretary of State, the Deputy Secretary of State, and the Under Secretary of State for

Management may exercise any function delegated to the Assistant Secretary for Consular Affairs by this delegation. The Secretary of State and the Deputy Secretary of State may exercise the functions conferred by section 403(b) of the IAA and delegated under section 1(b) to the Under Secretary for Management.

(b) As used in this delegation of authority, the term ''functions'' includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, determination, or activity.

(c) The functions delegated by this delegation of authority may be redelegated to the extent authorized by law except that the authority of the Secretary of State under subsection 204(c) of the IAA, relating to the temporary and permanent debarment of adoption service providers, may not be redelegated.

(d) Any reference in this delegation of authority to any act, executive order, determination, delegation of authority, regulation or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time.

(e) This delegation shall be published in the **Federal Register** and is effective upon the date of my signature.

Dated: September 16, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–24768 Filed 9–29–03; 8:45 am]

BILLING CODE 4710–06–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Bahrain Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Bahrain Free Trade Agreement. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than December 1, 2003.

ADDRESSES: Submissions by electronic mail: *FR0099@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to David J. Brooks, Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On August 4, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Bahrain. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/new/fta/Bahrain/2003–08–04-notification-house.pdf, http://www.ustr.gov/new/fta/Bahrain/2003–08–04-notification-senate.pdf.*

The TPSC has invited the public to provide written comments and/or oral testimony at a public hearing on November 5, 2003 in order to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (68 FR 51062) (August 25, 2003).

An FTA with Bahrain will promote the President's initiative to advance economic reforms in the Middle East and the Persian Gulf, moving us closer to the creation of a Middle East Free Trade Area. A U.S.-Bahrain FTA will build on the FTAs that we already have with Israel and Jordan, as well as the FTA that we are currently negotiating with Morocco. A comprehensive FTA will also provide an opportunity to work with Bahrain to encourage other members of the Gulf Cooperation Council to adopt high trade and investment standards.

In 2002, the United States exported $419.2 million worth of aircraft, machinery, vehicles, pharmaceutical products, toys, games, sports equipment, and other goods to Bahrain. An FTA with Bahrain is expected to benefit American manufacturers—as well as U.S. exports of meats and high-value processed agricultural products—by enhancing access to Bahrain's market and promoting Bahrain's role as a regional business hub for the Gulf. An FTA is also expected to provide new export opportunities for U.S. services firms in sectors such as telecommunications, finance, distribution, energy, construction, engineering, health care, legal services, accountancy, tourism and travel, and environmental services. An FTA will also support Bahrain's commitment to transparency, openness, and the rule of law, thereby enhancing respect for intellectual property, labor rights, and environmental protection.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: ''United States—Bahrain FTA Environmental Review'' followed by ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on Bahrain FTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated August 25, 2003 (68 FR 51062)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site *http://www.ustr.gov.*

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–24633 Filed 9–29–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Re-scheduled Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of re-scheduled public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) has re-scheduled the public hearing that was to be held to assist the Office of the United States Trade Representative (USTR) in its preparation of its annual report to the Congress on China's compliance with the commitments that it made in connection with its accession to the World Trade Organization (WTO).

DATES: The public hearing concerning China's compliance with its WTO commitments will be held on Friday, October 3, 2003 in the Truman Room at the White House Conference Center, 726 Jackson Place NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Director of Monitoring and Enforcement for China, (202) 395–3900, or David L. Weller, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: On July 21, 2003, the TPSC published a Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments in the **Federal Register** (68 FR 43247). In that notice, the TPSC scheduled a public hearing for Thursday, September 18, 2003. The TPSC subsequently had to postpone the hearing because Federal Government offices were closed that day due to Hurricane Isabel.

The TPSC will hold the public hearing concerning China's compliance with its WTO commitments on Friday, October 3, 2003, beginning at 10 a.m., in the Truman Room at the White House Conference Center, which is located at 726 Jackson Place, NW., Washington, DC 20006.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–24634 Filed 9–29–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

San Francisco Municipal Railway Department

[Waiver Petition Docket Number FRA–2003–15988]

San Francisco Municipal Railway Department (MUNI) located in San Francisco, California, seeks a permanent waiver of compliance from Title 49 of the CFR for operation of an extension of an existing light rail line at a ''limited connection'' with two existing Union Pacific Railroad (UPRR) industry lead tracks. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,* 65 FR 42529 (July 10, 2000). *See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,* 65 FR 42626 (July 10, 2000).

In regards to this, MUNI plans to construct its 5.4 mile double-track Third Street Light Rail Project, which is an extension of the City's existing 35 mile light rail system, crossing two existing single-track freight railroad (UPRR) industry lead tracks via at grade rail-crossings. MUNI is a light rail transit operation and except for these minor crossing connections, will not share

track or any connection to the general system. MUNI has agreed to a long-term lease with UPRR to operate and maintain the respective shared crossings and interlockings in accordance with FRA standards. MUNI is seeking a permanent waiver of compliance from certain CFR parts of title 49, specifically Part 223 Safety Glazing Standards-Locomotives, Passenger Cars and Cabooses Part 238 Passenger Equipment Safety Standards, and part 219 Control of Alcohol & Drug Use (as a light rail operation, MUNI adheres to an accepted drug policy established by the FTA).

Since FRA has not yet completed its investigation of MUNI's petition, the agency takes no position at this time on the merits of MUNI's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board to participate in the board's consideration of MUNI's waiver petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15988) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on September 24, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–24744 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–14810; Notice 1]

Evenflo Company, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Evenflo Company, Inc. (''Evenflo'') of Vandalia, Ohio, has determined that as many as 742,736 child restraint systems and 633 accessory tether kits may fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defects and Noncompliance Reports.'' Evenflo has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120, and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 213, Paragraph S5.9(b) requires ''In the case of each child restraint system manufactured on or after September 1, 1999 and that has components for attaching the system to a tether anchorage, those components shall include a tether hook that conforms to the configuration and geometry specified in Figure 11 of this standard.'' Figure 11 specifies that the height of the tether hook shall not exceed a maximum of 20 millimeters.

In its Part 573 Report filed with the agency on February 3, 2003, Evenflo stated that ''On the afternoon of January 28, 2003, a company seeking to supply Evenflo with tether hooks for child restraints advised Evenflo that it believed some of the tether hooks currently used by Evenflo, as well as other child restraint manufacturers, did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). Evenflo undertook an investigation, and on January 31, 2003 determined that some tether hooks supplied by SX Industries of Canton, Massachusetts did not meet Evenflo's engineering specifications and did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). A percentage of the hooks sampled by Evenflo measured between 20.11 and 20.39 millimeters.'' Evenflo estimates that, based on its sampling of products, between 70 percent and 80 percent of the 742,736 child restraints and 636 accessory tether kits manufactured between June 15, 2002 and January 30, 2003 contain the subject noncompliance.

Evenflo believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Evenflo supports its application for inconsequential noncompliance with the following:

Installation Testing Confirms Non-Conformance Will Not Adversely Affect Use of Tethers. In connection with this matter, Evenflo undertook installation testing on 207 different models (after eliminating duplicate tests on the same model performed by different test engineers [1]) of vehicles to ensure that the non-compliance would have no adverse affect on the ability of consumers to use their tethers. For this testing, Evenflo chose two of the tether hooks in its possession which exhibited the greatest non-conformance (those that were furthest from the requisite 20 millimeters specified in the Standard). These hooks measured 20.30 mm and 20.38 mm. Although 207 different models of vehicles were examined, where applicable, all three tether attachment points [2] in each vehicle were separately evaluated (resulting in 586 unique data points). In every one of the 586 unique installation points the non-conforming tethers properly attached to the vehicle's tether attachment point * * * Based upon this testing, it is clear that the non-compliance is transparent to consumers, and will in no way adversely affect the consumer's ability to use his/her tether.

Dynamic Sled Testing Conclusively Demonstrates No Adverse Performance In Child Restraints. Although Evenflo cannot be certain of the number, we estimate that at least one hundred (100) dynamic sled tests were conducted (using the protocol set forth in FMVSS213) on restraints which likely would have been equipped with tether hooks that did not meet the dimensional requirements of S5.9(b) and Figure 11. In

[1] The testing, which was conducted by two different test engineers, resulted in 21 vehicles of the same model and model year being tested by each test engineer. The duplicates of these tests appear in the attached test reports, but were eliminated from the numbers provided herein (to prevent testing conducted on the same model vehicle from being counted twice).

[2] As can be seen from the attached test reports, some vehicles had less than three tether attachment points, and some vehicles had more than three attachment points. For each vehicle tested, the test engineers tested every tether attachment point in the vehicle which they could locate.

none of these tests did the tether hook malfunction or improperly perform in any manner. Evenflo is confident that the non-compliance has no adverse impact of the dynamic performance of the child restraints.

Based on the above, Evenflo argued that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Evenflo requested that it be exempted from the notice and remedy procedures of the Vehicle Safety Act.

You may submit comments on the application described above. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Please submit two copies of your comments, including the attachments, to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 30, 2003.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 25, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–24742 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16066; Notice 1]

Subaru of America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Subaru of America, Inc. (Subaru) has determined that approximately 2,531 model year 2004 Subaru Impreza STi vehicles do meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 108, S7.7(e) on ''*headlamp ballast*.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Subaru has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' A copy of the petition may be found in this docket.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The affected vehicles were produced during the period of February 4, 2003 through July 9, 2003 at Ichikoh Industries, Ltd (Ichikoh), the HID headlamp assembly supplier. The affected headlamps are equipped with a ballast that is currently registered in docket No. NHTSA–98–3397. However, ballast units without all of the label information required in FMVSS No. 108, S7. 7 (e) were used by Ichikoh to assemble a complete headlamp assembly.

Subaru believes that this noncompliance on ballast marking is inconsequential for motor vehicle safety for the following reasons: (1) The ballast (part no.: NZMIC111LAC1000) and ignition module (part no.: NZMIC211LAC1000) used in these headlamp assemblies are the same ones as registered by Matsushita Electric Works, Ltd. according to part 564 except they are missing the information label. For this reason, Subaru believes that this noncompliance will not affect the luminous intensity distribution, mechanical performance or any other headlamp performance characteristic required by FMVSS No. 108. (2) The ballast is designed to have high durability during the vehicle's lifetime and Subaru believes that the ballast, as well as the headlamp assembly, will not need to be replaced from a lack of durability. (3) A properly affixed ballast information label, which is on the bottom surface of the ballast, is not visible unless the headlamp assembly is removed from the vehicle.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Fax: 1–202–493–2251, or submit to Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically.

The application and supporting materials and all comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 30, 2003.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: September 25, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–24743 Filed 9–29–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket 34075]

Six County Association of Governments—Construction and Operation—Rail Line Between Levan and Salina, UT

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On July 30, 2001 the Six County Association of Governments (SCAOG) filed a Petition for Exemption with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction of a new rail line between Levan and Salina, Utah. The project would involve approximately 45 miles of new rail line and ancillary facilities. Because the construction and operation of this project has the potential to result in

significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. The purpose of this Notice of Intent is to notify individuals and agencies interested in or affected by the proposed project of the decision to require an EIS. SEA will hold public scoping meetings as part of the EIS process.

SUPPLEMENTARY INFORMATION:

Background: The proposed project, known as the Central Utah Rail Project, includes construction and operation of approximately 45 miles of new rail line connecting the existing Union Pacific Railroad (UPRR) line near Levan, Utah to a proposed coal transfer terminal facility near Salina, Utah. Implementation of the proposed project would restore rail service to the Sevier Valley, providing a more direct connection to rail service for the coal industry (primarily the Southern Utah Fuels Company), provide rail service to other shippers in the Sevier Valley, and reduce the number of trucks on highways in the Sevier Valley. The EIS will analyze the potential impacts of the proposed route, the ''no-build'' alternative, and an alternative alignment.

Environmental Review Process: The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. SEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS. SEA will soon develop and make available a draft scope of study for the EIS and provide a period for the submission of written comments on it. Concurrently, scoping meetings will be held to provide further opportunities for public involvement and input into the scoping process. The dates, time and locations for the scoping meetings are as follows:

Wednesday, October 22, 2003, 6 p.m. to 8 p.m., North Sevier High School, 350 West 400 North, Salina, Utah, School Office (435) 529–3717.

Thursday, October 23, 2003, 6 p.m. to 8 p.m., Gunnison City Hall, 38 West Center Street, Gunnison, Utah, Office (435) 528–7969.

Following the issuance of a draft scope and the comment period, SEA will issue a final scope of study for the EIS.

After issuing the final scope of study, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. The DEIS will be made available upon its completion for public and agency review and comment. SEA will prepare a Final EIS (FEIS) that considers comments on the DEIS from the public and agencies. In reaching its decision in this case, the Board will take into account the DEIS, the FEIS, and all environmental comments that are received.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001, at 1–202–565–1530. (TDD for the hearing impaired 1–800–877–8339). The website for the Surface Transportation Board is *http://www.stb.dot.gov.*

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 03–24740 Filed 9–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–854X]

Allegheny & Eastern Railroad, Inc.—Abandonment Exemption—in Elk and Cameron Counties, PA

Allegheny & Eastern Railroad, Inc. (A&E), has filed a notice of exemption under 49 CFR 1152 Subpart F__*Exempt Abandonments* to abandon an 18.9-mile line of railroad between milepost 131, near St. Marys, in Elk County, and milepost 149.9, southeast of Emporium, in Cameron County, PA. The line traverses United States Postal Service Zip Codes 15834 and 15857.[1]

A&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 31, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 14, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 21, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to A&E's representative: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 JFK Blvd., Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

A&E has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 6, 2003. Interested persons may obtain a copy of

[1] Pursuant to 49 CFR 1150.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. While the applicant initially indicated a proposed consummation date of October 30, 2003, because the verified notice was filed on September 11, 2003, consummation may not take place prior to October 31, 2003. By letter filed on September 22, 2003, applicant's representative confirmed that the consummation date will be after October 31, 2003.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), A&E shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by A&E's filing of a notice of consummation by October 1, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''http://www.stb.dot.gov.''

Decided: September 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–24739 Filed 9–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5434 and 5434–A

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 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

DATES: Written comments should be received on or before December 1, 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 forms and instructions 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: Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

OMB Number: 1545–0951.

Form Number: Forms 5434 and 5434–A.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under ERISA. The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 38 minutes.

Estimated Total Annual Burden Hours: 3,800.

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: September 24, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24791 Filed 9–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 30, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0636.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Accelerated Payment; Certifications Required from Individuals Electing Accelerated Payments; and Agreement with Educational Institution.

OMB Control Number: 2900–0636.

Type of Review: Revision of a currently approved collection.

Abstract: A claimant who wishes to receive an accelerated payment of educational assistance under the Montgomery GI Bill (MGIB) must elect to do so. VA uses the request to support the claimant's election and to determine whether the claimant wants this option over the established monthly payments. The claimant is required to report that the payment was received and how the payment was used. In addition, schools are allowed to receive an advance MGIB accelerated payment on behalf of a claimant enrolled at that institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 3, 2003, at pages 40022–40023.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,086 hours.

a. Request for Accelerated Payment—167 hours.

b. Certifications Required from Individuals Electing Accelerated Payments—833 hours.

c. Agreement with Educational Institutions—86 hours.

Estimated Average Burden Per Respondent:

a. Request for Accelerated Payment—1 minute.

b. Certifications Required from Individuals Electing Accelerated Payments—5 minutes.

c. Agreement with Educational Institutions—3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 13,727

a. Request for Accelerated Payment—6,000.

b. Certifications Required from Individuals Electing Accelerated Payments—6,000.

c. Agreement with Educational Institutions—1,727.

Estimated Annual Responses: 21,727.

a. Request for Accelerated Payment—10,000.

b. Certifications Required from Individuals Electing Accelerated Payments—10,000.

c. Agreement with Educational Institutions—1,727.

Dated: September 16, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–24625 Filed 9–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of New System of Records ''Shipboard Hazard and Defense Integrated Database—VA''.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that each agency publish in the **Federal Register** a notice of the existence and character of its systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''Shipboard Hazard and Defense Integrated Database—VA'' (128VA008A).

DATES: Comment on the establishment of this system of records must be received no later than October 30, 2003. If no public comment is received, the new system will become effective October 30, 2003.

ADDRESSES: Anyone may submit written comments concerning the proposed system of records to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Dat Tran, Acting Director, Data Management and Analysis Service, Office of Policy (008A3), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6482.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Systems of Records

The Shipboard Hazard and Defense (SHAD) Integrated Database, located at VA Central Office (VACO), Washington, DC is a relational database. The database contains demographic, medical, and benefits information on veterans identified as Project 112 participants. Project 112 was the Department of Defense's (DoD) comprehensive program of chemical and biological warfare vulnerability tests, which DoD conducted to determine how to protect U.S. military personnel against these health threats. Project SHAD tests were the shipboard tests. DoD conducted SHAD tests to evaluate the effectiveness of shipboard detection of chemical and biological agents, the effectiveness of protective measures, and risks to U.S. forces. Data for the integrated database was compiled from VA's Compensation and Pension Master Records (CPMR), Beneficiary Identification and Record Locator System (BIRLS), and Inpatient and Outpatient data systems by matching social security numbers to the records of the veterans. The purpose of the Shipboard Hazard and Defense Integrated Database is to combine information about veterans who have been identified by DoD as P–112 participants from multiple VA databases into one database. The comprehensive information will be used by the Veterans Health Administration (VHA) and the Veterans Benefits Administration (VBA) to assess the needs of these veterans, address their concerns about potential health risks, and monitor VA's outreach efforts.

II. Proposed Routine Use of Disclosures of Data in the System

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual. Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Records covered by this system, as deemed necessary and proper, may be disclosed to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time. The purpose of these disclosures should be to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the Armed Services and/or

their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency, or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law. The record(s), however, will not be used for any purpose other than that stated in the request and the organization, agency, or instrumentality must be made aware of the penalty provision of 38 U.S.C. 5701(f).

VA must be able to comply with the requirements of agencies charged with enforcing the law who are conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public health as set forth in state law.

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 United States Code.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation, and in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to NARA for the proper disposition of such records.

5. Disclosure of information, excluding names and address (unless furnished by the requestor) for research purposes determined to be necessary and proper, may be made to epidemiological and other research facilities approved by the Under Secretary for Health.

VA participates in various research programs and activities and must be able to disclose information for research purposes approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents may be disclosed:

(a) To a Federal department or agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

VA must be able to disclose information for research purposes needed to accomplish a statutory purpose of a Federal agency. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

7. In the event that a record maintained by VA indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, state, local or foreign, charged with responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation, or order issued pursuant thereto. However, names and addresses of veterans and their dependents will be released only to Federal entities.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews. Disclosure may be made only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and for seeking accreditation and/or certification of health care facilities and program.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear when:

(a) VA, or any component thereof; or any employee of VA in his or her official capacity; where DOJ or VA has agreed to represent the employee or the U.S.; when VA determines that litigation is likely to affect VA or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or VA is deemed by VA to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which the VA collects the information.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, or will use the information to provide a benefit to VA, or disclosure is required by law.

We have sent the notice of intent to publish and an advance copy of the system notice to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 15, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

128VA008A

SYSTEM NAME:

Shipboard Hazard and Defense Integrated Database—VA.

SYSTEM LOCATION:

The Shipboard Hazard and Defense Integrated Database is maintained at the U.S. Department of Veterans Affairs, Office of Policy, Planning, and Preparedness (008A3), 810 Vermont Avenue NW., Washington, DC 20420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans who DoD has identified as participants in Project 112, a comprehensive program of chemical and biological warfare vulnerability tests conducted to determine how to protect U.S. servicemembers against these health threats.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of: veteran's service number, social security number, name, address, date of birth, test dates, sex, race, marital status, combined degree of disability, VBA (Veterans Benefits Administration) diagnostic codes, disability rating, disability description, service-connection, outreach letter information, names of tests, substances potentially exposed to, means test indicator to determine a veterans eligibility for healthcare, indication for homelessness, purpose of visit, date of visit, and location of visit to VA, Veterans Integrated Service Network (VISN) number of the facility providing healthcare, name of facility visited, principal diagnosis, other diagnoses, medical procedures, indication of Agent Orange exposure and related information, exposure to nose/throat radium treatment administered by DoD, radiation exposure during military service indicator, major diagnostic category of the diagnostic related group, length of stay, self-reported exposure to ionizing radiation in Japan or through nuclear testing, Agent Orange related care provided during admission, patient exposed to environmental care, radiation treatment indicator, discharge date, and bedsection at discharge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 United States Code, section 501.

PURPOSE(S):

The purpose of the Shipboard Hazard and Defense Integrated Database is to combine information about veterans who have been identified by DoD as P–112 participants from multiple VA databases into one database. The comprehensive information will be used to assess the needs of these veterans, to address their concerns of potential health risks, and to monitor VA's outreach efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332 (such as medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus), that information cannot be disclosed under a routine use unless there is also specific statutory authority permitting disclosure.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and the period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Disclosure of information, excluding name and address (unless name and address are furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct federal research necessary to accomplish a statutory purpose of any agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed:

(a) To a federal department or agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologist, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which VA, or any component thereof; or any employee of VA in his or her official capacity; where DOJ or VA has agreed to represent the employee or the U.S.; when VA determines that litigation is likely to affect it or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or VA is deemed by VA to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This information is stored on a secure computer system at U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420.

RETRIEVABILITY:

Records are retrieved by social security number and name.

SAFEGUARDS:

SHAD is stored on a secure computer network with restricted access at the U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. There is minimum risk of unauthorized disclosure. Access to automated records in this system of records is limited to, and under the physical control of VA employees who have a unique identification/password and a need to know of the information contained in the system of records in order to perform their duties. Security personnel control access to the building seven days per week.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS

Acting Director, Data Management & Analysis Service, Office of Policy, Planning and Preparedness (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the Acting Director, Data Management and Analysis Service, Office of Policy, Planning and Preparedness (008A3), U.S. Department of Veterans Affairs, Washington, DC 20420. Inquiries should include the veteran's name, social security number and return address.

RECORD ACCESS PROCEDURES

An individual who seeks access to records maintained under his or her name may write to the Acting Director, Data Management & Analysis Service, Office of Policy, Planning, and Preparedness (008A3), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORDS PROCEDURE

Refer to previous item, ''Record Access Procedures.''

RECORD SOURCE CATEGORIES

Information is obtained from VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, records from VA's Veterans Benefits Administration, Department of Defense, and other Federal agencies.

[FR Doc. 03–24624 Filed 9–29–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 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 HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1473–NC]

RIN 0938–AL94

Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004

Correction

In notice document 03–16397 beginning on page 39763 in the issue of Wednesday, July 2, 2003 make the following correction:

1. On page 39772, in the table, under the heading ''Wage index'', in the 15th entry ''.0944'' should read ''1.0944''.

2. On page 39779, in the same table, under the same heading, in the fourth entry, ''.7983'' should read ''.7923''.

[FR Doc. C3–16397 Filed 9–29–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 30, 2003

Part II

Department of Labor

Office of the Secretary
29 CFR Part 37

Employment and Training Administration
20 CFR Part 667

Use of Federal Financial Assistance for Religious Activities Under the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 37

Employment and Training Administration

20 CFR Part 667

RIN 1291–AA29

Use of Federal Financial Assistance for Religious Activities Under the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary and Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is proposing to amend the interim final regulations that implement the equal opportunity and nondiscrimination provisions of the Workforce Investment Act of 1998 (WIA). Today's proposal would revise a provision in the interim final regulations that prohibits the use of all types of WIA Title I financial assistance for the employment or training of participants in religious activities. Further, the Department of Labor is proposing to amend the regulations that implement the general provisions of WIA, to conform those regulations to the proposed changes to the interim final regulations implementing the equal opportunity and nondiscrimination provisions of WIA.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 1, 2003.

ADDRESSES: Submit comments concerning the proposed amendment to 29 CFR part 37 to Annabelle T. Lockhart, Director, Civil Rights Center (CRC). Electronic mail is the preferred method for submittal of comments regarding 29 CFR part 37. Comments by electronic mail must be clearly identified as pertaining to the proposed amendment to 29 CFR part 37, and sent to *CivilRightsCenter@dol.gov.* Brief comments (maximum of five pages), clearly identified as pertaining to the proposed amendment to 29 CFR part 37, may also be submitted by facsimile machine (FAX) to (202) 693–6505.

Where necessary, hard copies of comments, clearly identified as pertaining to the proposed amendment to 29 CFR part 37, may also be delivered to Director Lockhart at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4123, Washington, DC 20210. Because of delays in mail delivery, CRC suggests that commenters planning to submit comments via U.S. mail place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions regarding the proposed amendments to 29 CFR part 37, whether by mail, e-mail, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning the Civil Rights Center at the numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule will be made available, upon request, in large print and electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternate format, contact CRC at (202) 693–6500 (VOICE) or (202) 693–6515/16 (TTY/TDD). Please note that these are not toll-free numbers. You may also contact CRC at the addresses listed above.

Submit comments concerning the proposed amendments to 20 CFR part 667 to Maria Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, Department of Labor, Room N–5637, 200 Constitution Ave., NW., Washington, DC 20210. If you would like to receive notification that we have received your comments, you should include a self-addressed stamped postcard. You may submit comments by facsimile machine (FAX) to (202) 693–2766. Please note that this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed amendments to 29 CFR Part 37: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693–6500 (VOICE) or (202) 693–6515/16 (TTY/TDD). Please note that these are not toll-free numbers.

Regarding the proposed amendments to 20 CFR part 667: Maria Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, (202) 693–3700 (VOICE) or (202) 877–889–5627 (TTY/TDD). Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing to amend the interim final regulations, codified at 29 CFR part 37, that implement the equal opportunity and nondiscrimination provisions of the Workforce Investment Act of 1998 (WIA). Today's proposal would revise a provision in the interim final regulations that prohibits the use of all types of WIA Title I financial assistance for the employment or training of participants in religious activities. Further, the Department of Labor is proposing to amend the regulations, codified in 20 CFR part 667, that implement the general provisions of WIA, to conform those regulations to the proposed amendments to 29 CFR part 37.

The preamble to this proposed rule is organized as follows:

I. Background—provides a brief description of the statutory and regulatory background of this proposed rule.

II. Overview of the Proposed Amendments—describes the amendments that would be accomplished by this proposed rule and explains the reasons for the amendments.

III. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

The Workforce Investment Act of 1998 (WIA) superseded the Job Training Partnership Act (JTPA) as the Department of Labor's (DOL's) primary mechanism for providing financial assistance for a comprehensive system of employment and training services for adults and dislocated workers, and comprehensive youth activities for eligible youth. In WIA, Congress authorized financial assistance for that system through fiscal year 2003. The Administration is currently working to reauthorize WIA.

WIA has several goals: (1) Enhanced employment, retention and earnings of individuals; (2) increased occupational skills attainment; and (3) improved national economic growth through better productivity and competitiveness. To achieve these goals, WIA provides workforce investment services and activities through a statewide and local network of One-Stop Career Center partners and operators. The One-Stop Career Centers support the employment needs of job seekers and meet the changing human resource requirements of American business by assisting with the recruitment, training and retention of skilled workers.

Section 188 of WIA prohibits discrimination in the One-Stop Career Center system on the bases of race, color, national origin, sex, age,

disability, religion, and political affiliation or belief. Additionally, Section 188 prohibits discrimination against beneficiaries on the basis of participation in a program or activity that is financially assisted under Title I of WIA, and against certain non-citizen beneficiaries who are lawfully admitted to and authorized to work in the United States, on the basis of citizenship.

DOL published an Interim Final Rule (IFR) to implement WIA Section 188 on November 12, 1999, entitled ''Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998,'' 64 FR 61692, codified at 29 CFR part 37. That IFR, which generally carried over the nondiscrimination- and equal opportunity-related policies and procedures in place under JTPA, remains in effect. Because Congress is scheduled to reauthorize WIA, DOL has elected to wait until that reauthorization is completed before publishing a final rule to implement the nondiscrimination and equal opportunity provisions of WIA.

However, it has come to DOL's attention that some of the regulatory restrictions that were in place under JTPA are no longer required under WIA. For this reason, and to permit recipients of DOL financial assistance more choice and greater freedom while obtaining essential employment and training skills, the Department seeks to amend the WIA nondiscrimination IFR. The specific restrictions that are the subject of this NPRM are no longer necessary because the way in which financial assistance for training activities was provided under JTPA was different, in some instances, from the way in which such assistance is provided under WIA. The WIA nondiscrimination IFR bars the use of all types of WIA Title I financial assistance to employ or train participants in religious activities. This broad prohibition is inconsistent with current law, which permits the use of such financial assistance to provide religious training in cases in which participants are given a genuine and independent private choice among training providers, and freely elect to receive training in religious activities, provided the training offered otherwise satisfies the requirements of the program. As a result, the Department believes that 29 CFR part 37 should be amended.

In addition, the regulations promulgated by the Employment and Training Administration (ETA) and codified at 20 CFR part 667, which implement the general provisions of WIA, refer to the provision in 29 CFR part 37 that restricts the use of WIA financial assistance for training in religious activities. Accordingly, ETA's regulations should be revised as well, to conform to the amended language of part 37.

The current language of the regulatory provisions mentioned above may preclude religious organizations that are eligible training providers from receiving indirect Federal financial assistance in exchange for providing religious training, even in those situations in which participants exercise true private choice in selecting the training providers. The current regulatory language may also preclude participants from using WIA financial assistance for religious training in a manner consistent with Federal law. Therefore, the Department is proposing to amend the provisions at issue. *Cf.* Executive Order 13279, 67 FR 77139, 77141 (December 16, 2002) (''Equal Protection of the Laws for Faith-Based and Community Organizations'').

The NPRM would not change the underlying requirements for WIA financially assisted training. For example, participants must qualify as eligible for training, and training services must demonstrate certain linkages to occupations in demand. *See* WIA sec. 134(d)(4).

The Secretary of Labor has rulemaking authority for the parts of the Code of Federal Regulations that would be amended by this proposed rule. The remaining sections of this preamble will explain the reasoning underlying the proposed amendments.

The Department seeks comments on all issues concerning the proposed amendments to 29 CFR part 37 and the concurrent proposed revisions to 20 CFR 667. The Department is interested in comments from current and potential recipients of WIA title I financial assistance as to the effect of participating in the program as permitted in the revised paragraph 37.6(f)(2) on their programs and operations in light of the existing rules and regulations imposed on recipients in 29 CFR Part 37 including paragraph 37.6(c).

II. Overview of the Proposed Amendments

29 CFR Part 37

Proposed Paragraph 37.6(f)(1)

The existing language of paragraph 37.6(f)(1) bars recipients from permitting participants ''to be employed or trained in sectarian activities.'' The provision was not based on any specific statutory authority conferred by WIA or JTPA; rather, as discussed in more detail below, it was a regulatory provision promulgated under JTPA because of the manner in which financial assistance was provided under that program. Because some of the methods used to provide financial assistance under WIA are different from those used under JTPA, the proposal would revise paragraph 37.6(f)(1) to allow for more flexibility based on those differences.

Under JTPA, training institutions received financial assistance, channeled to training providers through State or local governments or private industry councils. The providers that participated under JTPA were selected pursuant to the job training plan established by each service delivery area. Pub. L. 97–300, §§ 104(b)(5), 107(a), (d), 96 Stat. 1322, 1331, 1355–56 (1982). Nothing in the language of JTPA indicates that beneficiaries or participants were provided any opportunity to choose which training providers would receive financial assistance, and the Department did not administer JTPA in a way that allowed participants to exercise true private choice in selecting training providers. *See* Pub. L. No. 97–300, *passim.* Therefore, consistent with constitutional requirements that in certain circumstances restrict direct Federal financial assistance for inherently religious activities in the absence of true private choice, *see,e.g.*, *Bowen* v. *Kendrick,* 487 U.S. 589, 611–12 (1988); *Mitchell* v. *Helms,* 530 U.S. 793, 815–16 (2002) (plurality opinion); *Zelman* v. *Simmons-Harris,* 536 U.S. 639, 649–55 (2002), the prohibition on the use of JTPA financial assistance for ''employment or training in sectarian activities'' was codified in the JTPA regulations promulgated by ETA, in a specific provision that stated that ''the employment or training of participants in sectarian activities is prohibited.'' 59 FR 45760, 45822, § 627.210(b) (September 2, 1994) (final rule).

Under WIA, there are grant programs for which the financial assistance is provided directly to certain programs or activities, as under JTPA. However, much of the financial assistance available under WIA for training of individual beneficiaries is provided as a result of beneficiaries' genuine and independent private choice. The constitutional restrictions on the use of Federal financial assistance to support training in religious activities do not apply where the assistance is provided to religious organizations as a result of such genuine and independent private choices, provided the training otherwise satisfies the requirements of the program. *See Zelman* v. *Simmons-Harris,* 536 U.S. at 652; *see also Witters*

v. *Washington Department of Services for the Blind,* 474 U.S. 481, 488 (1986).

For example, under Section 122 of WIA, a training provider that meets certain statutory criteria may apply to be identified as an eligible provider of training services. 29 U.S.C. 2842(a). Nothing in the statutory criteria excludes religious organizations from being so identified. *Id.* In addition, under WIA Section 134(d)(4), training services for participants or beneficiaries are primarily paid for through individual training accounts (ITAs). 29 U.S.C. 2864(d)(4)(G). For these services, (1) participants select their preferred training provider from a State's list of eligible providers and receive training; and (2) the provider receives payment from the participants' ITAs through electronic transfers of funds, vouchers, or other appropriate methods. *Id.;* 29 U.S.C. 2864(d)(4)(F), ''Consumer Choice Requirements''; 20 CFR 663.410.

The preamble to the WIA nondiscrimination regulations indicates that 29 CFR 37.6(f) ''is directly based on, and implements, Section 188(a)(3) of WIA.'' 64 FR at 61698. This statement is true with regard to existing paragraphs 37.6(f)(2) and (f)(3). *Compare* 29 U.S.C. 2938(a)(3) *with* 29 CFR 37.6(f)(2) and (f)(3). Paragraph 37.6(f)(1), however, originated in the IFR promulgated by ETA to implement the general provisions of WIA, and was merely a carry-over from the JTPA regulations, with no basis in the WIA statute. When the WIA nondiscrimination IFR was promulgated seven months after ETA's IFR, paragraph 37.6(f)(1) was inserted in the nondiscrimination regulations. *Compare* 64 FR 18662, 18729, 18730, §§ 667.266(a), 667.275(b) (April 15, 1999), with 29 CFR 37.6(f)(1). None of the language of the WIA statute, in Section 188(a)(3) or elsewhere addresses the employment or training of beneficiaries in religious activities.

The proposed rule would amend paragraph 37.6(f)(1) to allow religious organizations to receive government financial assistance that is provided indirectly through the genuine and independent private choices of beneficiaries. The proposed new language would allow participants to use their ITAs, or similar training accounts under programs established by States or Local Workforce Investment Areas (LWIAs), for religious training, as long as the training account programs afford participants genuine and independent choice between religious and non-religious training options, and the religious organizations receiving assistance otherwise satisfy the requirements of the program.

The proposed revision to paragraph 37.6(f)(1) would provide that financial assistance provided directly to a religious organization may not be expended for religious employment or training. Further, the revised paragraph would provide that, for purposes of the paragraph, the term ''direct'' would mean financial assistance that is provided at the direction of a governmental entity, or an intermediate organization with the same duties as a governmental entity under this program, as opposed to financial assistance that an organization receives as a result of the genuine and independent choice of a beneficiary. *See Zelman* v. *Simmons-Harris,* 536 U.S. 639.

Proposed Paragraph 37.6(f)(2)

[Current paragraph 37.6(f)(2) would be redesignated paragraph 37.6(f)(3).]

Consistent with the discussion above, the proposal would add a new paragraph 37.6(f)(2) to permit WIA Title I financial assistance to be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers); that mechanism permits participants to direct the financial assistance to the provider of their choice; and the training provider that receives the assistance otherwise satisfies the requirements of the program.

The revision would also be consistent with, and would assist in implementing, the principles underlying Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations,'' issued by President Bush on December 12, 2002, and reprinted at 67 FR 77141 (December 12, 2002). The purposes of Executive Order 13279 include ensuring equal protection of the laws for faith-based and community organizations, and furthering the national effort to expand opportunities for, and strengthening the capacity of, faith-based and community organizations so that they may better meet the social needs in America's communities. In the Department's view, the proposed language for paragraph 37.6(f)(2) is necessary in order to comply with this requirement.

Proposed Paragraphs 37.6(f)(3) and (f)(4)

[Current paragraph 37.6(f)(3) would be redesignated paragraph 37.6(f)(4).]

The existing language of paragraphs 37.6(f)(2) and (f)(3) implements Section 188(a)(3) of the Workforce Investment Act, 29 U.S.C. 2938(a)(3), which precludes participants in a WIA financially assisted program from ''being employed to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship.'' This statutory prohibition covers all forms of financial assistance, including assistance that is provided as a result of the independent and private decisions of participants. WIA Section 188(a)(3) does permit participants to be employed ''with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants.''

Existing paragraph 37.6(f)(2) addresses the employment activities at facilities devoted to religious instruction and worship that are proscribed by WIA Section 188(a)(3) of WIA. The employment activities that WIA Section 188(a)(3) permits at facilities operated by religious organizations are addressed in existing paragraph 37.6(f)(3). In the proposed regulations, existing paragraphs 37.6(f)(2) and (f)(3) would be redesignated as paragraphs 37.6(f)(3) and (f)(4), respectively. In addition, these paragraphs were revised in this proposed rule to make them easier to understand, and to adhere more closely to the language of WIA Section 188(a)(3). The proposed revisions are not intended to alter the meaning of these paragraphs.

20 CFR Part 667

Proposed Paragraphs 667.266(b)(1) and (2)

The prohibition on employing and training participants in religious activities found in the current 29 CFR 37.6(f)(1) is also set forth in 20 CFR 667.266(b)(1) of ETA's current regulations implementing WIA. The proposal would revise the provisions in 20 CFR 667.266(b)(1) to conform them to the proposed revisions to 29 CFR 37.6(f)(1). Thus, paragraph 667.266(b)(1) in the proposed rule would provide that WIA Title I financial assistance provided directly from the State or LWIA to a religious organization may not be expended for religious employment or training. Also, proposed paragraph 667.266(b)(2) would provide that WIA Title I financial assistance may be used for religious employment and training where the State or LWIA has a mechanism for providing such assistance that gives participants a

genuine and independent choice among training providers, as set forth in proposed 29 CFR 37.6(f)(2). Further, the current language of 20 CFR 667.266(b)(2) sets forth the prohibition on employing persons to carry out construction, operation, or maintenance of facilities used for religious instruction or religious worship that is found in 29 CFR 37.6(f)(1). The only change proposed to existing 20 CFR 667.266(b)(2) is to revise the cross-references to 29 CFR 37.6(f)(1) and (f)(2) to 29 CFR 37.6(f)(3) and (f)(4), respectively.

Proposed Paragraph 667.275(b)

The existing language of 20 CFR 667.275(b) also refers to the provision in existing 29 CFR 37.6(f) that prohibits the employment and training of participants in religious activities. Accordingly, the proposed rule would revise 20 CFR 667.275(b) to conform to the proposed revisions to existing 29 CFR 37.6(f). Proposed paragraph 667.275(b) would provide that WIA financial assistance provided directly to a recipient may not be expended for the employment or training of participants in religious activities, but that WIA Title I financial assistance that is provided indirectly may be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers) and the other conditions outlined in 29 CFR 29.37.6(f)(2) are met. Further, proposed paragraph 667.275(b) would state that WIA financial assistance may not be used in employment or training activities that involve the construction or maintenance of any facility used for religious instruction or a place of worship, but that the employment of participants to maintain a facility that is not primarily or inherently devoted to religious instruction or worship is permitted if the organization operating the facility is part of an organization that provides services to participants.

III. Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, ''Regulatory Planning and Review.'' OMB has determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order. However, this rule is not an economically significant regulatory action under the Order, and therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The proposed rule would not substantially change the existing obligation of recipients or entities operating Federally-assisted programs or activities to apply a policy of nondiscrimination and equal opportunity in employment or services. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by any State, local, and tribal governments.

Paperwork Reduction Act

The proposed rule contains no new information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act.

Executive Order 13132

This proposed rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. The 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. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

20 CFR Part 667

Employment, Grant programs—Labor, Reporting and recordkeeping requirements

29 CFR Part 37

Administrative practice and procedure, Discrimination, Civil rights, Equal education opportunity, Equal employment opportunity, Grant programs—Labor, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 667, subpart B, title 20 of the Code of Federal Regulations, and part 37, subpart A, title 29 of the Code of Federal Regulations, are amended to read as set forth below.

Signed at Washington, DC this 22nd day of September, 2003.

Elaine L. Chao,

Secretary of Labor.

Title 20—Employees' Benefits

Chapter V—Employment and Training Administration, Department of Labor

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT (WIA)

1. The authority citation for part 667 is revised to read as follows:

Authority: Section 506(c), Pub. L. 105–220, 112 Stat. 1246 (20 U.S.C. 9276(c)).

2. In § 667.266, the section heading and paragraph (b) are revised to read as follows:

§ 667.266 What are the limitations related to religious activities?

* * * * *

(b) Under these limitations:

(1) WIA title I financial assistance provided directly from the State or LWIA to a religious organization may not be expended for religious employment or training. This limitation is more fully described at 29 CFR 37.6(f)(1). As set forth in 29 CFR 37.6(f)(2), financial assistance provided under title I of WIA may be used to train participants in religious activities where the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers), that mechanism permits participants to direct the financial assistance to the provider of their choice, and the provider receiving the assistance otherwise satisfies the requirements of the program.

(2) Under 29 CFR 37.6(f)(3), participants must not be employed under title I of WIA to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for religious instruction or as a place for religious worship. However, as discussed in 29 CFR 37.6(f)(4), WIA financial assistance may be used for the maintenance of a facility to the extent that it is not primarily or inherently devoted to religious instruction or religious worship and provided that the organization operating the facility is part of a program or activity providing services to WIA participants. (WIA sec. 188(a)(3).)

* * * * *

3. In § 667.275, the section heading and paragraph (b) are revised to read as follows:

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, as well as nonparticipation in religious activities?

* * * * *

(b) Under 29 CFR 37.6(f), WIA financial assistance provided directly to a recipient may not be expended for religious employment or training, but financial assistance provided under title I of WIA may be used to train participants in religious activities, as long as the State or LWIA has established a mechanism for providing such assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers), that mechanism permits participants to direct the financial assistance to the provider of their choice, and the provider receiving the assistance otherwise satisfies the requirements of the program. WIA financial assistance may not be used in employment or training activities that involve the construction, or maintenance of any facility used for religious instruction or as a place of worship, but the employment of participants to maintain a facility to the extent that it is not primarily or inherently devoted to religious instruction or worship is permitted, and provided that the organization operating the facility is part of a program or activity that provides services to participants.

Title 29—Labor

Subtitle A—Office of the Secretary

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

1. The authority citation for part 37 continues to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681.

2. In § 37.6, paragraph (f) is revised to read as follows:

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

* * * * *

(f)(1) No financial assistance provided directly from the State or LWIA to a religious organization may be expended for religious employment or training. For purposes of this paragraph, the term ''direct'' means financial assistance that is provided at the direction of a governmental entity, or an intermediate organization with the same duties as a governmental entity under this program, as opposed to financial assistance that an organization receives as a result of the genuine and independent choice of the beneficiary.

(2) A recipient may permit WIA title I financial assistance to be used to train participants in religious activities if:

(i) The State or LWIA has established a mechanism for providing such financial assistance that gives participants a genuine and independent choice among training providers (including religious and non-religious providers);

(ii) The mechanism established by the State or LWIA includes an Individual Training Account (ITA), voucher, coupon, certificate, or other similar procedure through which participants direct the WIA Title I financial assistance to the provider of their choice; and

(iii) The selected provider otherwise satisfies the requirements of the program.

(3) Except under the circumstances described in paragraph (f)(4) below, a recipient must not permit participants to engage in employment or training activities that involve the construction, operation, or maintenance of any facility, or any part of a facility, that is used, or will be used, for religious instruction or as a place of religious worship.

(4) A recipient may permit participants to engage in employment or training activities that involve the maintenance of a facility that is used, or will be used, for religious instruction or religious worship,

(i) To the extent that the facility is not primarily or inherently devoted to religious instruction or religious worship, and

(ii) Provided that the organization operating the facility is part of a program or activity providing services to participants.

[FR Doc. 03–24296 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–23–P; 4510–30–P

Federal Register

Tuesday,
September 30, 2003

Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

Affirmative Action and Nondiscrimination Obligations of Government Contractors, Executive Order 11246, as Amended; Exemption for Religious Entities; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

RIN 1215–AB39

Affirmative Action and Nondiscrimination Obligations of Government Contractors, Executive Order 11246, as amended; Exemption for Religious Entities

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is amending the regulations implementing Executive Order 11246, as amended, to incorporate the exemption for religious entities prescribed by Executive Order 13279. Executive Order 11246, as amended, prohibits Government contractors and subcontractors, and federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of Executive Order 13279 amends Section 204 of Executive Order 11246, as amended, to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements.

EFFECTIVE DATES: These regulations are effective October 30, 2003.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0102 (voice), (202) 693–1308 (TTY). Copies of this rule in alternative formats may be obtained by calling (202) 693–0102 (voice) or (202) 693–1308 (TTY). The alternative formats available are large print, electronic file on computer disk, and audiotape. The rule also is available on the Internet at *http://www.dol.gov/dol/esa.*

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11246, as amended, prohibits employment discrimination and establishes affirmative action requirements for nonexempt Government contractors and subcontractors, and federally assisted construction contractors and subcontractors. Section 202 of Executive Order 11246, as amended, requires that every non-exempt contract and subcontract include an equal opportunity clause, which specifies the nondiscrimination and affirmative action obligations each contractor or subcontractor assumes as a condition of its Government contract or subcontract. Each non-exempt contractor and subcontractor agrees, as a condition of its Government contract, not to discriminate on the basis of race, color, religion, sex, or national origin and to take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

On December 12, 2002, President George W. Bush issued Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations,'' reprinted at 67 FR 77141 (December 16, 2002). Section 4 of Executive Order 13279 amends Section 204 of Executive Order 11246, as amended, by adding an exemption for religious corporations, associations, educational institutions and societies. The amendment to Section 204 of Executive Order 11246, as amended, in pertinent part, reads:

> (c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

The exemption for religious entities added to Executive Order 11246, as amended, is modeled on the exemption for religious institutions and organizations under Title VII of the Civil Rights Act of 1964. Section 702 of the Civil Rights Act provides that:

> This subchapter shall not apply to * * * a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. 42 U.S.C. 2000e–1(a).

Revised Section

Section 60–1.5 Exemptions

Today's final rule amends the regulation at 41 CFR 60–1.5(a) by adding a new paragraph (5) that sets forth the text of the amendment to Section 204 of Executive Order 11246, as amended, which provides the exemption for religious corporations, associations, educational institutions and societies. In the final rule, the text of the amendment to Section 204 has been modified slightly; for purposes of clarity ''Executive Order 11246, as amended'' has been substituted for ''this Order.'' The existing paragraphs (5) and (6) in § 60–1.5(a) have been redesignated as paragraphs (6) and (7) respectively, in the final rule.

Regulatory Procedures

Publication in Final

The Department of Labor has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. Rulemaking is not required to implement the new exemption for religious entities. The exemption for religious corporations, associations, educational institutions, and societies was effected by the President's amendment to Section 204 of Executive Order 11246, as amended, which was published in the **Federal Register**. This rule simply incorporates the amendment to Section 204 in the regulation at 41 CFR 60–1.5(a) so as to provide additional notice of this change in coverage under Executive Order 11246, as amended. The amendment to the rule directly tracks the President's amendment to that Order, and the Department of Labor may not, in response to public comment, change or decline to implement this amendment. Consequently, there is good cause for finding that the notice and public comment procedure is unnecessary and contrary to the public interest, pursuant to Section 553(b)(B) of the APA.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB has determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order. However, this rule is not an economically significant regulatory action under the Order, and therefore, no regulatory impact analysis is has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b)(B), the requirements of the Regulatory

Flexibility Act, pertaining to regulatory flexibility analysis, do not apply to this rule. In any event, the rule will not have a significant economic impact on a substantial number of small business entities.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Order 13132 (Federalism)

This final rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the requirements of Section 6 of Executive Order 13132 do not apply to this rule.

Congressional Review Act

This final rule is not a major rule for purposes of the Congressional Review Act.

List of Subjects in 41 CFR Part 60–1

Administrative practice and procedure, Equal employment opportunity, Government contracts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 41 CFR Part 60–1 is amended as set forth below:

Signed at Washington, DC, this 22 day of September 2003.

Elaine L. Chao,

Secretary of Labor.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 is revised to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230 and E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258.

■ 2. In § 60–1.5(a), paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(6) and (a)(7) respectively, and a new paragraph (a)(5) is added to read as follows:

§ 60–1.5 Exemptions

(a) * * *

(5) *Contracts with religious entities.* Section 202 of Executive Order 11246, as amended, shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

* * * * *

[FR Doc. 03–24295 Filed 9–29–03; 8:45 am]

BILLING CODE 4510–CM–P

Federal Register

Tuesday,
September 30, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 92 et al.

Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 92, 570, 572, 574, 576, 582, 583, and 585

[Docket No. FR–4782–F–02]

RIN 2501–AC89

Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations to remove barriers to the participation of faith-based organizations in certain HUD programs. In general, no group of applicants competing for HUD funds should be subject, as a matter of HUD's discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or absence of religious character or affiliation. Applicants for HUD funds and those applicants selected to receive HUD funding should generally be subject to the same requirements. The purpose of the revisions made by this rule is to ensure that faith-based organizations are able to compete on an equal footing with other organizations for HUD funding. This final rule follows publication of a January 6, 2003, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Streeter, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–2404 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For program specific information, contact the following offices in HUD's Office of Community Planning and Development: For the HOME Program and the HOPE for Homeownership of Single Family Homes (HOPE 3) Program, Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, (202) 708–2864; for the Community Development Block Grants Program, Robert Duncan, Office of Block Grant Assistance, (202) 708–3587; and for the remaining programs, John Garrity, Office of Special Needs Assistance Programs, (202) 708–4300. (These numbers are not toll-free numbers.) Hearing- or speech-impaired individuals may access these telephone numbers through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The January 6, 2003, Proposed Rule

On January 6, 2003 (68 FR 648), HUD published a proposed rule to amend certain HUD regulations that imposed (or appeared to impose) unwarranted barriers to the participation of faith-based organizations in HUD programs. HUD recognizes that faith-based organizations are an important part of the social services network of the United States, offering a multitude of social services to those in need. These organizations frequently have the experience that HUD seeks to administer social services to beneficiaries under HUD programs. Consistent with the President's Executive Order 13198 (Agency Responsibilities with Respect to Faith-Based and Community Initiatives), issued January 31, 2001 (66 FR 8497), HUD undertook a comprehensive review of its program requirements and regulations, particularly those that would be expected to attract interest and participation by nonprofit organizations. Executive Order 13198 directed five agencies, including HUD, to undertake this review and to take steps to ensure that Federal policy and programs are fully open to faith-based community groups in a manner that is consistent with the Constitution.

In response to the directive of the President's Executive Order, HUD identified regulations for eight programs administered by HUD's Office of Community Planning and Development that imposed (or appeared to impose) barriers to participation of faith-based organizations in these programs. HUD's proposed rule of January 6, 2003, was designed to eliminate these barriers and to ensure that these HUD programs are open to all qualified organizations, regardless of their religious character. The January 6, 2003, rule proposed to amend the regulations for the following HUD programs:

1. HOME Investment Partnerships (24 CFR part 92);
2. Community Development Block Grants (CDBG) (24 CFR part 570);
3. Hope for Homeownership of Single Family Homes (HOPE 3) (24 CFR part 572) [1]
4. Housing Opportunities for Persons With AIDS (HOPWA) (24 CFR part 574);
5. Emergency Shelter Grants (ESG) (24 CFR part 576);
6. Shelter Plus Care (24 CFR part 582);
7. Supportive Housing (24 CFR part 583); and
8. Youthbuild (24 CFR part 585).

The January 6, 2003, rule proposed to amend each set of program regulations to achieve the following objectives:

1. *Clarify that organizations are eligible to participate in HUD programs without regard to their religious character or affiliation.* The proposed amendments clarified that faith-based organizations are eligible to compete for funding on the same basis and under the same eligibility requirements as all other nonprofit organizations. The fact that an organization is a faith-based organization is not a basis for exclusion from a competition for HUD funds. The Federal government, as well as State and local governments administering funds under HUD programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

2. *Clearly delineate eligible and ineligible uses of HUD funds for all program participants.* The proposed rule provided that eligible and ineligible uses of HUD funds are applicable to *all* recipients of HUD funds. The proposed rule provided that a recipient organization may not use direct HUD funds to support inherently religious activities, such as worship, religious instruction, or proselytization. If the participating organization engages in these activities, the activities must be offered separately, in time or location, from the programs or services directly funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. This requirement ensures that HUD funds provided directly to any recipient are not used to support inherently religious activities. This restriction does not mean that an organization that receives HUD funds cannot engage in inherently religious activities. It means that an organization cannot pay for these activities with direct HUD funds.

3. *Clarify that faith-based organizations will retain their independence.* The proposed rule clarified that a faith-based organization that participates in HUD programs will

[1] Funds are no longer being appropriated for the HOPE 3 program; however, the part 572 regulations remain in place to provide regulatory guidance to existing HOPE 3 grantees. The regulations in part 572 are included within the scope of this rule to reflect the regulatory revisions applicable to faith-based participation and ensure their consistency with the similar regulations in the other parts covered by this final rule.

retain its independence and may continue to carry out its mission, including the practice and expression of its religious beliefs, provided that it does not use direct HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Emphasize that participating organizations cannot discriminate in providing assistance.* The proposed rule clarified that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, faith-based organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Clarify that HUD funds may not be used for acquisition, construction, or rehabilitation of structures to the extent those structures are used for inherently religious activities.* The proposed rule clarified that HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, the proposed rule clarified that HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. *Remove additional assurance requirements imposed only on faith-based organizations.* The proposed rule removed those provisions of HUD's regulations that required only faith-based organizations to provide assurances that they would conduct eligible program activities in a manner that is ''free from religious influences.'' HUD imposes no comparable assurance requirements in any other context. HUD determined that it is inappropriate to require that only faith-based organizations submit additional assurances of compliance with program requirements above and beyond those that any other applicant or recipient is required to provide. All organizations that participate in HUD programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that HUD's regulations may have disqualified faith-based organizations or indicated that faith-based organizations could be disqualified from participating in HUD's programs because the organizations are motivated or influenced by religious faith to provide social services, the proposed rule clarified that this type of restriction is inconsistent with governing law.

7. *Clarify the inapplicability of Executive Order 11246 in the context of grants.* The proposed rule amended the CDBG regulations to provide that Executive Order (E.O.) 11246 (Equal Employment Opportunity), regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60, do not apply to CDBG grantees.

II. Significant Differences Between the January 6, 2003, Proposed Rule and This Final Rule

This final rule follows publication of the January 6, 2003, proposed rule and takes into consideration the public comments received on the proposed rule. After consideration of the public comments, the significant changes made at the final rule stage are the following:

1. *Clarification of applicability of nondiscrimination requirements.* Some public commenters questioned whether the rule would reverse or supersede the applicability to program participants of nondiscrimination requirements. To the extent that statutory nondiscrimination requirements applied to participants in the HUD programs that were the subject of the January 6, 2003, proposed rule, those statutory requirements continue to apply. They are not altered by this rule.

2. *Clarification of when HUD funds may be used for acquisition, construction, or rehabilitation of real property.* The final rule clarifies that HUD funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship. Separate rooms located in a structure that contain sanctuaries, chapels, or other rooms that a HUD-funded religious congregation uses as its principal place of worship, however, may qualify for such assistance to the extent that they are used for eligible, HUD-funded activities. This final rule also clarifies the rules governing disposition of HUD-improved real property after the term of the grant and where there is a change in the use of the property. The following provide examples of application of the revised rule:

Example 1. A one-room church applies for CDBG funds to make several necessary repairs. On Sunday morning, the church serves as a place for congregational worship. During weekdays, the church is used to operate a ''soup kitchen'' for homeless individuals. Accordingly, except for the few hours on Sunday morning when the church holds worship services, the one-room church is used for the purpose of providing meals to homeless individuals—a purpose that is eligible for HUD assistance. The one-room church is ineligible for CDBG-funded improvements because it is the congregation's principal place of worship.

Example 2. A synagogue with several rooms applies for CDBG funds to make necessary repairs to its ''soup kitchen,'' which is operated from two rooms located within the synagogue basement. The congregation does not use these rooms as its principal place of worship; they are used exclusively for the ''soup kitchen.'' Accordingly, repairs to the two rooms are eligible for CDBG assistance.

Example 3. A church applies for HUD funding to construct a homeless shelter, which will contain several rooms for use as a shelter as well as a one-room chapel to be used for weekly religious services and nightly prayer meetings. With the exception of the chapel, the homeless shelter will be used exclusively for eligible HUD-funded activities; no inherently religious activities, such as worship or religious instruction, will be conducted outside of the chapel. Homeless individuals staying at the shelter will be offered the opportunity to participate in the religious services, but attendance will be purely voluntary. HUD may assist the construction on a prorated basis, excluding the costs of the chapel.

Example 4. A mosque purchases an abandoned church and applies for HUD funding to renovate it and use it as an elderly daycare center. The planned renovation will retain the existing exterior facade of the former church, including the stained-glass windows. No inherently religious activities will be conducted within the new daycare center. Although the proposed rehabilitation involves a building formerly used as a church, the entire renovation is eligible for HUD funding because the building will be used solely for eligible HUD activities.

3. *Clarification of Applicability of E.O. 11246.* The proposed rule's exclusion of E.O. 11246 from the CDBG regulations was intended only to reflect the exemption of religious organizations from the religious nondiscrimination requirements of E.O. 11246, as provided in an amendment to E.O. 11246 by E.O.

13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), issued by President Bush on December 12, 2002. The final rule reinstates the reference to E.O. 11246 in the CDBG regulations, and includes the amendment to E.O. 11246 by E.O. 13279, thus making E.O. 11246, as amended, applicable to HUD grantees to the same extent that it would otherwise apply.

4. *Clarification regarding the commingling of funds.* This final rule clarifies that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of this final rule apply to all of the commingled funds.

III. Discussion of the Public Comments Received on the January 6, 2003, Proposed Rule

The public comment period on the proposed rule closed on March 7, 2003. HUD received 188 public comments on the proposed rule. Comments were received from members of Congress, faith-based organizations, public housing agencies (PHAs) and other State and local community development agencies (as well as the national organizations representing PHAs and these State and local agencies), advocates of low-income housing, organizations concerned about First Amendment issues, law firms, and other interested members of the public.

Approximately eight commenters expressed support for the proposed rule, without reservation or request for change. The commenters commended HUD for issuing the proposed rule, writing that the changes ''are long overdue.'' The commenters stated their belief that the regulatory changes proposed by HUD are consistent with constitutional principles, and that the ''proposed regulation not only eliminates unnecessary obstacles, but retains those restrictions necessary under the Establishment Clause.'' One of the commenters urged HUD to expand the scope of the proposed rule to include all HUD programs, and not to limit regulatory changes to the eight community development programs identified in the rule.

The majority of commenters opposed the proposed rule or expressed strong reservations about the rule. The reasons for opposition or reservation varied. In some instances, these commenters supported the overall goals of the proposed rule, but were concerned about certain aspects of the proposal. The majority of the commenters expressed concern that the proposed regulatory changes would conflict with the Establishment Clause and related Supreme Court cases by authorizing Federal funding for churches and other ''pervasively sectarian organizations.'' Other commenters expressed concerns about the civil rights implication of the proposed rule, writing that the proposed changes would open the door to discriminatory practices by faith-based organizations. Other commenters objected to any Federal funding for faith-based organizations on policy grounds.

The following sections of this preamble present a more detailed discussion of the most significant issues and concerns raised by the public commenters on the January 6, 2003, proposed rule and HUD's responses to these comments. The summary of the public comments is organized as follows:

Section IV of this preamble discusses general comments on the proposed rule.

Section V of this preamble discusses the comments regarding faith-based activities.

Section VI of this preamble discusses the comments regarding the use of religious art, icons, scriptures, and other religious symbols.

Section VII of this preamble discusses the comments regarding nondiscrimination in providing assistance.

Section VIII of this preamble discusses the comments regarding Executive Order 11246 and consideration of religion in employment decisions.

Section IX of this preamble discusses the comments regarding structures used for religious activities.

Section X of this preamble discusses the comments regarding the removal of the assurance requirements.

IV. General Comments

Several commenters submitted comments on the proposed rule generally, and did not raise issues or questions about a specific regulatory change.

Comment: Insufficient justification for the proposed rule. Several commenters disagreed that there are currently barriers that prevent participation of faith-based organizations in HUD's programs. The commenters wrote that faith-based organizations have been successfully competing for HUD funds for many years. Another commenter stated that the impetus for the rule appeared to be based on anecdotal evidence. The commenter suggested that if some faith-based organizations are experiencing participation difficulties in localities, HUD should address those situations on a case-by-case basis. Another commenter suggested that the rule is unnecessary because religious institutions already receive a large government subsidy through tax exemption.

HUD Response. HUD disagrees with the statement that obstacles addressed in the proposed rule are based only on anecdotal evidence or that the appropriate method to resolve obstacles is on a case-by-case basis. In its own review of its regulations, HUD found barriers to faith-based organizations partnering with HUD. For example, under the previous rule, HOME program funds, which communities around the country use to construct affordable housing, may not be provided to faith-based organizations ''for any activity, including secular activities'' (*See* 24 CFR 92.257). This final rule, therefore, is necessary to remove these regulatory barriers (whether intentional or unintentional when promulgated) and to ensure that all organizations are able to compete on an equal footing for Federal financial assistance, in a manner that is consistent with constitutional church-state requirements.

Comment: Determination of legitimate faith-based organizations. Several commenters asked how HUD would determine which organizations are legitimate faith-based organizations. The commenters wrote that without guidance or a definition of faith-based organization, the Federal faith-based initiative would be a source of confusion and controversy for both recipients and subrecipients. One commenter recommended that HUD set minimum neutral standards for all eligible grantees, including faith-based organizations, such as a governing board requirement, a plan for public service programs approved by the governing board, and a certification of board responsibility for the programs that are open to the public. Another commenter wrote that the final rule should define the terms ''faith-based'' and ''religious'' organization based on the definition contained in the Internal Revenue Code.

HUD Response. HUD declines to adopt these suggestions. One of the objectives of this rule is to move away from unnecessary Federal inquiry into the religious nature, or absence of religious nature, of an applicant for HUD funds. With respect to any applicant for HUD funds, HUD's focus should always be that (1) the applicant is an eligible applicant for a program, as ''eligible applicant'' is defined for that program; (2) the applicant meets any

other eligibility criteria that the program may require; and (3) the applicant commits to undertake only eligible activities with HUD funds and abide by all program requirements that govern those funds.

Comment: Assessment of management and fiscal capability of faith-based organizations. Several commenters questioned how HUD would determine the management and fiscal capability of faith-based organizations. Some of the commenters asked whether faith-based organizations would be required to be nonprofits with section 501(c)(3) status under the Internal Revenue Code. These commenters wrote that many faith-based organizations have secured section 501(c)(3) status in order to receive government funding. The commenters wrote that obtaining and maintaining this status demonstrates a certain level of competence and fiscal accountability, and suggested that section 501(c)(3) status be a requirement for participation in HUD programs. One commenter wrote that faith-based organizations should be explicitly required to comply with OMB Circulars A–122 and A–133 to ensure the degree of financial separation necessary to protect the ''wall'' between church and state. The commenter wrote that ''Federal cost principles are carefully designed to preclude passing any element of an unallowable cost (such as lobbying) through to the government. These cost principles also apply to Federal grant funds (except block grants) that are passed through State or Local governments, as well as any matching funds raised from non-governmental sources.''

HUD Response. As noted in the response to the preceding comment, faith-based organizations participating in HUD programs must generally meet the same criteria as all other applicants for HUD funds. These criteria help to ensure that Federal dollars are allocated only to those program providers with sufficient administrative and financial controls to properly administer the Federal funds. The purpose of this rule is to ensure that HUD is not imposing greater requirements on faith-based organizations because they are faith-based organizations. For example, if regulations for a HUD program require participating nonprofit organizations to have section 501(c)(3) status, then all participating organizations must have this status to receive HUD funds. If there is no section 501(c)(3) requirement imposed on nonprofit organizations by the HUD regulation, HUD is not going to impose this requirement on faith-based organizations simply because they are faith-based organizations. Similarly, if the program regulations require grant recipients to comply with OMB cost accounting circulars, then all grantees, including grantees that are faith-based organizations, must comply with these circulars. If the program regulations, however, provide for other cost accounting procedures, then the grantees, including faith-based grantees, need comply only with the specified cost accounting procedures.

Comment: Difficulty in overseeing and enforcing compliance with regulations by faith-based organizations. Several commenters wrote that the monitoring and enforcement of faith-based organizations would be administratively burdensome, and raise the constitutionally troubling prospect of excessive government oversight of religious activity. The commenters raised concerns about the enforceability of the rule as a whole, but some commenters focused on the provisions authorizing the acquisition, construction, and rehabilitation of religious structures. One of these commenters wrote: ''Allowing HUD and religious organizations to split the cost of building a facility (yet barring the use of such a facility for religious activity) will cause HUD and the religious organization to enter into what is, at best, unseemly negotiations as to what counts as religious activity or not.'' The commenters urged that HUD provide guidance on the monitoring and enforcement of the new requirements and consider the use of mandatory training sessions as part of this guidance.

HUD Response. The enforcement of HUD regulations does not increase because some program participants are faith-based organizations. HUD has a responsibility to monitor all program participants to ensure that HUD funds (taxpayer funds) are used in accordance with HUD program and any government-wide requirements. Inappropriate use of HUD funds or failure to comply with HUD program requirements is not a possibility that arises only when program participants are faith-based organizations. Nonprofit organizations generally obtain funds for their social service purposes from several sources, not just HUD or the Federal government. Failure of a nonprofit organization (or any grantee) to ensure that the Federal portion of their funds is not used for non-Federal purposes or prohibited purposes (such as lobbying) will result in the imposition of sanctions or penalties on the organization. Violations of HUD program requirements can be committed by all types of program participants. All HUD program participants must carefully manage their various sources of Federal funds and abide by OMB cost accounting circulars, where applicable, or other cost accounting methods that may be specified in individual program regulations. Moreover, any inherently religious activities would be non-HUD activities, so the normal monitoring procedures would not require HUD to distinguish between religious and nonreligious ineligible activities and would more than suffice to address the commenters' concerns. Therefore, HUD does not see the need for additional requirements or guidance in this area.

V. Comments Regarding Inherently Religious Activities

Comment: Define the term ''inherently religious activities.'' Several commenters requested a definition of ''inherently religious activities.'' The commenters wrote that while a definition need not be exhaustive of all possible inherently religious activities, the final rule should provide a list of activities that are clearly ineligible. Another commenter suggested that HUD should retain the current wording used in the regulations, which refers to activities being ''free from religious influences'' and/or ''entirely for secular purposes.''

HUD Response. The final rule specifies that inherently religious activities include ''worship, religious instruction, or proselytization.'' As the commenters themselves note, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the regulatory definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Rather than attempt to establish an exhaustive regulatory definition, this final rule retains the language of the proposed rule, which provides examples of the general types of activities that are prohibited by the regulations. This approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. For example, prayer and worship are inherently religious, but social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of ''ministry.'' If HUD determines that additional guidance is needed regarding specific activities that are ''inherently religious,'' HUD will provide this guidance.

Comment: Clarify the term ''separation in time or location.'' Several commenters requested that HUD clarify

the separation ''in time or location'' restriction. The commenters wrote that the vagueness of the current language would lead to confusion among service providers. Some commenters offered suggestions for how the language could be clarified. For example, one commenter wrote that the rule should provide that the term ''separation in time or location'' means that clients must be allowed the opportunity to not participate in religious activities in a meaningful manner such that they do not have to hear or see the inherently religious activities. Another commenter wrote that greater clarity could be provided by specifying that religious activities must be separated by both time *and* location. Yet another commenter wrote that the final rule could more clearly define ''time'' by providing guidelines on an acceptable length of time between activities, such as 15 or 30 minutes.

HUD Response. HUD declines to adopt the suggestions raised by the commenters. HUD does not believe that the separation of time or location requirement is ambiguous and necessitates additional regulation for proper adherence. HUD believes that existing regulations and this rule are clear that faith-based organizations, using direct Federal funds for certain activities, must separate their inherently religious activities from the federally funded activities. HUD believes that a common sense approach to this regulation supported by HUD guidance, not a detailed regulatory approach, is the better one. For example, suppose that a community center is used for adult education in the evening, and that one of the organizations participating in the adult education initiative provides classes in English proficiency. The organization cannot use the English language class as a means of providing inherently religious instruction. The religious study class has to be provided in another classroom or building (separate in location) or at another time (if the same classroom is to be used). Concerning the recommendation that inherently religious activities be separated from HUD-funded activities by both time *and* location, HUD believes that this is legally unnecessary and that it would impose an unnecessarily harsh burden on small faith-based organizations, which may have access to only one location that is suitable for the provision of HUD-funded services.

Comment: Restrict activities that are ''inherently infused with religious doctrine.'' Two commenters wrote that there might be services provided to clients that are not inherently religious activities, but that are inherently infused with religious doctrine. For example, case management services by counselors could be infused with religious teachings and doctrine. The commenters wrote that the final rule should prohibit any services that are infused with religious doctrine.

HUD Response. HUD believes that existing HUD regulations and this rule are sufficiently explicit that direct HUD funds may not be used for religious proselytization. Program participants cannot use supportive services directly funded by HUD, such as counseling, to serve as a format for proselytization. This is a violation of program requirements, and the program participant that violates the prohibition on proselytization will be subject to applicable sanctions and penalties. No additional regulatory changes are required.

Comment: Ensure the availability of secular alternative service providers. Several commenters wrote that HUD should clarify that beneficiaries have the right to receive services from a different or non-religious provider, and that the beneficiaries be informed of this right by the faith-based provider. Some commenters suggested that a list of alternative service providers be in place and distributed to all beneficiaries or potential beneficiaries. Other commenters suggested that HUD ensure that funding be made available to a variety of providers within a service area to ensure that secular alternatives are viable, appropriate, and available. The commenters wrote that without reasonable secular alternatives, beneficiaries might be forced to participate in programs provided by faith-based organizations where they may be required to participate in religious activity in order to receive essential government-funded benefits.

HUD Response. HUD declines to adopt the recommendations of the commenters. Under this rule, no beneficiary served by a HUD-funded provider directly funded by HUD will be required to participate in inherently religious activities as a condition of receiving services. The commenters' recommendations run counter to the objectives that HUD is trying to achieve through this rule. HUD's general objective is to eliminate barriers to faith-based organizations, to welcome their participation in HUD programs, and most important, to ensure they are treated like other program participants. To develop a list that highlights which HUD program providers may be faith-based organizations and which are not, would defeat the ''neutrality'' objective sought by this rulemaking.

VI. Comments Regarding Religious Art, Icons, Scriptures, and Other Religious Symbols

Comment: Use of religious art or icons should not be permitted. Several commenters wrote that the use of religious art or icons can constitute a subtle but powerful form of proselytization or may be offensive to some persons. The commenters suggested that HUD prohibit the use of rooms or other space for providing HUD-funded services unless such items have been removed. Two commenters wrote that although a faith-based organization should not be required to remove icons from an existing chapel or chapel annex if they are used for providing HUD-funded services, the organization should not be permitted to have religious icons in the common area or the individual units of a HUD-funded shelter or housing project, or other HUD-funded space that is not also used for inherently religious activities.

HUD Response. HUD declines to impose this restriction on HUD program participants that are faith-based organizations. A number of Federal statutes affirm the principle embodied in this rule. (*See, e.g.*, 42 U.S.C. 290kk–1(d)(2)(B).) For no other program participant do HUD regulations prescribe the types of artwork, statues, or icons that may be placed within or without the structures or rooms in which HUD-funded services are provided. A prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in the program than other organizations, and would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional church-state guidelines, a faith-based organization that participates in HUD programs will retain its independence and may continue to carry out its mission, provided that it does not use direct HUD funds to support any inherently religious activities. Accordingly, this final rule continues to provide that faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols.

VII. Comments Regarding Nondiscrimination in Providing Assistance

Comment: Include a more explicit statement prohibiting faith-based organizations from requiring program beneficiaries to participate in religious

activities. Two commenters wrote that HUD should strengthen the provisions of the rule specifying that participation by a beneficiary in religious activities offered by a faith-based service provider is voluntary, and that the faith-based organization may not discriminate against a prospective beneficiary for refusing to participate in such activities. The commenters wrote that while the preamble to the proposed rule provides that a religious organization may not discriminate based on ''refusal to actively participate in a religious service,'' the regulatory text only prohibits discrimination on the basis of ''religion or religious belief.'' The commenters suggested that the regulatory text should be revised to track the stronger language of the preamble. The commenters, however, objected to the use of the word ''actively'' in this preamble language and urged that HUD clarify that faith-based organizations may not discriminate against clients who refuse to participate in religious activities—whether actively or passively.

HUD Response. HUD believes that the language in the rule prohibiting faith-based organizations from requiring program beneficiaries to participate in religious activities is sufficiently explicit. A prohibition on discrimination against beneficiaries on the basis of religion or religious belief is straightforward and requires no further elaboration.

Comment: Require fair housing training for staff of HUD-funded faith-based organizations. Require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries. Two commenters wrote that training of Fair Housing Act requirements is vital to ensure that the employees of faith-based organizations understand their responsibility to provide housing services free from discrimination. Two commenters stated that the final rule should require faith-based organizations to advertise HUD-funded services in a manner that welcomes all beneficiaries, regardless of religious persuasion. Another commenter stated that HUD's rule should prohibit organizations participating in HUD-funded programs from discussing religious beliefs with prospective beneficiaries.

HUD Response. HUD believes that its existing regulations and this rule are clear that HUD program participants cannot discriminate in providing services to beneficiaries on the basis of their religious belief, or the absence of such belief. With respect to fair housing training and advertising standards, HUD declines to impose requirements on faith-based organizations participating in HUD programs that are not imposed on all program participants.

Comment: Nondiscrimination provisions fail to properly take into account the distinction between ''direct'' and ''indirect'' assistance appearing elsewhere in the proposed rule. One commenter wrote that where the assistance is indirect, a faith-based organization, consistent with the Establishment Clause, may require beneficiaries to participate in its religious program.

HUD Response. This rule does not subject religious organizations that receive HUD funds as the result of a genuine and independent choice of a beneficiary—for example, where the entity administering HUD funds has established a voucher, coupon, certificate, or similar funding mechanism—to the restrictions on inherently religious activities that apply to organizations directly funded by HUD. This rule does not, therefore, prohibit ''indirectly funded'' organizations from offering assistance that integrates faith and social services and requires participation in all aspects of their programs. As noted in section II of the preamble to this final rule, however, the proposed rule did not offer amendments to any nondiscrimination provisions of existing statutes. Thus, to the extent that such statutes restrict the activities of indirectly funded organizations, those restrictions remain in effect. Accordingly, the statute that applies to each program should be reviewed for the scope of its applicability.

VIII. Comments Regarding Executive Order 11246 and Religion as a Factor in Employment Decisions

This final rule clarifies the applicability of E.O. 11246 to the CDBG regulations, and includes the amendment of E.O. 11246 by E.O. 13279. E.O. 13279, issued by the President on December 12, 2002, allows a government contractor or subcontractor that is a religious organization, corporation, association, educational institution, or society to take religion into consideration in the employment of individuals to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempt or excused from complying with the other requirements contained in Executive Order 11246. Thus, E.O. 11246, as amended, is applicable to HUD grantees to the same extent that it would otherwise apply.

Comment: HUD's rationale for eliminating compliance with E.O. 11246 is flawed. Several comments advised that HUD's approach to E.O. 11246 was flawed.

HUD Response. As discussed earlier in this preamble, the final rule clarifies the applicability of E.O. 11246 as amended, to the same extent that it would otherwise apply.

Comment: Do not permit faith-based organizations to consider religion in employment decisions. Rule should prohibit employment discrimination on the basis of sexual orientation. Several of the commenters wrote that the final rule should expressly prohibit discrimination against any employee or applicant for employment on the basis of religion. Other commenters wrote that faith-based organizations and other secular organizations may be generally able to discriminate on the basis of sexual orientation or gender identity because there does not currently exist a Federal law prohibiting this discrimination.

HUD Response. The purpose of this rulemaking is to eliminate barriers that HUD has imposed administratively to the participation of faith-based organizations in HUD programs. The purpose of this rule is not to establish nondiscrimination requirements or to alter existing nondiscrimination requirements. Current requirements of statute or Executive Order apply to HUD programs to the same extent that they applied under the prior rule.

Comment: Clarify that any equal employment opportunity exemption is consistent with Title VII. Several commenters suggested that HUD clarify that any exemption to the employment nondiscrimination requirements contained in the rule is consistent with the exemption provided by Title VII, and does not constitute a blanket exemption of equal employment opportunity. The commenters wrote that, under Title VII, religious organizations are allowed to employ individuals of a particular religion to perform the work of the religious organization, but are not exempt with respect to any other type of discrimination.

HUD Response. Again, it was not HUD's objective in this rulemaking to revise program requirements imposed by statute. HUD's objective in this rulemaking was to identify program requirements, imposed by HUD through rulemaking as a matter of administrative discretion, that constitute unwarranted barriers to the participation of faith-based organizations in HUD programs. As noted earlier in this preamble, existing nondiscrimination

requirements are not altered by this rule.

Comment: Faith-based organizations should be required to abide by State and local civil rights laws. Several commenters wrote that HUD should clarify that the rule will not preempt State and local laws regarding the funding of faith-based organizations, including civil rights statutes governing employment nondiscrimination. The commenters wrote that some States and localities have stringent laws regarding the funding of faith-based groups with Federal, State, and local funds, and that it is unclear whether the proposed rule, as written, would preempt these laws that have been in effect for decades.

HUD Response. The requirements that govern funding under the HUD programs at issue in these regulations do not raise a question of preemption of State or local laws. Federal funds, however, carry Federal requirements. No organization is required to apply for funding under these programs, but organizations that apply and are selected for funding must comply with the requirements applicable to the program funds. As noted above in this preamble, language has been added to the rule clarifying that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them; however, if the funds are commingled, these regulations apply to all of the commingled funds.

IX. Comments Regarding Structures Used for Religious Purposes

As noted in section II of the preamble to this final rule, the final rule clarifies this requirement by stating that HUD funds may not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship. This final rule also clarifies the rules governing disposition of HUD-improved real property after the term of the grant and where there is a change in the use of the property.

Comment: Government funding for religious structures is unconstitutional. Several commenters objected to the use of any HUD funds in the acquisition, construction, or rehabilitation of religious structures. The objection to this proposal included the comment that the proposed ''attribution'' requirements would be unenforceable by State and local agencies administering the HUD grant, and are contrary to Supreme Court decisions that prohibit spending government funds on structures that are not exclusively secular in their use. Other comments offered that, even if the proposed rule could be effectively enforced, it would require such excessive monitoring as to constitute excessive government entanglement with religious institutions. The commenters wrote that HUD would need to establish effective safeguards to avoid the perceived constitutional pitfalls.

Other comments stated that nothing in the rule would prevent a faith-based organization from converting a HUD-funded portion of a structure for religious use at some future date. The overall concern expressed by these commenters was that these provisions would inevitably lead to the unconstitutional government funding of religion. One of the commenters wrote that, under governing legal precedent, public funds may be used by religious institutions for capital improvements only when the structures are wholly limited to secular use. Other commenters suggested that HUD require that the HUD-funded portions of a structure be used for secular purposes for the life of the building. Several commenters suggested that HUD establish procedures for recapturing the Federal assistance if the HUD-funded portion of the structure is ever used for a religious purpose.

HUD Response. In the preamble to this final rule, HUD previously addressed the issue of monitoring and enforcement. HUD finds no basis for requiring greater oversight and monitoring of faith-based organizations than other program participants simply because they are faith-based organizations. All program participants must be monitored for compliance with program requirements, and no program participant may use HUD funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the program at issue. Many nonreligious organizations participating in HUD programs also receive funding from several sources (private sources, State, or local sources) to carry out activities that are ineligible for funding under HUD programs. In many cases, the non-eligible activities are secular activities but not activities eligible for funding under HUD programs. All program participants receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. The regulations for the programs prescribe the cost accounting procedures that are to be followed in using HUD funds.

With respect to structures, HUD believes that the prorated funding of improvements to a structure that has a mixed use—both religious and nonreligious—is not itself a violation of the Constitution. In a neutral program in which the government directly funds the capital improvements of institutions that administer Federal social welfare programs, the government need only put in place safeguards to ensure that public money is not used to finance inherently religious activities. The proposed rule satisfied this requirement by prohibiting the use of HUD funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities—a prohibition that is enforced by generally applicable cost-accounting standards carefully designed to ensure that HUD monies are not used to support any ineligible activity. Therefore, the final rule's prohibition on the funding of capital improvements for sanctuaries, chapels, or any other rooms that a religious congregation that is a recipient or subrecipient of HUD assistance uses as its principal place of worship simply provides extra assurance that HUD-funded capital improvements will not be used to support inherently religious activities, and HUD's rule is well within the bounds of the Constitution.

HUD disagrees with those who commented that preventing the use of direct HUD capital-improvement funds for inherently religious activities would necessarily fail or, in the process, excessively entangle the government in the affairs of recipients or subrecipients that are religious organizations. As to the question whether limiting HUD funding to eligible, nonreligious activities is possible, it merits emphasis that HUD must generally perform the very same cost-accounting functions to all organizations. Because inherently religious activities are non-HUD activities, HUD need not distinguish between program participants' religious and nonreligious non-HUD activities; the same mechanism by which HUD polices the line between ineligible and eligible activities will serve to exclude inherently religious activities from funding. This system of monitoring is more than sufficient to address the commenters' concerns, and the amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly funded programs that the Supreme Court has sustained.

With respect to the concern about the funding of capital improvements for religious structures that are later converted to non-HUD uses, the final rule clarifies that disposition of HUD-improved property after the term of grants to religious organizations, and changes in the use of property improved for use by religious organizations, are subject to government-wide regulations governing real property disposition. HUD has regulations (*see* 24 CFR parts 84 and 85) that address the terms under which such grantees must use the property for eligible activities, and the terms under which federally funded improvements must be ''bought back'' if such grantees decide to discontinue their involvement in the program.

X. Comments Regarding the Removal of Assurance Requirements

Comment: HUD should not remove the assurance requirements. Several commenters wrote that by removing the assurance requirements, HUD is condoning religious influences and activities in HUD-funded programs. The commenters wrote that the Federal government has rightly recognized that faith-based organizations are unique in their mission and require unique assurances. The commenters disagreed with HUD's rationale for removing the requirements, writing that HUD requires many certifications and assurances that grantees will comply with various laws and regulations. The commenters wrote that retaining this assurance would not be inconsistent with requiring other assurances of compliance with laws and regulations. Two commenters agreed that it is unfair to apply the assurance requirement only to faith-based organizations, and suggested that rather than eliminating the requirement, HUD should make it applicable to all grantees.

HUD Response. The final rule remains unchanged from the proposed rule on this matter. Additional assurances, such as those that are being removed by this rule, only perpetuate, and unfairly so, a presumption that program requirements applicable to all program participants are insufficient to bind faith-based organizations, and additional requirements and assurances must be imposed on these organizations. No additional requirements are needed.

In issuing this rule, HUD's general approach is that faith-based organizations are not a category of applicants or program participants that require additional requirements or additional oversight in order to ensure compliance with program regulations. In issuing this rule, HUD's approach is that faith-based organizations well understand that inherently religious activities cannot be undertaken with Federal funding and must remain separate from federally funded activities, and no additional requirements are necessary. The requirements for use of funds under a HUD program apply to, and are binding on, all HUD program participants.

XI. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *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 an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 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 Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local governments in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, HUD specifically solicited comment from State and local government officials on the January 6, 2003, proposed rule, and no comments from these entities were submitted that raised federalism concerns.

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). That 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 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 final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the final rule is to remove regulatory prohibitions that currently restrict the equal participation of faith-based organizations (large and small) in HUD's programs.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.218, 14.219, 14.225, 14.227, 14.228, 14.231, 14.235, 14.237, 14.238, 14.239, 14.241, 14.243, 14.246, 14.248, 14.512, 14.514, and 14.515.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands trust territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS/HIV, Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

■ For the reasons stated in the preamble, HUD amends title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 1. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 2. Revise § 92.257 to read as follows:

§ 92.257 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the Federal government nor a State or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

(c) A religious organization that participates in the HOME program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds in this part. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 92.504 [Amended]

■ 3. In § 92.504, remove paragraph (c)(3)(x) and redesignate paragraph (c)(3)(xi) as paragraph (c)(3)(x).

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 4. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 5. Revise § 570.200(j) to read as follows:

§ 570.200 General policies.

* * * * *

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and

include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 570.503 [Amended]

■ 6. Amend § 570.503 as follows:

■ a. Remove paragraph (b)(6);

■ b. Redesignate paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7), respectively; and

■ c. In newly designated paragraph (b)(7)(ii), replace all references to ''paragraph (b)(8)(i) of this section'' with ''paragraph (b)(7)(i) of this section.''

■ 7. Revise § 570.607 to read as follows:

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, *12086,* and 12107 (3 CFR 1964–1965 Comp. p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

■ 8. The authority citation for 24 CFR part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

■ 9. Revise § 572.405(d) to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(d) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPE 3 program. Neither the Federal government nor a State or local government receiving funds under HOPE 3 programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPE 3 program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the HOPE 3 program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPE 3 funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPE 3-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPE 3-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPE 3 program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPE 3 funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPE 3 funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPE 3 funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOPE 3 funds in this part. Sanctuaries, chapels, or other rooms that a HOPE 3-funded religious congregation uses as its principal place of worship, however, are ineligible for HOPE 3-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 10. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 11. Revise § 574.300(c) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-

based are eligible, on the same basis as any other organization, to participate in the HOPWA program. Neither the Federal government nor a State or local government receiving funds under HOPWA programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPWA program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) An organization that participates in the HOPWA program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPWA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPWA-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPWA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPWA program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPWA funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPWA funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPWA funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOPWA funds in this part. Sanctuaries, chapels, or other rooms that a HOPWA-funded religious congregation uses as its principal place of worship, however, are ineligible for HOPWA-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

■ 12. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

■ 13. Revise § 576.23 to read as follows:

§ 576.23 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Shelter Grants program. Neither the Federal government nor a State or local government receiving funds under Emergency Shelter Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Emergency Shelter Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Emergency Shelter Grants program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Shelter Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Shelter Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Shelter Grants-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Emergency Shelter Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Emergency shelter grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency shelter grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, emergency shelter grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to emergency shelter grants in this part. Sanctuaries, chapels, or other rooms that an Emergency Shelter Grants-funded religious congregation uses as its principal place of worship, however, are ineligible for Emergency Shelter Grants-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 582—SHELTER PLUS CARE

■ 14. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11470b.

■ 15. Revise § 582.115(c) to read as follows:

§ 582.115 Limitations on assistance.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the S+C program. Neither the Federal government nor a State or local government receiving funds under S+C programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the S+C program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the S+C program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct S+C funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide S+C-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an S+C-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the S+C program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

■ 16. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

■ 17. Revise § 583.150(b) to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(b) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Supportive Housing Program. Neither the Federal government nor a State or local government receiving funds under Supportive Housing programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the Supportive Housing Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the Supportive Housing Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Supportive Housing Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Supportive Housing Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Supportive Housing Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the Supportive Housing Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Supportive Housing Program funds in this part. Sanctuaries, chapels, or other rooms that a Supportive Housing Program-funded religious congregation uses as its principal place of worship, however, are ineligible for Supportive Housing Program-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

PART 585—YOUTHBUILD PROGRAM

■ 18. The authority citation for 24 CFR part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

■ 19. Revise § 585.406 to read as follows:

§ 585.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Youthbuild program. Neither the Federal government nor a State or local government receiving funds under Youthbuild programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Youthbuild program may not engage in inherently religious

activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Youthbuild Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Youthbuild Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Youthbuild Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Youthbuild Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Youthbuild program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Youthbuild funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Youthbuild funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Youthbuild funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Youthbuild funds in this part. Sanctuaries, chapels, or other rooms that a Youthbuild-funded religious congregation uses as its principal place of worship, however, are ineligible for Youthbuild-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

Dated: September 22, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–24326 Filed 9–29–03; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Tuesday,
September 30, 2003

Part V

Department of Justice

28 CFR Parts 31, 33, 38, 90, 91, and 93

Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants; Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Parts 31, 33, 38, 90, 91, and 93

[Docket No. OAG 106; AG Order No. 2687–2003]

RIN 1105–AA83

Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants

AGENCY: Office of the Attorney General, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement executive branch policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for the Department's funding. This proposed rule would revise Department regulations pertaining to certain programs to bring them into compliance with this policy and to ensure that these programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

DATES: Comments must be submitted by December 1, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Task Force for Faith-Based and Community Initiatives, Office of the Deputy Attorney General, Room 4413, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 8:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Purtill, Director, Task Force for Faith-Based and Community Initiatives, Department of Justice, Room 4409, 950 Pennsylvania Avenue, NW., Washington, DC 20530; telephone: (202) 305–8283 (this is not a toll-free number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For program-specific information, contact the following offices: Office of Justice Programs—Bureau of Justice Assistance, (202) 307–0635; Office of Juvenile Justice Delinquency Prevention, (202) 307–5924; National Institute of Justice, (202) 307–2942; Drug Court Programs Office, (202) 616–5001; Office of Victims of Crime, (202) 514–4696; Office of Violence Against Women, (202) 307–6026; Executive Office for Weed and Seed, (202) 616–1152; Bureau of Prisons, 202–307–3198; National Institute of Corrections, (202) 307–3106; Community Oriented Policing Services (COPS), (202) 307–1480 (these are not toll-free numbers). Hearing or speech-impaired individuals may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Religious organizations, including religiously affiliated organizations, are an important part of the social services network of the United States, offering a multitude of social services to those in need. In addition to places of worship, religious organizations include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Religious groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, help to reduce crime, addiction, and delinquency, and help to strengthen families and rebuild communities.

All too often, however, Federal policy and programs have not recognized religious groups as resources for providing social assistance. Federal, state, and local governments have often imposed barriers to the participation of religious organizations in social service programs, including unwarranted regulatory barriers.

President Bush has directed the federal agencies, including the Justice Department, to take steps to ensure that federal policy and programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. The Administration believes that religiously affiliated, or faith-based, groups possess an under-appreciated ability to meet the needs of disadvantaged Americans, including those within the criminal justice system, and to revitalize distressed neighborhoods. The Administration believes that there should be an equal opportunity for *all* organizations—both religious and nonreligious—to participate as partners in federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order, which was published in the **Federal Register** on January 31, 2001 (66 FR 8499), created Centers for Faith-Based and Community Initiatives in five cabinet departments—HUD, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the equal participation of faith-based and community organizations in the provision of social services by their Departments. On December 12, 2002, President Bush issued Executive Order 13280. That Order, published in the **Federal Register** on December 16, 2002 (66 FR 77145), created Centers in two additional agencies—the United States Agency for International Development and the Department of Agriculture—and charged those Centers with duties similar to those set forth in Executive Order 13198. On December 12, 2002, President Bush also issued Executive Order 13279, published in the **Federal Register** on December 12, 2002 (67 FR 77141). That Executive Order charges executive branch agencies to give equal treatment to faith-based and community groups that apply for funds to meet social needs in America's communities. President Bush called for an end to discrimination against faith-based organizations and, consistent with the First Amendment to the United States Constitution, ordered implementation of these policies throughout the executive branch, including, among other things, allowing organizations to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in government-funded programs. President Bush directed each executive branch agency, including the Department of Justice, to implement these policies. This proposed rule is part of the Department's efforts to fulfill its responsibilities under these Executive Orders.

II. This Proposed Rule

A. Purpose of Proposed Rule

Consistent with the President's initiative, this proposed rule would revise the Department's regulations to remove unwarranted barriers to the equal participation of faith-based organizations in the Department's programs. The objective of this proposed rule is to ensure that the Department's programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to

which funds may be put, and the conditions for receipt of funding. In addition, this proposed rule is designed to ensure that the implementation of the Department's programs is conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

B. Justice Department Program Regulations Amended by Proposed Rule

This rule proposes to amend the regulations for the following Justice Department components or offices:

1. Office of Justice Programs (OJP)
2. Bureau of Prisons (BOP)
3. National Institute of Corrections (NIC)
4. Community Oriented Policing Services (COPS)
5. Office for Violence Against Women (OVW)
6. United States Marshals Service
7. Asset Forfeiture and Money Laundering Section of the Criminal Division
8. Civil Rights Division

C. Proposed Regulatory Amendments

This rule proposes to make the following regulations applicable to all discretionary grant, formula grant, contract, and cooperative agreement programs listed above.

1. *Participation by faith-based organizations in Justice Department programs.* The proposed rule would make clear that organizations are eligible to participate in Department programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for Department funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, as well as state and local governments administering funds under Department programs, are prohibited from discriminating against organizations on the basis of religion, religious belief, or religious character in the administration or distribution of Federal financial assistance under social service programs, including grants, contracts, and cooperative agreements.

2. *Inherently religious activities.* The proposed rule describes the requirements applicable to all recipient organizations regarding the use of Department funds for inherently religious activities. Specifically, a participating organization may not use direct financial assistance [1] from the Department to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Department assistance, and participation must be voluntary for the beneficiaries of the Department-funded programs or services. This requirement ensures that direct financial assistance from the Department to religious organizations is not used to support inherently religious activities. Such assistance may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives Department funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct financial assistance from the Department. Thus, faith-based organizations that receive direct financial assistance from the Department must take steps to separate, in time or location, their inherently religious activities from the direct Department-funded services that they offer.

These restrictions on inherently religious activities do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the secular requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that beneficiary using Department funds under a program that is designed to give that beneficiary a choice among providers.

Correctional institutions are heavily regulated, and the degree of government control over correctional environments means that prison officials must sometimes take affirmative steps, in the form of chaplaincies and similar programs, to introduce religion into the environment. Without such efforts to make religious accommodations, religious freedom would not exist for federal prisoners. Accordingly, the proposed rule recognizes that the legal restrictions applied to religious programs within correctional facilities will sometimes be different from the legal restrictions that are applied to other Department programs.

3. *Independence of faith-based organizations.* The proposed rule clarifies that a religious organization that participates in Department programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization may use space in its facilities to provide Department-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Department-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Nondiscrimination in providing assistance.* The proposed rule clarifies that an organization that receives direct financial assistance from the Department shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services directly funded in whole or in part by the Department, may not discriminate against current or prospective program beneficiaries on the basis of religion or religious belief.

5. *Assurance requirements.* This rule proposes to direct the removal of those provisions of the Department's agreements, covenants, memoranda of understanding, policies, or regulations that require only Department-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities. The Department imposes no comparable assurance requirements in any other context, and the Department believes it is unfair to require religious

[1] The term ''direct financial assistance'' is used here to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same responsibilities as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct financial assistance'' may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). Again, in these proposed regulations, the term ''direct financial assistance'' has the former meaning.

organizations alone to provide additional assurances, above and beyond those any other organization is required to provide, that they will comply with Department requirements. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. In addition, to the extent that provisions of the Department's agreements, covenants, policies, or regulations disqualify religious organizations from participating in the Department's programs because they are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, the proposed rule removes that restriction, which is inconsistent with governing law.

III. Findings and Certifications

Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *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 an economically significant regulatory action under the Order) and, accordingly, has reviewed the rule. Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Task Force for Faith-based and Community Initiatives, Room 4409, 950 Pennsylvania Ave, NW., Washington, DC 20530.

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 on the private sector. This proposed 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, *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. Consistent with Executive Order 13132, the Department specifically solicits comments from state and local government officials on this proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Department regulations at 28 CFR part 61, 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 8:30 a.m. and 5:30 p.m. weekdays in the Task Force for Faith-based and Community Initiatives, Office of the Deputy Attorney General, Room 4413, Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to Department grantees. Rather, the purpose of the proposed rule is to remove policy prohibitions that currently restrict the equal participation of religious or religiously affiliated organizations (large and small) in the Department's programs. Notwithstanding the Department's determination that this rule will not have a significant economic effect on a substantial number of small entities, the Department specifically invites comments regarding any less burdensome alternatives to this rule that will meet the Department's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for the programs affected by this rule are 16.579, 16.592, 16.593, 16.523, 16.540, 16.548, 16.549, 16.575, 16.588, 16.580, 16.613, 16.202, 16.585, 16.595, 16.560, 16.563, 16.541, 16.542, 16.728, 16.729, 16.730, 16.731, 16.732, 16.543, 16.544, 16.547, 16.726, 16.547, 16.582, 16.583, 16.524, 16.525, 16.587, 16.589, 16.602, 16.005, 16.108, 16.320, 16.526, 16.710, 16.110.

List of Subjects

28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

28 CFR Part 33

Administrative practice and procedure, Grants.

28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements, Nonprofit organizations.

28 CFR Part 90

Grant programs, Judicial administration—violence against women.

28 CFR Part 91

Grant Programs—correctional facilities.

28 CFR Part 93

Grant programs, Judicial administration.

For the reasons stated in the preamble, the Department proposes to amend chapter I of Title 28 of the Code of Federal Regulations as follows:

PART 31—OJJDP GRANT PROGRAMS

1. The authority citation for part 31 is revised to read as follows:

Authority: 42 U.S.C 5601 through 5785; Pub. L. 108–7, 117 Stat. 11; 5 U.S.C. 301.

2. Add § 31.404 to subpart A to read as follows:

§ 31.404 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

3. In § 31.502, add paragraph (a)(3) to read as follows:

§ 31.502 Assurances and plan information.

(a) * * *

(3) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

* * * * *

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

4. The authority section for part 33 is revised to read as follows:

Authority: 42 U.S.C. 3701 through 3797y–4; 5 U.S.C. 301.

5. In suppart A under the heading Additional Requirements, add § 33.53 to read as follows:

§ 33.53 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

6. Add part 38 to read as follows:

PART 38—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.
38.1 Discretionary grants, contracts, and cooperative agreements.
38.2 Formula grants.

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; 18 U.S.C. 4001, 4042, 5040; 20 U.S.C. 1152; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107–273, 116 Stat. 1758 (42 U.S.C. 3751, 3753, 3762b, 3782, 3796dd–1, 3796dd–7, 3796gg–1, 3796gg–0b, 3796gg–3, 3796h, 3796ii–2, 3797u–3, 3797w, 5611, 5672, 10604, 14071).

§ 38.1 Discretionary grants, contracts, and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. No State or Local government receiving funds under any Department program shall discriminate against an organization on the basis of the organization's religious character or affiliation. As used in this section, ''program'' refers to a grant, contract, or cooperative agreement funded by a discretionary grant from the Department. As used in this section, the term ''grantee'' includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.

(b) (1) Organizations that receive direct financial assistance from the Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(2) The restrictions on inherently religious activities set forth in paragraph (b)(1) of this section do not apply to programs where Department funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where Department funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) *Exemption from Title VII Employment Discrimination Requirements.* A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives direct or indirect financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(g) In general, the Department does not require that a grantee, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a ''nonprofit organization'' in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(i) Effect on State and local funds. If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(h) To the extent otherwise permitted by federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

§ 38.2 Formula grants.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. No state or local government receiving funds under any Department program shall discriminate against an organization on the basis of the organization's religious character or affiliation. As used in this section, ''program'' refers to a grant, contract, or cooperative agreement funded by a formula or block grant from the Department. As used in this section, the term ''grantee'' includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.

(b) (1) Organizations that receive direct financial assistance from the Department may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(2) The restrictions on inherently religious activities set forth in paragraph (b)(1) of this section do not apply to programs where Department funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where Department funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in the Department-funded programs or services will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a faith-based organization that receives financial assistance from the Department may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in programs funded by direct financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and non-religious organizations. All organizations that participate in Department programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a state or local government in administering financial assistance from the Department shall disqualify religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) *Exemption from Title VII Employment Discrimination Requirements.* A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the religious organization receives direct or indirect financial assistance from Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(g) In general, the Department does not require that a grantee, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a ''nonprofit organization'' in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate

Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(h) Effect on State and local funds. If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the federal funds.

(i) To the extent otherwise permitted by federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

PART 90—VIOLENCE AGAINST WOMEN

7. The authority citation for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711–3796gg–7; Sec. 826, Part E, Title VIII, Pub. L. 105–244, 112 Stat. 1581, 1815.

8. Add § 90.3 to subpart A to read as follows:

§ 90.3 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

9. The authority citation for part 91 is revised to read as follows:

Authority: 42 U.S.C. 13701 through 14223.

10. In § 91.3, add paragraph (g) to read as follows:

§ 91.3 General eligibility requirements.

* * * * *

(g) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

11. In § 91.23, add paragraph (d) to read as follows:

§ 91.23 Grant authority.

* * * * *

(d) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

PART 93—PROVISIONS IMPLEMENTING THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

12. The authority citation for part 93 is added to read as follows:

Authority: 42 U.S.C. 3797u through 3797y–4.

13. In § 93.4, add paragraph (c) to read as follows:

* * * * *

§ 93.4 Grant authority.

(c) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

Dated: September 17, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–24294 Filed 9–29–03; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Tuesday,
September 30, 2003

Part VI

Department of Education

34 CFR Parts 74, 75, 76, and 80

Direct Grant Programs; State-Administered Programs; Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, and 80

RIN 1890–AA11

Direct Grant Programs; State-Administered Programs; Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Center for Faith-Based and Community Initiatives, Office of the Secretary, U.S. Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) governing direct grant programs; State-administered programs; the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations; and the uniform administrative requirements for grants and cooperative agreements to State and local governments. The amendments are intended to clarify that faith-based organizations are eligible to participate in programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

DATES: We must receive your comments on or before December 1, 2003.

ADDRESSES: Address all comments about these proposed regulations to John J. Porter, Director, Center for Faith-Based and Community Initiatives, Office of the Secretary, U.S. Department of Education, 555 New Jersey Avenue, NW., suite 410, Washington, DC 20208–8300. You may also fax your comments to (202) 208–1689.

If you prefer to send your comments through the Internet, use the following address: *faithandcommunity@ed.gov.*

You must include the term ''proposed rule'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: John J. Porter. Telephone: (202) 219–1741.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections and paragraph or paragraphs of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing the regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in suite 410, 555 New Jersey Avenue, 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 these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

Faith-based organizations make an important contribution to the education of Americans and provide an important part of the social services network of the United States. Faith-based organizations acting alone or in partnership with public schools, community-based organizations, institutions of higher education, and other private organizations do much good work to advance the quality of education for all Americans. Often this good work of faith-based organizations is done despite meager resources, and in the past, it has generally been done without the assistance of the Federal Government.

The Department seeks to facilitate the contribution of faith-based and community organizations to increase the effectiveness of its programs and to provide equal access to a quality education for all Americans. We believe this will strengthen the effort to make sure that no child is left behind.

President Bush has directed Federal agencies, including this Department, to take steps to ensure that Federal policies and programs are fully open to faith-based organizations in a manner that is consistent with the U.S. Constitution and statutory requirements. The Administration believes that faith-based organizations possess an under-appreciated ability to meet the educational needs of disadvantaged children and to strengthen our system of education. The Administration believes that Federal agencies should ensure that there is equal opportunity for all private organizations, faith-based and secular, to use Federal resources to meet the needs of their communities.

President Bush has signed two Executive orders relevant to the Department's efforts on the faith-based and community initiative. Executive Order 13198, dated January 29, 2001, directs the Department to identify and eliminate regulatory and other programmatic obstacles to the full contribution of faith-based and community groups in order to increase the effectiveness of the Department's programs. Executive Order 13279, dated December 12, 2002, directs the Department to review and evaluate existing policies that have implications for faith-based and community organizations in order to assess the consistency of those policies with certain fundamental principles and policymaking criteria designed to ensure a level playing field for religious and nonreligious organizations. The order directs the Department, to the extent permitted by law, (1) to amend all such existing policies to ensure that they are consistent with the fundamental principles and policymaking criteria; (2) where appropriate, to implement new policies that are consistent with and necessary to further the fundamental principles and policymaking criteria; and (3) to implement new policies that are necessary to ensure that the Department collects data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance. This proposed amendment to the Department's regulations is part of its effort to comply with these Executive orders.

Significant Proposed Regulations

Current Regulations. Current program eligibility regulations at 34 CFR parts 75 and 76 do not state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as other private organizations, with respect to programs for which such organizations are eligible. Similarly, current procurement regulations at 34 CFR parts 74 and 80 do not state specifically that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible.

Proposed Regulations and Reasons. Proposed §§ 75.52 (Eligibility of faith-based organizations for a grant) and 76.52 (Eligibility of faith-based organizations for a subgrant) state specifically that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

The Department seeks to clarify that the most qualified applicants will receive funding under the Department's programs, and that the religious character or affiliation of the private organizations that apply will not be taken into account. For that reason, the Department is additionally proposing the removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2), which prohibit grantees and subgrantees, respectively, from using their grants and subgrants to pay for an activity of a school or department of divinity.

In addition, to clarify that grantees may not use their grants to pay for equipment or supplies used for religious worship, instruction, or proselytization, the Department is proposing a technical amendment to § 75.532(a)(2).

Moreover, although the Department believes that grantees and subgrantees may use their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility only to the extent that such facilities are used for eligible Department-funded activities (and not for inherently religious activities such as religious worship, instruction, or proselytization, or any other ineligible purpose), the Department is proposing simply to remove §§ 75.532(a)(3) and 76.532(a)(3) because there is no statutory authority under which a grantee or subgrantee may use its grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). Because no Department program funds capital improvements for any such facility, these regulations have no application and are unnecessary.

Lastly, the Department is proposing to add a new paragraph (f) to § 74.44 and a new paragraph (j) to § 80.36 to clarify that faith-based organizations are eligible to contract with and otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible. The proposed paragraphs state that such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the use of Department funds for inherently religious activities, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

Proposed §§ 75.52 (Eligibility of Faith-Based Organizations for a Grant) and 76.52 (Eligibility of Faith-Based Organizations for a Subgrant)

Proposed paragraph (a)—Participation by faith-based organizations in the Department's programs. This paragraph clarifies that a faith-based organization is eligible to participate in the Department's direct grant programs (proposed § 75.52) and State-administered programs (proposed § 76.52) on the same basis as any other private organization, with respect to programs for which such other organizations are eligible. If a faith-based organization meets the statutory and regulatory tests for eligibility, the Department considers it eligible. The inclusion of qualified faith-based organizations increases the pool of potential applicants and enhances competition. As a result, the inclusion of qualified faith-based organizations increases the quantity of highly qualified applicants that are eligible to receive Federal funding, contributing to an increase in effectiveness of the Department's programs, a savings of Federal dollars, the generation of new ideas, and the provision of services to people who may not otherwise receive them. The Department needs the contribution of qualified faith-based organizations that serve in areas of great need and that have strong ties to the community to achieve the Department's goal of ensuring that no child is left behind.

Consistent with this principle, the paragraph additionally provides that the Department and the States shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

Proposed paragraph (b)—Prohibition on use of funds for inherently religious activities. This paragraph clarifies that a faith-based organization that receives a grant under a program of the Department (proposed § 75.52) or a subgrant from a State under a State-administered program of the Department (proposed § 76.52) is subject to the provisions of §§ 75.532 and 76.532, respectively. Those sections prohibit grantees (§ 75.532) and States and subgrantees (§ 76.532) from using their grants and subgrants to pay for inherently religious activities, such as religious worship, instruction, or proselytization; and for equipment or supplies used for religious worship, instruction, or proselytization. Sections 75.532 and 76.532 also currently prohibit grantees and subgrantees from using their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization; and an activity of a school or department of divinity, as so defined. As explained above, however, the Department seeks to eliminate those provisions elsewhere in these proposed regulations.

Proposed paragraph (c)—Inherently religious activities that must be offered separately in time or location and be voluntary. This paragraph clarifies that a private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by grants from the Department (proposed § 75.52) or subgrants from a State under a State-administered program of the Department (proposed § 76.52), and that participation in any such inherently religious activities by beneficiaries of the programs supported by the grants or subgrants must be voluntary.

The religious liberties of program beneficiaries must be guarded. No one should be coerced into participating in inherently religious activities to receive federally funded services. Thus, the inherently religious activities of faith-based groups must be separated by time

or location from the programs or services supported by grants from the Department or subgrants from a State under a State-administered program of the Department, and participation in such inherently religious activities by beneficiaries of the program supported by the grants or subgrants must be voluntary.

Proposed paragraph (d)—Faith-based organizations may retain their religious character. The restrictions on the use of grants and subgrants for inherently religious activities do not prohibit faith-based organizations from engaging in inherently religious activities. The restrictions only prohibit such funds from being used to support these activities. This paragraph clarifies that a faith-based organization does not have to suppress its religious identity to qualify for a grant or subgrant.

A faith-based organization that applies for or receives a grant or subgrant may maintain its character and independence, including the definition, practice, and expression of its religious beliefs, provided that it does not use the grant or subgrant to support inherently religious activities. Many faith-based organizations are concerned that they must give up their religious identity to receive Federal funding and, as a result, have not sought opportunities to use Federal funds to meet needs in their communities. This concern has served as a barrier to facilitating the contribution of faith-based organizations to aid the Department in achieving its goal of making programs more effective. The Federal Government does not ask other types of private organizations to compromise their philosophical identity or ideology to receive Federal funds so the Department does not require faith-based organizations to compromise their philosophical identity or ideology either. Faith-based organizations, like other private organizations, must use the Federal funds for the purpose of the applicable program. Clarifying that faith-based organizations do not have to suppress their religious identity encourages them to participate in the Department's programs and contributes to increasing the effectiveness of the Department's programs.

Proposed paragraph (e)—Prohibition on discrimination against program beneficiaries or prospective program beneficiaries on the basis of religion. This paragraph prohibits discrimination by private organizations against beneficiaries or prospective beneficiaries of the Department's programs on the basis of religion. One who administers or delivers services to such beneficiaries (*e.g.*, an employee or prospective employee of a grantee or subgrantee) is not considered a ''beneficiary'' or ''prospective beneficiary'' for purposes of this provision.

Proposed paragraph (f)—Effect of contribution of own funds. In the case of grants or subgrants that require fund matching, the Department's regulations stipulate that Federal rules apply to those matching funds. In addition, in cases where grantees and subgrantees pledge to contribute their own funding in excess of matching funds required under the grant or subgrant announcement, those excess funds pledged in the grant or subgrant application are considered part of a ''grant agreement'' and are therefore also subject to Federal rules.

If a grantee or subgrantee provides funds in excess of those funds stipulated in grant or subgrant matching requirements or agreements, Federal rules will not apply to the extent that those excess funds are not commingled with the funds stipulated in the matching requirements or agreement. If the excess funds are separated from those ''required'' funds, they will not be subject to Federal rules. If those excess funds are not kept separate from the ''required'' funds, they will be subject to Federal rules.

Technical amendment to § 75.532(a)(2) relating to the prohibition on use of grants to pay for equipment or supplies to be used for religious worship, instruction, or proselytization.

To clarify that grantees cannot use their grants to pay for equipment or supplies used for religious worship, instruction, or proselytization, the Department is proposing a technical amendment to § 75.532(a)(2). The Department believes that no clarification is needed for § 76.532(a)(2) relating to States and subgrantees.

Removal of §§ 75.532(a)(3) and 76.532(a)(3) relating to the prohibition on use of grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for religious worship, instruction, or proselytization.

The Department believes that grantees and subgrantees may use their grants and subgrants to pay for construction, remodeling, repair, operation, or maintenance of any facility or part of a facility only to the extent that such facilities are used for eligible Department-funded activities (and not for inherently religious activities such as religious worship, instruction, or proselytization, or any other ineligible purpose). The Department is nevertheless proposing the removal of §§ 75.532(a)(3) and 76.532(a)(3) because there is no statutory authority for grantees and subgrantees to use their grants and subgrants for construction, remodeling, repair, operation, or maintenance of any private educational facility (or part of a private educational facility). The Department accordingly has no programs that fund such capital improvements. Therefore, rather than amend these provisions to clarify the limitations under which grantees and subgrantees could use their grants and subgrants if such statutory authority existed, the Department proposes simply to remove these provisions. If and when such uses are authorized by statute, the Department will issue program-specific regulations in accordance with the statute.

Removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2) relating to the prohibition on use of grants and subgrants to pay for an activity of a school or department of divinity.

Consistent with the principle that faith-based organizations are eligible to apply for and to receive funding under Department of Education programs on the same basis as any other private organization, with respect to programs for which such other organizations are eligible, the Department is additionally proposing the removal of §§ 75.532(a)(4), (b)(1) and (2) and 76.532(a)(4), (b)(1) and (2), which prohibit grantees and subgrantees, respectively, from using their grants and subgrants to pay for an activity of a school or department of divinity. Grantees and subgrantees that use their grants and subgrants to pay for such an activity will still be subject to §§ 75.532(a) and 76.532(a), which prohibit them from using their grants and subgrants to pay for (1) religious worship, instruction, or proselytization, and (2) equipment or supplies to be used for those activities. To the extent that they perform eligible activities, however, they need not be disqualified from participating in Federal programs simply by virtue of their status as religious schools or departments.

Proposed §§ 74.44(f) (Procurement Procedures) and 80.36(j) (Procurement)

Lastly, the Department seeks to clarify that faith-based organizations are eligible to contract with or otherwise receive assistance from grantees and subgrantees, including States, on the same basis as other private organizations, with respect to contracts or assistance for which such organizations are eligible. Such faith-based organizations are subject to the same limitations to which grantees and subgrantees are subject regarding the

use of funds for inherently religious activities, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program. For example, a supplemental educational service provider that contracts with or otherwise receives assistance from a subgrantee pursuant to section 1116 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, is not subject to the same limitations to which grantees and subgrantees are subject regarding the use of funds for inherently religious activities because the provider, by statute, is selected as a result of the genuine and independent private choice of the parent of an eligible child. However, the provider must still satisfy all applicable statutory requirements.

Executive Order 12866

1. Potential Cost and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are minimal and arise from statutory requirements and those we have determined to be necessary for administering the Department's programs effectively and efficiently.

In assessing the minimal potential costs and substantial benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, Local, and Tribal governments in the exercise of governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations would not add significantly to the costs of implementing the Department's programs, but will significantly increase the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere in this preamble, the proposed regulations would increase the pool of potential applicants from which the Department may select grantees, the States may select subgrantees, and grantees and subgrantees may select entities with which to contract or otherwise provide assistance, thereby increasing the quantity of highly qualified private organizations that are eligible to receive Federal funding. The proposed regulations will enable the Department to facilitate the contribution of faith-based organizations to increase the effectiveness of the Department's programs. The proposed regulations will also ensure that Federal funds are used only for proper purposes and clarify for faith-based organizations, the Department, and the public the rules for using Federal funds.

The existing procedures for ensuring that Federal funds will be used for proper purposes will be used to ensure that funds are not diverted to improper purposes. The Department will employ its standard procedures for monitoring grantees that it would employ even if the proposed regulations were not promulgated. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading: for example, § 75.52 *Eligibility of faith-based organizations for a grant.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations require the Department and States to administer grant programs in accordance with constitutional standards and to maximize the efficiency and productivity of such programs. States are not considered small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not require any additional information collection requirements.

Intergovernmental Review

These proposed regulations affect direct grant programs that are 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 to strengthen 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 actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.* (Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 74

Accounting, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Administrative practice and procedure, Education, Grant programs—Education, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

34 CFR Part 80

Accounting, Grant programs, Reporting and recordkeeping requirements.

Dated: September 22, 2003.

Rod Paige,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend parts 74, 75, 76, and 80 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. A new § 75.52 is added to subpart A under the heading ''Eligibility for a Grant'' to read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

(2) The Department shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

(b) The provisions of § 75.532 apply to a faith-based organization that receives a grant under a program of the Department.

(c) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a grant from the Department, and participation in any such inherently religious activities by beneficiaries of the programs supported by the grant must be voluntary.

(d)(1) A faith-based organization that applies for or receives a grant under a program of the Department may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and otherwise govern itself on a religious basis; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) A private organization that receives a grant under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary of that program on the basis of religion or religious belief.

(f) If a grantee contributes its own funds in excess of those funds required by a matching or grant agreement to supplement Federally funded activities, the grantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(Authority: 20 U.S.C. 1221e–3 and 3474)

3. Section 75.532(a)(2) is revised to read as set forth below; paragraphs (a)(3) and (4) are removed; and paragraph (b) is removed and reserved.

§ 75.532 Use of funds for religion prohibited.

(a) * * *

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(b) [Reserved]

PART 76—STATE-ADMINISTERED PROGRAMS

4. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, 6511(a), and 8065a, unless otherwise noted.

5. A new § 76.52 is added to subpart A under the heading ''Eligibility for a Grant or Subgrant'' to read as follows:

§ 76.52 Eligibility of faith-based organizations for a subgrant.

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization, with respect to programs for which such other organizations are eligible.

(2) States shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

(b) The provisions of § 76.532 apply to a faith-based organization that receives a subgrant from a State under a State-administered program of the Department.

(c) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a subgrant from a State under a State-administered program of the Department, and participation in any such inherently religious activities by beneficiaries of the programs supported by the subgrant must be voluntary.

(d)(1) A faith-based organization that applies for or receives a subgrant from a State under a State-administered program of the Department may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and otherwise govern itself on a religious basis; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(e) A private organization that receives a subgrant from a State under a State-administered program of the Department shall not discriminate against a beneficiary or prospective beneficiary of that program on the basis of religion or religious belief.

(f) If a State or subgrantee contributes its own funds in excess of those funds required by a matching or grant

agreement to supplement federally funded activities, the State or subgrantee has the option to segregate those additional funds or commingle them with the funds required by the matching requirements or grant agreement. However, if the additional funds are commingled, this section applies to all of the commingled funds.

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

§ 76.532 [Amended]

6. Section 76.532 is amended by removing (a)(3) and (a)(4); and removing and reserving (b).

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

7. The authority citation for part 74 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, OMB Circular A–110, unless otherwise noted.

8. Section 74.44 is amended by adding new paragraph (f) to read as follows:

§ 74.44 Procurement procedures.

* * * * *

(f)(1)(i) A faith-based organization is eligible to contract with or otherwise receive assistance from recipients on the same basis as any other private organization, with respect to contracts or assistance for which such other organizations are eligible.

(ii) Recipients shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

(2) The provisions of §§ 75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with or otherwise receives assistance from a recipient, unless the faith-based organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with or assistance received from a recipient and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract or assistance must be voluntary, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(4)(i) A faith-based organization that contracts with or otherwise receives assistance from a recipient may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(ii) A faith-based organization may, among other things—

(A) Retain religious terms in its name;

(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(D) Select its board members and otherwise govern itself on a religious basis; and

(E) Include religious references in its mission statement and other chartering or governing documents.

(5) A private organization that contracts with or otherwise receives assistance from a recipient shall not discriminate against a beneficiary or prospective beneficiary of the program on the basis of religion or religious belief.

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

9. The authority citation for part 80 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–102, unless otherwise noted.

10. Section 80.36 is amended by adding new paragraph (j) to read as follows:

§ 80.36 Procurement.

* * * * *

(j) *Contracting with faith-based organizations.* (1)(i) A faith-based organization is eligible to contract with or otherwise receive assistance from grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts or assistance for which such other organizations are eligible.

(ii) Grantees and subgrantees, including States, shall not discriminate against a private organization on the basis of the organization's religious character or affiliation.

(2) The provisions of §§ 75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, unless the faith-based organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with or assistance received from a grantee or subgrantee, including a State, and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract or assistance must be voluntary, unless the organization is selected as a result of the genuine and independent private choice of the beneficiary of the program and provided the organization otherwise satisfies the requirements of the program.

(4)(i) A faith-based organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(ii) A faith-based organization may, among other things—

(A) Retain religious terms in its name;

(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(D) Select its board members and otherwise govern itself on a religious basis; and

(E) Include religious references in its mission statement and other chartering or governing documents.

(5) A private organization that contracts with or otherwise receives assistance from a grantee or subgrantee, including a State, shall not discriminate against a beneficiary or prospective beneficiary of the program on the basis of religion or religious belief.

[FR Doc. 03–24292 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
September 30, 2003

Part VII

Department of Veterans Affairs

38 CFR Part 61

VA Homeless Providers Grant and Per Diem Program; Religious Organizations; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AL63

VA Homeless Providers Grant and Per Diem Program; Religious Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to revise the regulations concerning the VA Homeless Providers Grant and Per Diem Program. More specifically, we propose to revise provisions that apply to religious organizations that receive VA funds under VA's Homeless Providers Grant and Per Diem Program to ensure that VA activities under this program are open to all qualified organizations, regardless of their religious character, and to clearly establish the proper uses to which funds may be put, and the conditions for the receipt of such funding.

Also, consistent with Title VII of the Civil Rights Act of 1964, we propose to remove the regulatory prohibition against religious organizations making employment decisions on a religious basis. The numerous other requirements are more than sufficient to ensure that direct government funds are not used for inherently religious activities.

DATES: Comments must be received on or before October 30, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL63.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: In the interim final rule document published in the **Federal Register**, March 19, 2003, we revised a portion of the ''VA Homeless Providers Grant and Per Diem Program'' regulations. In order to allow the public to easily review the regulatory changes, we included the entire rule text for that section, including portions that were not changing from the regulation that had already been promulgated prior to the interim final rule. The interim final regulation contained a § 61.64 concerning religious organizations, which had been promulgated previously and was not changed in the interim final rule, that reads as follows:

(a) As a condition for receiving assistance under this part, an organization that is primarily a religious organization must agree to conduct activities for which the assistance is provided in a manner that is free from religious influences and must comply with the following:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence as a condition of the provision of housing and supportive services.

We propose to revise § 61.64, consistent with Executive Order 13199 (''Establishment of White House Office of Faith-Based and Community Initiatives'') and Executive Order 13279 (''Equal Protection of Laws for Faith-Based and Community Organizations''), to ensure that VA programs under this part are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put, and the conditions for the receipt of such funding. Accordingly, we propose to revise § 61.64 in accordance with the following principles.

1. *Participation by faith based organizations in VA programs.* The proposed rule would make clear that organizations are eligible to participate in VA programs under this part without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for VA funds under this part because they are religious. Specifically, religious organizations would be eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. Also, the Federal Government, as well as State and local governments administering funds under VA programs under this part, would be prohibited from discriminating against organizations on the basis of religion or their religious character.

2. *Faith-based activities.* The proposed rule would describe the requirement applicable to all recipient organizations regarding the use of VA funds under this part for faith-based activities. Specifically, a participating organization could not use direct VA funds under this part to finance inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with VA assistance, and participation must be voluntary for the beneficiaries of the directly funded programs or services under this part. This requirement would ensure that direct VA funds under this part provided to religious organizations are not used to support inherently religious activities. Thus, VA funds under this part provided directly to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This proposed restriction does not mean that an organization that receives VA funds under this part cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with direct VA funds under this part. Thus, faith-based organizations that receive direct VA funds under this part must take steps to separate, in time or location, their inherently religious activities from the VA-funded services that they offer under this part.

The proposed rule defines the meaning of ''direct financial assistance'' and ''indirect financial assistance.'' We note, however, that VA currently has in place only programs that provide direct financial assistance to participating organizations.

3. *Independence of faith-based organizations.* The proposed rule clarifies that a religious organization that participates in VA programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations

may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. *Nondiscrimination in providing assistance.* The proposed rule clarifies that an organization that participates in a VA program under this part shall not, in providing service funded in whole or in part by VA, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. *Assurance requirement.* The proposed rule would remove those provisions of VA's regulation that require only VA-funded religious organizations to provide assurance that they will conduct eligible program activities in a manner that is ''free from religious influences'' as VA imposes no comparable assurance requirements in any other context. VA believes it is unfair to require religious organizations alone to provide additional assurance, above and beyond those any other organization is required to provide, that they will comply with VA requirements. All organizations that participate in VA programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of VA-funded activities, including those prohibiting the use of direct financial assistance from VA to engage in inherently religious activities. In addition, to the extent that provisions of VA's regulation disqualify religious organizations from participating in VA's program because they are motivated or influenced by religious faith to provide social services, the proposed rule removes that restriction, which is inconsistent with governing law. Such requirements may have a ''chilling effect'' on religious organizations, many of which are motivated by their faith to provide VA-funded social services or view the provision of such services as a ''ministry.''

As noted above, current § 61.64 provides that as a condition for receiving assistance an organization that is primarily a religious organization must agree not to discriminate against any employee on the basis of religion and could not limit employment or give preference on the basis of religion. We propose to delete the hiring restriction. Section 702 of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberties of communities of faith. The proposed regulation thus reflects the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

Comment Period

As noted above, an interim final rule revising the VA Homeless Providers Grant and Per Diem regulations became effective on March 19, 2003. We will begin working on a final rule relating to the interim final rule as soon as the comment period for the interim final rule closes. We are providing a 30-day comment period for this proposed rule concerning religious organizations so that any resulting changes can be included in said final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. This proposed rule merely ensures that religious organizations are treated the same as other participants in the Homeless Providers Grant and Per Diem Program. It creates no new economic impact. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: May 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 61 as follows:

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note.

2. Revise § 61.64 to read as follows:

§ 61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. Neither the Federal Government nor a State or local government receiving funds under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, ''indirect financial assistance'' means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. ''Direct financial assistance,'' means Federal aid

in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

[FR Doc. 03–24320 Filed 9–29–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
September 30, 2003

Part VIII

Department of Health and Human Services

42 CFR Parts 54 and 54a

45 CFR Parts 96, 260 and 1050

Charitable Choice Provisions and Regulations; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 54 and 54a

45 CFR Part 96

RIN 0930–AA11

Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants, Projects for Assistance in Transition From Homelessness Formula Grants, and to Public and Private Providers Receiving Discretionary Grant Funding From SAMHSA for the Provision of Substance Abuse Services Providing for Equal Treatment of SAMHSA Program Participants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Final rule.

SUMMARY: On December 17, 2002, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) to implement the Charitable Choice statutory provisions of the Public Health Service Act, applicable to the Substance Abuse Prevention and Treatment (SAPT) Block Grant program, the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, insofar as recipients provide substance abuse services, and to SAMHSA discretionary grants for substance abuse treatment or prevention services, which are all administered by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. The Secretary requested comments on the NPRM and gave 60 days for individuals to submit their written comments to the Department. The Secretary has considered the comments received during the open comment period and is issuing the final regulation in light of those comments.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Daryl Kade, Associate Administrator for Planning and Budget, 12C–06 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–4111.

Background

Section 1955 of the Public Health Service Act, 42 U.S.C. 300x–65, as added by the Children's Health Act of 2000 (Pub. L. 106–310), as well as sections 581–584 of the Public Health Service Act, 42 U.S.C. 290kk, *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554), (hereinafter referred to as ''SAMHSA Charitable Choice provisions'') set forth certain provisions which are designed to give people in need of substance abuse services a greater choice of SAMHSA-supported substance abuse prevention and treatment programs. SAMHSA's Charitable Choice provisions ensure that religious organizations are able to compete on an equal footing for Federal substance abuse funding administered by SAMHSA, without impairing the religious character of such organizations and without diminishing the religious freedom of SAMHSA beneficiaries. These provisions apply to recipients of the Substance Abuse Prevention and Treatment (SAPT) Block Grant funds, the Projects for Assistance in Transition from Homelessness (PATH) formula grant funds, and to SAMHSA discretionary grant funds for substance abuse prevention and treatment services.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer myriad social services to those in need. The SAMHSA Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for *all* organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need. SAMHSA's Charitable Choice statutory provisions were enacted within the constitutional framework of government interaction with religious organizations. The goal of Charitable Choice is not to support or sponsor religion, but to ensure fair competition among providers of services whether they are public or private, secular or faith-based.

Purpose of Rule

The SAMHSA Charitable Choice provisions contain important protections both for religious organizations that receive SAMHSA funding for substance abuse services and for the individuals who receive services from such programs. The rule will work to ensure that SAMHSA substance abuse programs are open to all eligible organizations, regardless of religious character or affiliation, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. The regulations provide maximum flexibility to the States and local governments, and to religious organizations that are ''program participants'' in implementing these provisions. In that vein, the final rules provide that, as part of the application package they submit for funding, duly-designated officials from the States, local governments, and applicants for SAMHSA discretionary funding for applicable programs will assure that they will comply with these provisions.

Brief Overview of the Rule

The Department is amending the regulations to add 42 CFR part 54 and part 54a. Part 54 addresses implementation of these provisions with regard to SAMHSA's Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x–21 to 300x–66, and to SAMHSA's Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35, in which the State has most of the responsibility for implementation. Part 54a addresses implementation of these provisions with regard to SAMHSA's discretionary grant programs, 42 U.S.C. 290aa, *et seq.*, in which implementation responsibility is shared among SAMHSA, and the States and local governments as recipients of those grants.

Response to Comments Received on the Proposed Rule

The Department received comments about the Charitable Choice proposed rule from 62 commenters, as follows:

- 15 comments from 13 States
- 13 comments from faith-based organizations
- 11 comments from substance abuse associations and providers
- 10 comments from individuals not representing particular groups or organizations
- 8 comments from advocacy groups and civil rights organizations
- 2 comments from public and State/local interest groups
- 2 from law firms
- 1 from a Federal agency

In general, comments from the States and providers centered on the implementation of Section 54.8 and Section 54a.8, the alternative services provisions. Comments from faith-based organizations, advocacy groups, and interest groups centered on how to keep religious activities separated from social services, and how to safeguard the rights of both the religious organization and the program beneficiary.

The following is a summary of comments by issue, and the Department's response to those comments.

Scope. (Secs. 54.1 and 54.1a)

This section of the rules clarifies that they apply, according to SAMHSA's Charitable Choice provisions, only to awards that pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21 to 290cc–35, and 42 U.S.C 290aa, *et seq.* These rules do not apply to awards under any such authorities for activities that do not involve the direct provision of substance abuse services.

Comment: One commenter was concerned ''about the singling out of substance abuse services from mental health services, [perpetuating] the damaging myth that substance abuse service are not truly health care services.''

Response: SAMHSA's mental health programs are not covered by the Charitable Choice statutory provisions. However, all of SAMHSA's programs are covered by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, which establishes that all eligible organizations, including faith-based and other community organizations are able to compete on an equal footing for Federal financial assistance. The Department is working to ensure that all its programs, whether substance abuse or mental health, comply with the principles set out in this Executive Order.

Comment: Several commenters opined that the proposed rule was an unconstitutional breach of the principle of separation of church and state, because it would allow public funds to be given to ''pervasively sectarian organizations,'' contrary to longstanding judicial precedent.

Response: We do not agree with the commenters. Religious organizations that receive direct SAMHSA funds for substance abuse treatment cannot use such funds for inherently religious activities. These organizations must ensure that religious activities are separate in time or location from the treatment services and they must also ensure that participation in such religious activities is voluntary. Furthermore, they are prohibited from discriminating against a program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

The Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that *no* government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case set forth reasoning that is inconsistent with its underlying premises, *see id.* at 857–858 (O'Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of ''actual diversion of public support to religious uses''). Thus, six members of the Court have rejected the view that aid provided to institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. We therefore believe that when current precedent is applied to a substance abuse program, or to the SAMHSA Charitable Choice provisions, government may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

Definition of Religious Organization. (Secs. 54.2 and 54.2a)

In the NPRM, the Department defined ''religious organization'' as a ''non-profit religious organization,'' consistent with 42 U.S.C. 290kk(c)(6). This definition covers the breadth of organizations that could potentially apply for federal funding under the Charitable Choice Regulations.

Comments: Six commenters requested a more detailed definition of ''religious organizations'' and some offered suggestions including using the tax code definition of ''religious organization.'' The commenters felt it was important to know to which organizations the Charitable Choice regulations applied.

Response: Throughout the proposed rule, we used the term ''religious organization'' and the term ''faith-based organization'' interchangeably. Neither the U.S. Constitution nor the relevant Supreme Court precedents contain a comprehensive definition of religion or a religious organization that must be applied to this rule. Yet, an extensive body of judicial precedent provides the practical guidelines that States and religious organizations need to conform to the Establishment and the Free Exercise Clauses of the First Amendment to the U.S. Constitution. In addition, following investigation into the definition provided by the tax code, the Department determined that the definition did not serve to provide more clarity to the definition in the preamble. Therefore, the Department, in the final rule, has not further defined that term. Please note that the Department is planning to ask organizations to identify whether they are religious organizations as part of a survey entitled *Survey on Ensuring Equal Opportunity for Applicants.*

Comment: Several commenters asked that the final rule provide additional guidance on how to comply with the Establishment Clause and that it detail the scope of religious content that must be excluded from public funding.

Response: In enacting the Charitable Choice provisions, Congress did not include specific statutory provisions with guidance on how to meet constitutional requirements. Like Congress, we do not believe it is appropriate in this rule to provide either States or religious organizations with detailed guidance on how to comply with the Establishment or Free Exercise Clauses of the Constitution. States and faith-based organizations have years of experience and extensive practice in following case law and adhering to judicial precedent to conform to these provisions. In enacting the SAMHSA Charitable Choice provision, Congress sought to conform the law to this precedent while providing maximum flexibility to the States in carrying out statutory requirements. The requirement in the proposed rule closely mirrors the statutory provision and we have retained the identical language of the proposal in the final rule.

Restriction on Religious Activities by Organizations that Receive Funding Directly from SAMHSA. (Secs. 54.2 and 54a.2)

In the NPRM, the Department defined ''inherently religious'' as including ''worship, proselytization, or instruction.'' Faith-based organizations cannot use Federal funds to support such activities.

Comment: Many commenters addressed the issue of what constitutes ''inherently religious activities.'' Some groups stated that the definition provided in the NPRM, of ''worship, proselytization, or instruction,'' did not clarify sufficiently what activities could be funded by federal funds. They noted that questions of what constitutes religious content and the religious nature of program must be addressed. Without this clarification, the provision opens the door to other activities—including desirable ones such as providing food and shelter—that may be undertaken for religiously informed reasons being ruled ineligible for SAMHSA funding support.

Response: The Charitable Choice regulation maintains that the organization's inherently religious activities must be kept separate—*i.e.*, in time or location—in order to prevent the organization from using some or all of the SAMHSA funds provided to it to further its inherently religious activities. The inherently religious activities must be funded privately in their entirety.

For example, a church has a contract with SAMHSA to provide a substance abuse prevention class. The class is held in the finished basement of the church, the same place where the pastor of the church holds a Bible study group at the end of the day, when all other classes have ended. The pastor has extended an open invitation for anyone who wishes, to attend the study group. The church must use private funds to pay for this Bible study activity. Thus, faith-based organizations that receive direct SAMHSA funds must take steps to separate, in time or location, their inherently religious activities from the SAMHSA-funded services that they offer.

In addition, any participation by a program beneficiary in inherently religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, directly funded religious organizations must be careful to reassure program beneficiaries that they will receive services or benefits even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

As some of the commenters noted, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Our approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. The Court has explained, however, that prayer and worship are inherently religious, but that social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of ''ministry.''

Comment: Other commenters were concerned because the potential for violating the requirement to separate religious and non-religious components of a program is heightened in the area of substance abuse services, which is sometimes viewed as a spiritual problem.

Response: The restrictions on inherently religious activities by organizations that receive funding directly from SAMHSA [1] remain the same as those described in the proposed rule. The Department agrees that these activities include worship, religious instruction, and proselytization. (Other basic examples include prayer meetings and devotional studies of sacred texts.) The right to maintain a group's religious character does not include the right to use government funds to pay for inherently religious activities or materials.

Comment: Questions were also raised about whether 12-step programs or, specifically, AA programs, are religious programs.

Response: With regard to the 12-step and AA meetings, we note that any inherently religious activities must be voluntary and must be offered separately in time or location from the program that receives direct SAMHSA funding.

Comment: A commenter stated that the exclusion of all ''inherently religious'' activities from government funding is flawed, and puts many faith-based organizations in the position of having to choose either to deny their core religious perspectives on social issues or to reject government funds for their programs that accomplish the government's objectives.

Response: This limitation on the use of the direct funds, which tracks the SAMHSA Charitable Choice statute, is not meant to put an organization in the position of having to deny its religious perspectives on social issues, or in the position of having to reject government funds for its programs that are consistent with the purposes of the SAMHSA program. We recognize that while the government regards services like feeding the hungry or helping substance abusers return to their communities as social services or secular work, some organizations may regard these same activities as acts of mercy, spiritual service, fulfillment of religious duty, good works, or the like. Therefore, providing social services that otherwise satisfy the requirements for funding under a government program—*e.g.*, providing food for the hungry or helping substance abusers rejoin their communities—would constitute an appropriate use of funds, as long as government funds are not used to pay for inherently religious activities such as prayer and worship.

Comment: Several commenters recommended that the phrase ''separate in time or location'' be changed to ''separate in time and location.'' According to the commenter, this would ''prevent a religious provider from completing a service component, and then moving directly into a prayer service without notice or a break.''

Response: The Department has decided to leave the final regulation as it was stated in the NPRM. Changing the regulation in the suggested way would place an undue burden on the providers and is not legally necessary. For example, such a rule would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of SAMHSA-funded services. As to the commenter's fear that a provider may move directly from the service component into a prayer service without notice or taking a break, it should be noted that the rule makes it clear that religious activity must be separated in time or location from the SAMHSA-funded services and participation by a beneficiary must be voluntary. We believe the rule adequately addresses this situation.

Equal Treatment for Religious Organizations. (Sec. 54.3 and 54a.3)

Under SAMHSA's Charitable Choice provisions, organizations are eligible to participate in SAMHSA programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for Federal funds because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations.

Comments: Eleven commenters said that faith-based providers should be held to the same program standards that are applicable to other providers. Commenters felt that without such a standard, faith-based organizations would have an unfair advantage in providing services, and that the overall effect would be lower standards of care.

Response: These regulations are established in accordance with the law

[1] In the Charitable Choice context, the term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In these proposed regulations, the term ''direct'' has the former meaning.

to provide evenhanded treatment of SAMHSA program participants—that is, to ensure that religious organizations are not discriminated against on the basis that the religious organization has a religious character. These regulations do not establish a preference for faith-based organizations and, much like the Charitable Choice laws, in fact, provide that ''nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.''

Comment: One commenter felt that the NPRM failed to distinguish between ''discrimination and the application of special rules required to protect the character of religious organizations.'' Another commenter suggested that the final rule should also prohibit discrimination ''in favor of'' faith-based organizations. In selecting contractors, a government entity should not allow a provider's religious character to influence its selection.

Response: According to other comments received from faith-based organizations, most groups recognize that the regulations and the Charitable Choice laws serve to protect program recipients and are consistent with the Establishment Clause. These regulations do not establish a form of discrimination or preferential treatment, but rather deal with the special situation involved in the funding of religious organizations. Nothing in the regulations is intended to preclude those administering the program from accommodating religious organizations in a manner consistent with the Establishment Clause.

Comment: A couple of commenters, noting the importance of the equal treatment provisions, observed that the proposed rule is consistent with the statute and strongly supported retention in the final rule.

Response: We agree with these comments and have retained similar language in the final rule.

Comment: One commenter noted that the provisions equate religious and non-religious providers and seek to treat them as equals, thereby failing to recognize the unique place that religion has in our society. This commenter believed that religion should be above the fray of government funding, regulation and auditing, not reduced to it.

Response: This rule does not present any violation of constitutional church-state principles. Rather, this rule governs the conscious decision of a religious organization to administer regulated activities, by accepting public funds to do so. Therefore, consistent with the SAMHSA Charitable Choice laws, we have retained language that enables faith-based organizations to compete on an equal footing for funding, within the framework of constitutional church-state guidelines. This does not in any way denigrate the special place of religion in the Constitution or its unique role in society. As the Supreme Court has recognized, respect for religious freedom at times permits (and at times requires) treating religion on an equal basis.

Nondiscrimination Against Beneficiaries. (Sec. 54.7 and 54a.7)

This provision of the NPRM restated the statutory requirement that programs receiving federal funding may not discriminate against program recipients on the basis of their religion or religious beliefs or a refusal to actively participate in a religious practice.

Comment: Many of the commenters expressed concern over the use of the word ''active'' in setting forth the prohibition from discriminating against beneficiaries or potential beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice. They believed that the word ''actively'' implies that beneficiaries are not protected if they refuse to passively participate in religious practices. They also believed that faith-based organizations could compel beneficiaries to attend activities like sermons, prayers, and religious lectures, or force beneficiaries to bow their heads or remain standing during the delivery of proselytizing messages, religious instruction or worship. Further, they interpreted the word ''active'' to allow the delivery of such messages using facilities and equipment funded by the government. They believed this word opens the door wherein vulnerable clients may be exposed to inappropriate ''passive'' religious practices. The commenters recommended removing the word ''actively'' from the final regulations.

Response: In enacting the SAMHSA Charitable Choice provisions, Congress provided that program participants may not discriminate against program beneficiaries ''on the basis of religion, a religious belief, or a refusal to actively participate in a religious practice.'' 42 U.S.C. 300x–65(f). Further, Congress stipulated that the religious freedom of beneficiaries may not be diminished and provided that beneficiaries who object to the religious character of a service provider have a right to an alternative provider. These provisions are straightforward and are sufficient to protect the religious freedom of program beneficiaries. Accordingly, we have retained the language of the proposed rule, which is based on Congress's own language. We reiterate, however, as indicated in the rules at sections 54.4 and 54a.4, that inherently religious activities are not to be made part of a program that is directly funded by SAMHSA. Inherently religious activities, such as prayer and worship, may only be offered to beneficiaries on a voluntary basis and must be provided separately, in time or location.

Comment: The commenters suggested that we strengthen the provision in this subsection so clients may not be coerced, explicitly or tacitly, to participate in religious activities, or feel pressured to participate in such activities. Individuals in need are not always in a condition to make a thoughtful and well-considered decision whether or not to participate in worship or similar activities offered by a religious social service provider, particularly when the individual is in great need of the service.

Response: We believe that the provision suffices as written. However, we will use this opportunity to reaffirm that a person's participation in any religious activities must be entirely voluntary. Beneficiaries of directly funded SAMHSA services have the right not to take part in any religious practices to which they object. Therefore, they may, at any time, refuse to participate in inherently religious activities. We recommend that States and organizations help to ensure that clients and prospective clients have a clear understanding of the services offered by an organization by having literature available to give to the client which fully explains the services offered, including any inherently religious activities, as well as the individual's rights.

Comment: One commenter wrote that the rules should clarify that individuals who refuse to participate in the inherently religious activities will not be excluded from the program and will not suffer any discrimination in the administration of the program. Congress specified that Federal funds may not be used for religious purposes, but the rules provide no enforcement mechanism, so beneficiaries have no administrative relief if violations occur.

Response: The SAMHSA Charitable Choice provision explicitly prohibits a religious organization from discriminating against a participant on the basis of religion, religious belief, or

refusal to actively participate in a religious practice. For example, if the service provider is a faith-based organization, that organization may not discriminate against the individual on account of religion or a religious belief. In addition, the faith-based organization may not turn away a beneficiary from the organization's program solely because the beneficiary refuses to participate in an inherently religious practice. Hence, this provision ensures the beneficiary's right not to take part in any inherently religious practices to which he or she objects. The individual's participation in an inherently religious activity must be entirely voluntary. Likewise, it is well established that government may not compel an individual, through material penalty or loss of public benefit or advantage, to profess a religious belief or to observe an inherently religious practice.

Comment: One commenter wrote that the proposed rule does not require a secular alternative. Therefore, it lacks constitutionally required safeguards for beneficiaries. Another commenter suggested that beneficiaries should be referred to programs to which they have no religious objection.

Response: The proposed rule provided that if the applicant or recipient objects to the religious character of a SAMHSA service provider, he or she is entitled to an alternative provider to which the individual has no religious objection. This is in keeping with the SAMHSA Charitable Choice provisions, which require that the beneficiary be provided assistance from ''an alternative provider.'' The Charitable Choice statute does not specify that the alternative provider needs to be a secular organization; it need only be a provider to which the beneficiary has no objection (unless, of course, the beneficiary objects to the religious character of *all* faith-based providers, in which case he is entitled to a secular alternative). We have chosen not to adopt this suggestion for three reasons. First, some beneficiaries may prefer an alternative religious organization, rather than a secular organization, and we prefer to provide beneficiaries with as many choices as possible. Second, the Charitable Choice statute prohibits direct funding of inherently religious activities (which must also be voluntary), and many faith-based organizations in any case deliver their services in a secular manner. As a result, most beneficiaries do not object to the religious character of these organizations, and we do not want to exclude them as potential providers of service. Third, under the permissive statutory language that we have retained, State and local governments may offer a secular alternative. We believe States will implement this requirement in a manner consistent with their obligation to ensure compliance with the Establishment Clause of the First Amendment.

Comment: One commenter would like us to recognize that religious organizations and secular organizations sometimes discriminate on the basis of sexual orientation or gender identity. The commenter suggested that we develop a regulation banning religious, sexual orientation and/or gender identity discrimination with Federal or other public funds.

Response: Religious and secular organizations alike must follow Federal civil rights laws prohibiting discrimination on the bases of race, color, national origin, gender, age, and disability. However, the Federal civil rights laws are silent on discrimination on the basis of sexual orientation, and we decline to impose such restrictions by regulation.

Comment: Several commenters noted that if religious organizations are providing program services and facilities, then they must be in compliance with the Americans with Disabilities Act (ADA).

Response: It is beyond the scope of these regulations to address how various civil rights laws might apply in all situations. As noted previously, organizations providing programs services and facilities must comply with Federal civil rights laws to the extent those laws are applicable. We note that section 307 of the Americans with Disabilities Act of 1990 excludes religious organizations or entities controlled by religious organization, including places of worship, from coverage under the provision that deal with public accommodations. On the other hand, there exist a number of other Federal prohibitions against discrimination on the basis of disability. For example, section 504 of the Rehabilitation Act of 1973, and its implementing regulations at 45 CFR part 84, prohibit discrimination on the basis of disability in programs or activities receiving Federal financial assistance.

Religious Character and Independence. (Sec. 54.5 and 54a.5)

Sections 54.5 and 54a.5 of the final rule clarify that a religious organization that participates in the SAMHSA program retains its independence from Federal, State, and local governments, provided that it does not use direct SAMHSA funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide SAMHSA-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a religious organization that receives SAMHSA funds may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

Comment: A number of commenters expressed concern that a religious organization in receipt of SAMHSA funds does not have to remove the religious art, icons, scriptures, or other symbols. The commenters think that this provision is too broad. It could result in the organization providing services in a setting that may well constitute a ''pervasively sectarian'' atmosphere in which members of a different religion may not feel comfortable or welcome to receive their SAMHSA-funded benefits. For example, the organization could conduct the government-funded program in a chapel, leading to a reasonable misperception of government endorsement of or support for religion.

Response: The SAMHSA Charitable Choice provisions impose on the government a duty not to intrude into the institutional autonomy of religious organizations. Specifically, each participating faith-based organization in receipt of SAMHSA funds ''shall'' retain its independence from Federal, State and local governments. This independence includes control over the definition, development, practice, and expression of its religious beliefs. In addition, the statutes expressly prohibit State, Federal, and local governments from requiring a religious organization to alter its form of internal governance or remove religious art, icons, scripture, or other symbols in order to be eligible to receive directly funded SAMHSA funds to provide services to beneficiaries. And, it should be noted that, if the beneficiary objects to the religious character of the organization, then he or she is entitled to receive the service from an alternate provider to which the beneficiary has no religious objection.

Finally, as noted above, the Supreme Court's ''pervasively sectarian'' doctrine no longer enjoys the support of a majority of the Court. *See Mitchell* v. *Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion); *id.* at 857–858 (O'Connor, J., concurring in judgment,

joined by Breyer, J.) (requiring proof of ''actual diversion of public support to religious uses''). Accordingly, the Department (like Congress) does not believe that the Constitution requires exclusion of organizations that are governed by religious organizations or whose facilities contain religious symbols.

Employment Practices. (Sec. 54.6 and 54a.6)

The NPRM restated the SAMHSA's Charitable Choice provisions, which provide that a religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program. To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) imposes religious nondiscrimination requirements on the employment practices of program participants, the NPRM clarifies that such requirements do not apply to program participants that demonstrate that these requirements would substantially burden their exercise of religion.

Comments: Numerous comments were received dealing with the employment practices provisions in the proposed rule. Nineteen out of 23 comments made about this provision supported the removal of the provision from the final rule. Many commenters felt that the Religious Freedom Restoration Act (RFRA) was an inappropriate basis for the regulation and did not provide the statutory authority to overrule the broad anti-discrimination provision in SAMHSA's authorizing legislation for the Substance Abuse Prevention and Treatment (SAPT) block grant in the Public Health Service Act. They argued that religious groups would not be substantially burdened by having to comply with these requirements, and that, in any event, the government had a compelling interest in imposing the requirements.

Response: The Department does not agree with the comments. We believe that, in addition to being a reasonable construction of the SAMHSA Charitable Choice provision, the inapplicability of the discrimination provisions of the SAPT block grant program and the PATH program, 42 U.S.C. 300x–57(a)(2) and 42 U.S.C. 290cc–33(a)(2), to religious organizations that demonstrate a substantial burden on their exercise of religion follows from RFRA. Under RFRA, the government may not impose legal requirements that substantially burden a grantee's exercise of religion unless doing so is the least restrictive means of furthering a compelling government interest. 42 U.S.C. 2000bb–1(b). Accordingly, where a religious entity establishes that its exercise of religion would be substantially burdened by the religious nondiscrimination provisions cited above, RFRA supercedes those statutory requirements, thus exempting the religious entity therefrom, unless the Department has a compelling interest in enforcing them.

The Department's rationale in this regard is set out in the NPRM. *See* 67 FR 77350, 77351–77352 (Dec. 17, 2002). Several points, however, merit elaboration. First, the Department recognizes that not all religious organizations that might receive funding under the SAPT block grant and PATH programs would be substantially burdened by the application of the religious nondiscrimination requirements of 42 U.S.C. 300x–57(a)(2) and 42 U.S.C. 290cc–33(a)(2). For example, some religious organizations are concerned only with their employees' commitment to providing social services, not with any profession of faith, and thus do not consider religion in hiring people to perform such services. Such groups would not likely be burdened by having to comply with a religious nondiscrimination requirement. Many other religious organizations, however, consider religious faith critical to all of their employees' activities, including those that involve providing government-funded social services to the public. For these groups, imposition of a religious nondiscrimination requirement can impose a particularly harsh burden. As Justice Brennan explained: ''Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is * * * a means by which a religious community defines itself.'' *Corporation of Presiding Bishop* v. *Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring). For groups that deem religious faith an important part of their self-definition, having to make employment decisions without regard to their faith would substantially alter the charter of their organization.

In recognition that the religious nondiscrimination requirements of 42 U.S.C. 300x–57(a)(2) and 42 U.S.C. 290cc–33(a)(2) would substantially burden some but not other grantees, the RFRA exemption is limited to those organizations that are able to certify that: (1) They sincerely believe that employing individuals of a particular religion is important to the definition and maintenance of their religious identity, autonomy, and/or communal religious exercise; (2) they make employment decisions on a religious basis in analogous programs; (3) the grant in question would materially affect their ability to provide the type of services in question; and (4) providing the services in question is expressive of their values or mission. We disagree, however, with some commenters' assertion that no religious organization would be substantially burdened by having to make hiring decisions without regard to their faith while participating in the SAMHSA program.

Second, the fact that SAMHSA is a funding program does not mean that the Federal government necessarily possesses a ''compelling interest'' in imposing religious nondiscrimination provisions upon the employment practices of participating religious organizations. To begin with, religious organizations' exemption from the religious nondiscrimination requirements of Title VII (the availability of that exemption is expressly clarified by the SAMHSA Charitable Choice law, 42 U.S.C. 290kk–1(e), 300x–65(d)(2)) reflects Congress's judgment that employment decisions are an important component of religious organizations' autonomy, and that the government has a much stronger interest in applying a religious nondiscrimination requirement to secular organizations than to religious organizations'many of whose existence depends upon their ability to define themselves on a religious basis. Moreover, many federal funding programs—including the discretionary grant programs administered by the Secretary under Title V of the Public Health Service Act—do not impose a religious nondiscrimination requirement upon the employment practices of grantees. Rather, Congress's application of religious nondiscrimination requirements in the employment context is quite selective, which makes it difficult to regard the government as having a compelling interest in imposing such a requirement in this particular context. Finally, secular entities that administer federally funded social programs generally are not barred from considering their ideologies in making employment decisions. In this respect, allowing faith-based grantees to consider religious motivation in hiring simply levels the playing field, allowing them to consider ideology on the same basis as other organizations.

Comment: Several commenters agreed that the proposed rule regarding the Title VII exemption reflects a proper understanding of civil rights law. When

a faith-based organization receives government funding and hires staff on a religious basis, the Federal civil rights law is not violated.

Response: We agree with these commenters and have retained the identical language in the final rule. This statutory and regulatory provision of Charitable Choice does not change the status quo; it simply clarifies applicability of the Title VII exemption under the SAMHSA Charitable Choice law.

Comment: Several commenters believed that the proposed rule allows employment discrimination in violation of constitutional prohibitions and court decisions that have struck down government-funded discrimination. One commenter explicitly stated that this provision runs afoul of the ''no-religious-tests clause'' of the Constitution under which ''no religious test shall ever be required as a qualification to any office or public trust under the United States.'' Other commenters stated that the exemption from Title VII of the Civil Rights Act was never intended to permit a religious organization to favor co-religionists in hiring when using Federal funds to pay the salaries and wages of employees who are carrying out government-funded social service programs.

Response: We do not agree that these comments accurately portray the law. In 1972, Congress broadened section 702(a) of the Civil Rights Act to exempt religious organizations from the religious nondiscrimination provisions of Title VII, regardless of the nature of the job at issue. The broader, amended provision was unanimously upheld by the Supreme Court in 1987 and, absent a specific statutory repeal, remains applicable even when religious organizations are delivering federally funded social services. Thus, although section 702(a) of the Civil Rights Act of 1964 is permissive—it does not require religious staffing—religious organizations may consider their faith in making employment decisions without running afoul of Title VII. The effect of the explicit preservation of the Title VII exemption is no different from the rule that applies in other programs that are simply silent on the question of the applicability of Title VII in the funding context, and, as noted above, there are many such programs. Concerning the commenters' suggestion that allowing a federally funded organization to consider faith in making employment decisions would violate the ''no religious test'' clause of the Constitution, we would simply note that it is well settled that the receipt of government funds does not convert the employment decisions of private institutions into ''state action'' that is subject to constitutional restrictions such as the ''no religious test'' clause.

Comment: Several commenters noted that the clause—''nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment''—did not address local laws and asked us to clarify in the final rule that the Charitable Choice provisions do not preempt any State or local law that relates to discrimination in employment.

Response: This provision of the SAMHSA Charitable Choice law preserves a ''Federal or State law or regulation that relates to discrimination in employment.'' 42 U.S.C. 290kk–1(e). In contrast, 42 U.S.C. 290kk–1(d)(1) provides that a religious organization participating in the program ''shall retain its independence from Federal, State, and local government * * *'' Congress thus was cognizant of the distinction between State and local law in drafting the SAMHSA Charitable Choice statute, and we believe that the existing language faithfully implements the statute.

Comment: One commenter wanted the Department to clarify under section 54.6(b) that the certification that is required to show that its religious exercise would be substantially burdened by the nondiscrimination requirements under the SAPT block grant and PATH programs should be submitted to SAMHSA.

Response: The Department does not believe that it is necessary for the subgrantees to provide such documentation to SAMHSA unless SAMHSA requests it, as indicated previously in the proposed rule which is now finalized.

Comment: One commenter pointed out that oversight of the employment practices would generate an administrative burden on the States.

Response: The Department recognizes this possibility of generating an administrative burden on the States and has included extensive flexibility for the implementation of the provision by the States.

Notice, Referral, and Provision of Alternative Services. (Sec. 54.8 and 54a.8)

If an otherwise eligible program beneficiary or prospective beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary must be referred to an alternative provider that has the capacity to provide the services, is accessible, and is of at least equal value as the provider to which the beneficiary objected. Under SAMHSA's Charitable Choice provisions, the responsibility for providing the alternative services rests with the ''the appropriate Federal, State, or local government'' that administers the program or is a program participant. The NPRM proposed that States provide and fund alternative services for SAPT block grant-funded beneficiaries and PATH program beneficiaries who have objected to the religious character of a program participant. States may use SAPT block grant and PATH grant funding to provide and fund such services from a provider to which the program beneficiaries do not have a religious objection, in a manner consistent with State law and policy.

With respect to SAMHSA discretionary grant funding, when SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to nongovernmental organizations, SAMHSA is the responsible unit of government.

Comments: All thirteen States and eleven providers that commented on the NPRM urged more flexibility for the States and providers in implementing these provisions. Fourteen of these commenters had concerns about the administrative and fiscal burden occasioned by this provision. Several were concerned that an ''essentially duplicate system of care'' would have to be developed, ''with the faith-based community in charge of deciding, by default, what services must be duplicated in order to assure that the beneficiary has freedom of choice.'' Others appreciated the discretion we had provided to States, but were concerned that the expectation of alternative services may expose States to litigation based on availability and how they define comparable services. Finally, one State commenter recommended that ''[I]f SAMHSA is interested in minimizing administrative costs, I recommend that these requirements be eliminated in lieu of existing State requirements.''

At the same time, other commenters believed that the proposed rule left too much discretion to States to define the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and ''value that is not less than.'' These commenters asked that we either provide Federal definitions for these terms, or establish baseline parameters or guidelines.

Response: After carefully considering these concerns, the Department agrees that it is important to provide flexibility to the States in determining how to establish procedures for notice, referral, and provision of alternative services. As noted in the NPRM, the Department recognizes that a range of methods that fulfill these responsibilities is possible. Therefore, the Department does not seek to prescribe a single, inflexible referral and alternative provider system that States must adopt when States are the responsible units of government. The Department believes it is vital to any effective implementation of these provisions that SAMHSA, State and local agencies, and religious organizations work cooperatively to develop systems to comply with these provisions, monitor compliance, identify compliance problems and take necessary corrective actions.

SAMHSA's Charitable Choice provisions apply to three different granting situations. The first is when the State itself is the recipient of SAPT block grant and PATH formula funds or when the States receive a discretionary grant from SAMHSA. Because of the broad range of State circumstances, coupled with the States' proven success in establishing systems to address such circumstances, States may develop referral and alternative service systems that are compatible with the treatment and prevention systems they administer, including reasonably defining and applying the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and ''value that is not less than.'' SAMHSA will work with the States as they develop their implementation plans, providing technical assistance and opportunities for the States to discuss implementation approaches with one another. Allowing the States such discretion will not require the development of duplicate systems and will reduce regulatory and paperwork burden.

The second situation is when SAMHSA awards discretionary funds directly to local governments. The third is when SAMHSA awards discretionary funds directly to faith-based nonprofit organizations. The unit of government responsible for providing and funding alternative services in these situations is defined at section 54a.8 as follows:

''With respect to SAMHSA discretionary programs, for purposes of determining what is the appropriate Federal, State, or local government, the following principle shall apply: When SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to a nongovernmental organization, SAMHSA is the responsible unit of government.''

Therefore, in the second circumstance, when SAMHSA awards discretionary funds to local governments, local governments are responsible for providing alternative services for program beneficiaries who may object to a faith-based program they are funding with SAMHSA funds. SAMHSA expects that local governments will work with the States and comply with the implementation approach adopted by their respective States.

In the third circumstance—when SAMHSA provides discretionary funds directly to faith-based organizations—SAMHSA will work with those organizations and consult with the States to ensure that program beneficiaries are provided alternative services in accordance with the statutory and regulatory requirements. As provided in the rule in section 54a.8(e), if there are no publicly funded alternatives available for the beneficiary, these grantees must contract with an alternative provider for the provision of such services, and the grantee may use the SAMHSA grant funds to finance the services. Should a grantee incur unanticipated additional costs as a result of providing alternative services beyond the discretionary grants awarded, the grantee may request reimbursement of those funds from SAMHSA, as the responsible unit of government, in the form of a request for supplemental funds to cover unanticipated costs. Based the past experience of other HHS agencies in implementing similar provisions, objections to the religious character of program participants have been rare, which is perhaps unsurprising in light of the fact that beneficiaries may not be required to participate in any inherently religious activities as a condition of receiving services. Thus, SAMHSA expects that such an occurrence will be infrequent and only occur when the referral is to a private provider. While the specific circumstances will vary from jurisdiction to jurisdiction, we anticipate that in many cases, referrals will be made to programs that are funded, at least in part, from public funds, and therefore the burden of this requirement will not be substantial.

Comment: SAMHSA posed certain questions to commenters in the **Federal Register** Notice about what commenters thought constituted ''reasonable period of time,'' ''reasonably accessible services,'' and what the best understanding of ''services that* * * have a value that is not less than the value of [services that would otherwise be provided].''

Commenters provided the following input in response:

- With regard to ''reasonable period of time,'' commenters suggested this would be anywhere from 24 hours after a request for alternative services to 4–6 weeks after such request. Most commenters reiterated that the States should determine what ''a reasonable period of time'' is.
- With regard to what ''reasonably accessible services'' are, commenters urged a focus on comparable level of care and reasonable accommodation. They noted that in large cities it may be easy to effect a referral to an alternative provider, but in smaller communities and rural areas, there may be only one existing licensed provider in the county.
- With regard to what constitutes equivalent services, commenters recommended that this phrase be interpreted to mean the value of the services themselves, without regard to the administrative costs involved.

Response: Although commenters made many good suggestions for defining these terms, the wide variety of responses to the questions SAMHSA raised underscores the need for State flexibility and the need for Departmental restraint in defining terms or regulating procedures for referral and provision of alternative services.

Comment: Commenters asked for clarification of ''how these recipients would fund and deliver services from alternative providers.'' Another commenter offered the opinion that States would need to establish formal set-asides within discretionary grants to cover alternative placements.

Response: As indicated above, the regulation (consistent with the statute) requires the ''responsible unit of government'' to provide and fund alternative services. With regard to the suggestion for set-asides, Federal cost policies do not permit grantees to have set-aside/contingency dollars.

Comment: Several commenters were concerned about the ''excessive burden on the treatment program to monitor the action of an individual who has not been admitted to its program and for whom the program is not receiving funding.'' In particular, several commenters noted ''faith-based organizations should not bear the burden of securing and financing alternative services.''

Response: SAMHSA considered these comments carefully in finalizing this rule, and has concluded that, when SAMHSA is the responsible unit of

government (that awards discretionary funds directly to a religious organization), it will follow the rule that applies to the other granting circumstances—that is, the grantee (which may be the State, the local government, or in this instance, the religious organization) will use grant funds, if necessary, to cover the cost of securing and providing alternative services. As indicated earlier, SAMHSA anticipates that in many cases, referrals will be made to programs that are funded, at least in part, from public funds, and therefore the burden of this requirement will not be substantial.

Comment: With regard to the program participant's responsibility to refer objecting program beneficiaries to alternative services, one commenter recommended that a ''gateway'' referral system that takes place before a beneficiary arrives at any provider be established and administered by the government. In the same vein, another commenter suggested that referral take place through ''coordination that result[s] in referrals not requiring opt-outs.''

Response: State and local governments have the flexibility to implement the requirement as they see fit so long as they meet all of the statutory and regulatory requirements. The Department is not mandating any one method.

Comment: Several commenters noted that the requirement to provide alternative services places additional burdens on State agencies, when the States are the responsible units of government, especially in rural areas. A faith-based organization may be selected as the service provider for a particular geographic area. Ensuring that an alternative service provider is available could require the State to make dual sets of services available, and thus increase costs. As a result, many of these commenters suggested that the requirement to provide alternative services is unreasonable. Some suggested that exceptions be permitted or that the requirement should be eliminated. Others noted that with this requirement, some States may choose not to contract out or provide community-based services, especially in rural areas.

Response: SAMHSA's Charitable Choice provisions impose the requirement to provide accessible and comparable assistance or services within a reasonable period of time to an individual who has an objection to the religious character of an organization. In the proposed rule, with the exception of requiring notice and referral, we did not expand or enhance the rights of beneficiaries to assistance from an alternative provider, but simply clarified this statutory right. We also left substantial discretion to the States to define terms and carry out the statutory objectives. We are not free, however, to eliminate the statutory requirement to provide alternative services.

We also believe that commenters may have potentially overestimated the impact and potential burden of this requirement. Through the Department's Administration on Children and Families' TANF program, many faith-based organizations have a long history of contracting with State and local governments to address the secular purpose of providing assistance and services to needy families. In this situation, few beneficiaries have objected to the religious nature of these providers, which is perhaps unsurprising in light of the fact that, under TANF's Charitable Choice provisions, any inherently religious activities must be offered separately and on a voluntary basis. We also do not believe that States will decide not to contract out or provide community-based services in order to avoid this requirement. Since the statutory Charitable Choice requirements have applied since 2000, we believe that State and local governments are providing alternative services, in compliance with the law, and discovering and enhancing procedures that efficiently and effectively address this requirement.

Comment: Several provider commenters were concerned that faith-based programs receiving SAMHSA funding ''should conform to principles of religious tolerance and inclusiveness.''

Response: All recipients of SAMHSA funding are required to comply with Sections 54.7 and 54a.7, dealing with nondiscrimination toward program beneficiaries.

Comment: One State commenter was concerned about having to provide notice and alternative services to beneficiaries in SAMHSA-funded substance abuse prevention programs.

Response: SAMHSA appreciates this concern and recommends that grantees contact their State's substance abuse agency to secure information about alternative prevention services in the State. Many States' governors have used SAMHSA State Incentive Grants (SIGs) to coordinate their prevention systems, and, as a result, will have comprehensive information on prevention services available in particular areas.

Comment: One State offered implementation suggestions, including that ''the provision of alternative services could be addressed in contract language through a requirement that providers identify services available for referral.'' Several States noted that they already provide beneficiaries a choice of providers.

Response: The Department hopes that States will work with each other to identify effective implementation approaches, such as those noted above. We decline, however, to impose this particular requirement across the board.

Notice

The SAMHSA Charitable Choice provisions require SAMHSA-funded religious organizations providing substance abuse services, public agencies that refer individuals to such SAMHSA-funded programs, and the appropriate Federal, State, or local governments that administer these SAMHSA-funded programs to ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. It further requires the program participant to notify the responsible unit of government of all such referrals.

Comments: Several commenters recommended that notice of availability of alternative providers be given to all beneficiaries at the outset.

Response: Below is a model notice that grantees may wish to use:

Model Notice to Individuals Receiving Substance Abuse Services

No provider of substance abuse services receiving Federal funds from the U.S. Substance Abuse and Mental Health Services Administration, including this organization, may discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

If you object to the religious character of this organization, Federal law gives you the right to a referral to another provider of substance abuse services to which you have no religious objection. The referral, and your receipt of alternative services, must occur within a reasonable period of time after you request them. The alternative provider must be accessible to you and have the capacity to provide substance abuse services. The services provided to you by the alternative provider must be of a value not less than the value of the services you would have received from this organization.

In addition, section 54.8(b) and 54a.8(b) of the regulation has been changed to add the word, ''all'' before ''program beneficiaries'' as follows:

Program participants, public agencies that refer individuals to designated programs, and the appropriate Federal, State, or local governments that administer designated programs or are program participants shall ensure that notice is provided to *all* program

beneficiaries or prospective program beneficiaries of their rights under this section. (Emphasis added.)

SAMHSA assumes that providers will be able to provide such notice when program beneficiaries can understand their rights—which may be at the outset of services.

Comment: Other commenters recommended States should be given latitude to comply with the Notice requirements.

Response: The Department agrees. SAMHSA is providing a ''model notice'' to the States and other grantees, but is not requiring them to use this notice.

Comment: Another State commenter recommended that program participant notify the State ''or responsible unit of government'' of such referral.

Response: The Department will insert the suggested language, ''or responsible unit of government'' in 54.8(c)(4).

Referral to Alternative Provider

If an individual objects to the religious character of the substance abuse treatment or prevention program from which they are receiving services, the religious organization (program participant) must refer the individual, within a reasonable period of time, to another provider of substance abuse services. The requirements regarding referral are set out in sections 54.8(c) and 54a.8(c).

Comments: Several commenters felt that the government should require that a non-religious alternative be available. On this point, several asked whether a program beneficiary had to be referred to a religious provider if that is the only alternative.

Response: The proposed rule at sections 54.8 and 54a.8 provided that if the applicant or recipient objects to the religious character of a SAMHSA service provider, he or she is entitled to an alternative provider to which the individual has no religious objection. This is in keeping with the SAMHSA Charitable Choice provisions at sections 582(f) and 1955–(e) of the Public Health Service Act, 42 U.S.C. 290kk–1(f) and 300xx–65(e), which require States to provide the individual with assistance from ''an alternative provider.'' Hence, the alternative provider could, but does not have to be, a secular alternative (unless, of course, the beneficiary objects to the religious character of all faith-based providers). We have retained the wording of this provision.

Comment: One commenter wrote that the proposed rule does not require a secular alternative. Therefore, it lacks constitutionally required safeguards for beneficiaries.

Response: The Charitable Choice statute does not specify that the alternative provider needs to be a secular organization. We have chosen not to adopt this suggestion for three reasons. First, the purpose of the statute is to respect beneficiary choice, and some beneficiaries may prefer an alternative religious provider to an alternative secular provider. Second, many faith-based organizations deliver services in a secular manner. As a result, most beneficiaries will not object to the religious character of these organizations, and we do not want to exclude them as potential providers of service. Third, under the permissive statutory language that we have retained, State and local governments may offer a secular alternative. We believe States will implement this requirement in a manner consistent with their obligation to ensure compliance with the Establishment Clause of the First Amendment.

Comment: Others wanted a more general requirement that the government ensure the existence of at least one alternative service provider to protect the rights of beneficiaries; on this point, several States and providers noted the problem of the availability of alternative services in a rural setting. In contrast, one State stressed that the regulations ''must not require the establishment of alternative providers where none currently exist.''

Response: The Department expects States, local governments and other grantees to abide by the statutory and regulatory requirements with respect to providing alternative services. We will work together to ensure compliance. In addition, we note that the statute prohibits grantees from using direct funding for inherently religious activities, and that any such activities must be voluntary. These requirements are sufficient to protect the religious freedom of beneficiaries.

Comment: Several commenters felt that the referral responsibility should be the government's, rather that the religious organization's (as a program participant).

Response: The Department is relying on the close cooperation among SAMHSA, States, providers and religious organizations to develop referral systems that are based primarily on shared responsibility. Religious organizations can look to the responsible unit of government for assistance, including access to SAMHSA's treatment facility locator at *http://findtreatment.samhsa.gov* to identify providers in the surrounding area. *See* the regulations for further detail.

Comment: Several commenters, mainly providers, underscored the importance of ensuring that the confidentiality protections, including those provided in 42 CFR part 2 and HIPAA, are complied with; others were concerned, however, that confidentiality rules would block information sharing between religious organizations and secular providers.

Response: The SAMHSA Charitable Choice laws do not override the confidentiality laws of 42 CFR part 2 and HIPAA. Therefore, the final regulations will contain the same provision from the NPRM in section 54.8(c)(3), as follows:

All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'').

Comment: Two State commenters were concerned that SAMHSA's Charitable Choice provisions confer a ''special entitlement'' to certain beneficiaries to services, similar to that of the ''priority'' set-aside populations currently listed in SAPT block grant law.

Response: With regard to a ''special entitlement'' being created, SAMHSA agrees with a State commenter who stated that ''[T]he States can assure that steps can and will be taken to assure protection of these rights without granting religious objectors more extensive rights than those of the general population of beneficiaries''. * * * [Existing protections are sufficient.]''

Fiscal Accountability. (Sec. 54.10 and 54a.10)

The fiscal accountability section of the regulation provided that religious organizations receiving SAMHSA funding would be held to the same fiscal accountability requirements as other organizations, including generally accepted auditing and accounting principles. Faith-based organizations would also be required to keep any federal funds in a separate account from non-federal funds. Only the segregated Federal funds are subject to audit by the government under the SAMHSA program.

Comment: The Department received 13 comments on the issue of fiscal accountability. All of the comments received on this section supported segregation of funds and strict adherence to Federal audit and cost principles and requirements. There was some concern about the ability of faith-based organizations to maintain separate accounts.

Response: The final rule provides that religious organizations receiving SAMHSA discretionary funds will be subject to audit, just like any other non-governmental organization receiving such funds. The faith-based organization is to use the funds in accordance with the grant and all applicable laws and regulations. For discretionary grants, as provided in 45 CFR 74.26 and 92.26, SAMHSA grantees are responsible for obtaining audits by an independent auditor following generally accepted government auditing standards, in accordance with applicable OMB circulars. When the State is the grantee, the State is responsible for the appropriate use of its SAMHSA funds, so the organization (as the subgrantee) needs to be able to show to the State and the auditor that it used the funds for the purpose intended by the State. This must also be in accordance with the Single Audit Act and OMB Circular A–133.

Moreover, HHS is authorized to conduct any additional audits or reviews that are warranted, irrespective of the amount of Federal funds expended by the grantee annually, in order to ensure compliance with program requirements including the restriction against funding of inherently religious activities. HHS may determine that such audits or reviews are warranted based upon any information received by the agency that raises an issue concerning the propriety of expenditures.

Comment: Several commenters were concerned about religious organizations operating as intermediary organizations. One commenter notes that the ''proposed rule creates the risk that comparable religious intermediaries will not act in a religiously neutral manner.'' Another commenter believed using such intermediaries has the effect of advancing religion and noted that the delegation of governmental authority to a religious organization violates the Establishment Clause. Another commenter believed it would raise questions about the accountability of tax dollars and that it promotes religion.

Response: We do not agree that the use of a religious organization as an intermediate organization is unconstitutional. Our review did not disclose any precedents, legal or otherwise, that would prevent a governmental unit from selecting a religious organization as an intermediate organization. The purpose of the regulations at sections 54.12 and 54a.12 is not to delegate authority to organizations to carry out tasks that are traditionally reserved for a governmental agency. It simply recognizes what has occurred in States already—that is, States have used block grant funds to contract with intermediaries to manage programs and make sub-awards to other organizations as part of their substance abuse service systems. Although such intermediary organizations may be utilized, we emphasize that the governmental unit that procures such services is accountable for Federal funds and must assure that the intermediary abides by all statutory and regulatory requirements, including these regulations, and must assure that the intermediary acts in a religiously neutral manner and that direct funds are not expended for inherently religious activities.

Educational Requirements for Personnel in Drug Treatment Programs (Sec. 54.13 and 54a.13)

This provision, restated directly from SAMHSA's Charitable Choice laws, seeks to redress ''unduly rigid or uniform educational qualification for counselors and other personnel in drug treatment programs.'' States establish such licensure and certification requirements.

Comment: Of the eighteen comments received on this section, sixteen stressed that faith-based organizations should have to meet the same licensing and certification requirements as other providers. One commenter noted that language should be clarified that the goal of this section is to ensure non-discrimination against training programs offered by religious organizations, rather than to loosen State requirements designed to ensure quality of care to clients.

Response: The final rule restates the statutory requirement of 42 U.S.C. 290kk-3, which provides that, in determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, *so long as such education and training is comparable to the coursework or training provided by nonreligious organizations or is substantially equivalent to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied* (emphasis added).

In keeping with its approach to provide States with wide flexibility in implementing the alternative service provisions, the Department is enabling the States to determine whether the education and training provided by a religious organization is ''substantially equivalent'' to that provided by nonreligious organizations, and is in accordance with applicable State certification and licensure requirements. States are encouraged to provide simplified information about their State's certification and licensure requirements to religious organizations, highlighting, if appropriate, different requirements for different stages of treatment (*e.g.*, outreach versus medically-indicated treatment).

Comment: Two commenters felt that faith-based organizations should be provided more flexibility, with one commenting that ''[S]tates should reconsider their existing certification requirements to ensure that their existing certification requirements do not unnecessarily discourage alternative treatment strategies and thus the involvement of new providers.'' The commenter also suggested that ''SAMHSA provide guidance on the range of drug treatments that are effective and on the range of educational paths that prepare people to offer those different treatment modalities.''

Response: The Department urges the States to work with their faith-based providers to ensure that these providers have clear information on licensure and certification requirements, and to ensure that new providers are encouraged and supported. With regard to guidance from the Department on types of drug treatment, we refer interested parties to the full range of SAMHSA's Treatment Improvement Protocols (TIPS), available at *www.samhsa.gov*.

Comment: Several commenters noted that substance abuse treatment is a medical treatment, not a social service, and that ''prevailing models treat addiction as a biopsychosocial disorder,'' not a social problem.

Response: The Department agrees that certain aspects of substance abuse treatment are medical in nature. State licensure and certification systems recognize this characterization as well. SAMHSA encourages States to work with their provider community to clarify different treatment alternatives.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the

private sector, of $100 million or more in any one year.

Comment: Numerous States, providers, faith-based organizations and public interest groups stated that the proposed rule constitutes an unfunded mandate by SAMHSA and asked that an unfunded mandate analysis be completed. In the words of one commenter, ''there is a broad delegation of responsibility to States for providing secular alternatives without providing corresponding resources to carry it out. SAMHSA should provide 'much more specific regulation' and resources necessary to carry this out.''

Response: The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. As provided in sections 54.8 and 54a.8, States and other grantees can use grant funds to implement these provisions, and these regulations impact only existing Federal-funding streams, unless the State or local governments commingle other funds with Federal funds.

Assurances and State Oversight of the Charitable Choice Requirements

The NPRM proposed that States, as a standard part of their applications for funding under each program, certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and submit to the Secretary a summary each year of the steps it has taken to implement this regulation.

Comments: Eight commenters felt that the stated assurance for tracking implementation and accountability was not strong enough. One commenter recommended spot-checks and reporting requirements to make sure faith-based providers and governments were complying with the final rule.

Response: The Department believes that signed assurances, plus existing compliance and auditing standards, provide the needed oversight and guarantee that the States, localities and religious organizations are implementing the regulation properly and that all beneficiaries' rights are being upheld as required.

Complaint System

Comment: One commenter pointed out that no complaint, investigation and resolution process was discussed in the NPRM.

Response: For the PATH formula grant and SAPT block grant, and for discretionary programs, program participants and beneficiaries can contact the Administrator, SAMHSA. Complaints and comments will be addressed on a case-by-case basis as needed.

Indirect and Direct Funding

In the Charitable Choice context, the term ''direct'' funding is used to describe funds that are provided ''directly'' to a participating organization ''*i.e.*, based on the government's own decision and without any intervening steps—by a governmental entity or an intermediate organization with the same duties under this part as a governmental entity, as opposed to funds that such an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon or other similar mechanism.

Comment: One commenter wrote that the indirect funding definition opens the door to government-funded worship and proselytization. This commenter asked us to require that all government-funded services be free of religious content. In addition, the commenter thinks that ''free and independent choice'' is a myth which incorrectly assumes that people in need will be able to shop for services. Social services are not available on a scale that makes ''choice'' real. This commenter believes people use the most geographically accessible providers.

Response. With respect to indirect funding, we find no basis to require that all government-funded services be free of religious content. Furthermore, we disagree that funding services indirectly opens the door to government-funded worship and proselytization. The Supreme Court has consistently held that governments may fund programs that place the benefit in the hands of individuals, who in turn have the freedom to choose the provider to which they take their benefit and ''spend'' it, whether that institution is public or private, secular or religious. Therefore, any consequential aid to religion having its origin in such a program is the result of the beneficiary's own choice. In other words, indirect funding means that individual private choice, rather than the government, determines which social service provider eventually receives the funds. As a general matter, this removes involvement on the part of the government in worship and proselytization.

Comment: Several other commenters were concerned that indirect funding mechanisms would not be subject to the requirements of this rule, giving way to government funding of religious activities. One commenter asked for clarification whether a faith-based organization receiving indirect funding from the government could require active participation by a beneficiary in religious activities. Some commenters seemed to be confused as to whether the rules applied to indirect funding.

Response: It is the Department's position that these regulations apply only to direct funding and not to indirect funding pursuant to vouchers, certificates or similar funding mechanisms. To the extent that religious organizations receive Federal funding indirectly through vouchers, certificates or similar funding mechanisms, the Charitable Choice regulations do not apply.

Comment: One faith-based commenter recommended that beneficiaries be given the opportunity to choose to use indirect funding for the religious services provided to them.

Response: Making this a requirement is beyond the authority of the Charitable Choice statutes.

Vouchers

President Bush announced his ''Access to Recovery'' program in his State of the Union Address in January 2003. This initiative will provided increased access to services for the Nation's substance abusers while also expanding the range of treatment providers available. In short, the voucher program will enhance consumer choice and allow recovery to be pursued in an individualized manner.

Comment: We received approximately 15 comments about the voucher program being developed by the Department. Some commenters recommended that requirements from the Zelman case be included in the Charitable Choice regulations. Other commenters discussed their opposition to the government use of vouchers while others felt that vouchers would violate the Establishment Clause. Also, commenters questioned whether the voucher program allowed for a true ''genuine and independent choice.''

Response: Neither the NPRM, nor the final rule, create a voucher program. Since these regulations in and of themselves do not create a voucher program, we do not believe these comments are relevant to the regulations at issue. As to the specifics of the voucher program, such details are beyond the scope of this regulation. Furthermore, the Department disagrees with the comments and believes that voucher programs are a viable mechanism for funding services and are constitutionally permissible.

We do not agree with the contentions that vouchers for religiously based services would violate the Establishment Clause, force individuals to attend ''pervasively sectarian'' institutions, or lack secular purpose, for the following reason: the Supreme Court has upheld the constitutionality of mechanisms of indirect aid, such as vouchers. Therefore, we think that it is reasonable to conclude that neutral, indirect aid to a religious organization does not violate the Establishment Clause.

Applicability of Charitable Choice to the PATH Program

SAMHSA's program, Projects in Transition from Homelessness (PATH), funds outreach and some substance abuse services for homeless persons with mental illness. The Department has determined that the Charitable Choice provisions apply to the programs under PATH that provide substance abuse services.

Comment: Several commenters were concerned that the State PATH offices have ''no administrative capacity to monitor such reporting of client specific information.'' They also commented that, because the reporting burden ''doesn't seem to quite fit with the PATH program, implementing the Charitable Choice regulation for PATH will require development of an entirely new planning and accounting system.''

Response: The Department appreciates these concerns, but is confident that, with sufficient flexibility, States will be able to develop client referral and monitoring systems that will enable PATH grant officials to comply with the regulation.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is a ''significant regulatory action'' under Section 3(f) of the Executive Order, and the Office of Management and Budget has therefore reviewed it under that Order.

Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and record keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a.

Description: Section 1955 of the Public Health Service Act (42 U.S.C. 300x–65), as amended by the Children's Health Act of 2000 (Pub. L. 106–310), and sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk, *et seq.*), as added by the Consolidated Appropriations Act (Pub. L. 106–554), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the SAPT Block Grant, PATH formula grant program, and to certain SAMHSA discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, record keeping and disclosure requirements of the regulations allow maximum flexibility in implementation and impose minimum burden.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Response burden estimate: This rule includes requirements for disclosure by program participants to program beneficiaries of their rights to receipt of services from an alternative service provider, for notification by program participants to the applicable level of government of referrals made to alternative service providers, and requirements for reporting of activities to comply with these regulations. The rule also requires that a program participant under the SAPT Block Grant and the PATH programs that believes it would be substantially burdened by application of the requirements of 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) must sign a certification to that effect and must maintain documentation to support the certification.

Comment: SAMHSA received three comments related to response burden estimates. One comment noted that States would need to enhance their current data systems to track an individual's choice of providers or referral between providers.

Response: The regulations do not require that States track individuals. They require only that a religious organization that is a program participant refer a beneficiary who objects to the religious character of the organization to an alternative provider and that the program participant notify the State of the referral. Each State or local government may determine its own reporting procedures.

Comment: One State commented that it believes the annual burden estimates are not supported with reliable data.

Response: At the present time, there is no known source of information to quantify precisely the numbers or proportions of program beneficiaries who will request referral to alternative providers. The Department believes that less than one percent, the proportion suggested by the commenter, of program beneficiaries will make such requests.

Comment: A third State commented that the burden of implementation will depend on the number of objections from beneficiaries.

Response: The Department agrees with the State that this is true. However, the Department believes that there will be a minimal number of program beneficiaries who request referral to alternative providers and that the flexibility provided with regard to implementation will minimize information collection burden. Experience in the first several years of implementing the rule will provide an empirical basis for any adjustments of burden estimates associated with the information collection requirements.

ANNUAL BURDEN ESTIMATES

42 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants				
Reporting				
54.8(c)(4) Program participant notification to responsible unit of government regarding referrals to alternative service providers	40	4	0.33	53
54.8(e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112
Disclosure				
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider.				
SAPT BG	1,000	275	.05	13,750
PATH	100	170	.05	850
Recordkeeping				
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x–57 or 42 U.S.C. 290cc–3(a)(2)	50	1	1.00	50
Part 54—Subtotal	1,156			14,815
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services				
Reporting				
54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10
Disclosure				
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	100	275	.05	1,375
Part 54a—Subtotal	100			1,393
Total	1,256			16,208

In addition, the regulations for the SAPT Block Grant (45 CFR part 96) will be amended to include at 45 CFR 92.122(f)(5) a requirement to include as part of the annual report a description of the activities the State has undertaken to comply with 42 CFR part 54. This reporting burden is estimated as follows:

45 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
96.122(f)(5) Annual report of activities the State undertook to comply with 42 CFR Part 54	60	1	2	120

The information collection provisions in this final rule have been approved under OMB control number 0930–0242. This approval expires 09/30/2006. 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.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia, and certain Territories. It also does have an impact on potential grantees, some of which are small entities. However, the number of small entities affected and the size of the impact does not require a regulatory flexibility analysis under the requirements of the Act. Therefore, we certify that this rule will not have a significant impact on small entities.

Comment: One commenter noted that the ''proposed rules will impact a large number of nonprofit organizations, both faith-based and secular, that wish to partner with government in providing SAMHSA services'' and called for SAMHSA to conduct a regulatory flexibility analysis.

Response: While the commenter is accurate in his assertion that nonprofit organizations, some of which would be considered small entities under the Regulatory Flexibility Act definition, will be affected by this rule, the economic impact of this particular rule on small entities will not be significant.

The rule simply allows faith-based organizations to compete for a wider range of government funding on an equal footing as other qualified applicants. The economic impact stems from the individual funding opportunities, which are not included in this rule. We have certified that this rule will not have a significant impact on small entities, and therefore a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. In the NPRM, we specifically solicited comments from State and local government officials.

Comment: Two commenters specifically mentioned that we should have consulted with State and local officials before the issuance of a final rule.

Response: We believe that our solicitation of comments from the public in the NPRM satisfied the consultation requirement of Executive Order 13132. SAMHSA provided a comment period, during which time the agency heard from many State agencies and local providers, and the rules have been drafted in a manner that provides States flexibility.

Dated: September 22, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons set forth in the preamble, 42 CFR chapter I and 45 CFR Subtitle A are amended as follows:

42 CFR CHAPTER I

■ 1. Part 54 is added to read as follows:

PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

Sec.

54.1 Scope.
54.2 Definitions.
54.3 Nondiscrimination against religious organizations.
54.4 Religious activities.
54.5 Religious character and independence.
54.6 Employment practices.
54.7 Nondiscrimination requirement.
54.8 Right to services from an alternative provider.
54.9 Assurances and State oversight of the Charitable Choice requirements.
54.10 Fiscal accountability.
54.11 Effect on State and local funds.
54.12 Treatment of intermediate organizations.
54.13 Educational requirements for personnel in drug treatment programs.

Authority: 42 U.S.C. 300x–65, *et seq.*, 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

§ 54.1 Scope.

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21 *et seq.*, and 42 U.S.C. 290cc–21 to 290cc–35. This part does not apply to direct funding under any such authorities for activities that do not involve the provision of substance abuse services, such as for infrastructure activities authorized under Section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

(1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x–66, and

(2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the U.S. Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties under this part as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of religion or the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious

organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54.6 Employment practices.

(a) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(b) To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on of its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue. In order to make this demonstration, the program participant must certify: that it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; that it makes employment decisions on a religious basis in analogous programs; that the grant would materially affect its ability to provide the type of services in question; and that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

(c) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

(d) The phrases ''with respect to the employment,'' ''individuals of a particular religion,'' and ''religious corporation, association, educational institution, or society'' shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a).

§ 54.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.

(b) *Notice.* Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to all program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section. A model notice is set out in appendix A to part 54a.

(c) *Referral to an alternative provider.* If a program beneficiary or prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

(1) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider;

(2) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(3) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR Part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'');

(4) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State or responsible unit of government of such referral; and

(5) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(d) *Provision and funding of alternative services.* If an otherwise eligible applicant or recipient objects to the religious character of a SAMHSA-funded service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency must provide the individual with alternative services within a reasonable period of time, as defined by the State agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State agency. The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may define and apply the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and ''value that is not less than.'' The appropriate State or local governments that administer SAMHSA-funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

(e) *PATH annual report.* As part of the annual report to SAMHSA, PATH grantees shall include a description of the activities the grantee has taken to comply with 42 CFR part 54.

§ 54.9 Assurances and State oversight of the Charitable Choice requirements.

In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs comply with the SAMHSA Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, States are required as part of their applications for funding to certify that they will comply with all of the requirements of such provisions and the implementing regulations under this

part, and that they will provide such oversight of religious organizations.

§ 54.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under an applicable program into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by government under the SAMHSA program.

§ 54.11 Effects on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

■ 2. Add a new Part 54a to read as follows:

PART 54a—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES, LOCAL GOVERNMENTS AND RELIGIOUS ORGANIZATIONS RECEIVING DISCRETIONARY FUNDING UNDER TITLE V OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 290aa, ET SEQ., FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT SERVICES

Sec.

54a.1 Scope.
54a.2 Definitions.
54a.3 Nondiscrimination against religious organizations.
54a.4 Religious activities.
54a.5 Religious character and independence.
54a.6 Employment practices.
54a.7 Nondiscrimination requirement.
54a.8 Right to services from an alternative provider.
54a.9 Oversight of the Charitable Choice requirements.
54a.10 Fiscal accountability.
54a.11 Effect on State and local funds.
54a.12 Treatment of intermediate organizations.
54a.13 Educational requirements for personnel in drug treatment programs.
54a.14 Determination of nonprofit status.
Appendix to Part 54a—Model notice to individuals receiving substance abuse services.

Authority: 42 U.S.C. 300x–65, and 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 290aa, *et seq.*

§ 54a.1 Scope.

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under Title V of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.*, which are administered by the Substance Abuse and Mental Health Services Administration. This part does not apply to direct funding under any such authorities for only mental health services or for certain infrastructure and technical assistance activities, such as cooperative agreements for technical assistance centers, that do not provide substance abuse services to clients. This part implements the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54a.2 Definitions.

(a) *Applicable program* means the programs authorized under Title V of the PHS Act, 42 U.S.C. 290aa, *et seq.*, for the provision of substance abuse prevention and or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice* provisions means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

(g) *Direct funding* or *Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties under this part as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54a.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54a.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs

or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54a.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54a.6 Employment practices.

(a) The participation of a religious organization in or its receipt of funds from an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(b) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

§ 54a.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54a.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section. With respect to SAMHSA discretionary programs, for purposes of determining what is the appropriate Federal, State, or local government, the following principle shall apply: When SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to a nongovernmental organization, SAMHSA is the responsible unit of government.

(b) *Notice.* Program participants that refer an individual to alternative providers, and the appropriate Federal, State, or local governments that administer the applicable programs, shall ensure that notice of the individual's rights to services from an alternative provider is provided to all program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section. A model notice is set out in appendix A to this part.

(c) *Referral to services from an alternative provider.* If a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider.

(1) When the State or local government is the responsible unit of government, the State shall have a system in place to ensure that such referrals are made. That system shall ensure that the following occurs:

(i) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider;

(ii) In making such referral, the religious organization shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(iii) All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'');

(iv) Upon referring a program beneficiary to an alternative provider, the religious organization shall notify the responsible unit of government of such referral; and

(v) The religious organization shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(2) When SAMHSA is the responsible unit of government, the referral process is as follows:

(i) When a program beneficiary requests alternative services, the religious organization will seek to make such a referral.

(ii) If the religious organization cannot locate an appropriate provider of alternative services, the religious organization will contact SAMHSA. They will work together to identify additional alternative providers, utilizing the SAMHSA Treatment Locator system, if appropriate.

(iii) The religious organization will contact these alternative providers and seek to make the referral, in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'').

(iv) In the event the religious organization is still unable to locate an alternative provider, it may again contact SAMHSA for assistance.

(d) *Referral reporting procedures.* The program participant shall notify the appropriate Federal, State or local government agency that administers the program of such referral. If a State or local government is the responsible unit of government, it may determine its own reporting procedures. When SAMHSA is the responsible unit of government, this notification will occur during the course of the regular reports that may be required under the terms of the funding award.

(e) *Provision and funding of alternative services.* The responsible unit of government, as defined in paragraph (a) of this section, shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant, services and fund services from an alternative provider that is reasonably accessible to, and has the capacity to provide such services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The appropriate State or local governments

that administer SAMHSA-funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

(1) When the State receives a discretionary grant from SAMHSA, it shall utilize its own implementation procedures for these provisions and shall use funds from the SAMHSA discretionary grant to finance such alternative services, as needed;

(2) When the local government receives a discretionary grant from SAMHSA, it shall utilize State implementation procedures for these provisions and shall use funds from the SAMHSA discretionary grant to finance such alternative services, as needed;

(3) When a religious organization receives a discretionary grant from SAMHSA, if a publicly funded alternative provider is available that is reasonably accessible and can provide equivalent services, the religious organization shall refer the beneficiary to that provider. However, if such a provider is not available, the religious organization shall contract with an alternative provider to provide such services and may finance such services with funds from the SAMHSA discretionary grant.

§ 54a.9 Oversight of the Charitable Choice requirements.

In order to ensure that program funds are used in compliance with the SAMHSA Charitable Choice provisions, applicants for funds under applicable programs are required, as part of their applications for funding, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and the implementing regulations under this part.

§ 54a.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under applicable programs into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by the government under the SAMHSA program.

§ 54a.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds, in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54a.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54a.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

§ 54a.14 Determination of nonprofit status.

The nonprofit status of any SAMHSA applicant can be determined by any of the following:

(a) Reference to the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code.

(b) A copy of a currently valid IRS Tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of its net earnings accrue to any private shareholder or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

(e) Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

Appendix—to Part 54a—Model Notice of Individuals Receiving Substance Abuse Services

Model Notice to Individuals Receiving Substance Abuse Services

No provider of substance abuse services receiving Federal funds from the U.S. Substance Abuse and Mental Health Services Administration, including this organization, may discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

If you object to the religious character of this organization, Federal law gives you the right to a referral to another provider of substance abuse services. The referral, and your receipt of alternative services, must occur within a reasonable period of time after you request them. The alternative provider must be accessible to you and have the capacity to provide substance abuse services. The services provided to you by the alternative provider must be of a value not less than the value of the services you would have received from this organization.

45 CFR Subtitle A

PART 96—[AMENDED]

■ 1. The authority for part 96 continues to read as follows:

Authority: 31 U.S.C. 1243 *note*, 7501–7507; 42 U.S.C. 300w *et seq.*, 300x *et seq.*, 300y *et seq.*, 701 *et seq.*, 8621 *et seq.*, 9901 *et seq.*, 1397 *et seq.*

■ 2. Amend § 96.122(f)(5) by adding paragraph (f)(5)(v) to read as follows:

§ 96.122 Application content and procedures.

* * * * *

(f) * * *

(5) * * *

(v) A description of the activities the State has undertaken to comply with 42 CFR part 54.

* * * * *

■ 3. Amend § 96.123(a) by adding paragraph (a)(18) to read as follows:

§ 96.123 Assurances.

(a) * * *

(18) The State will comply with the requirements of 42 CFR part 54.

[FR Doc. 03–24289 Filed 9–25–03; 12:15 pm]
BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 260

RIN 0970–AC12

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the Charitable Choice statutory provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended. The statutory and regulatory provisions apply to the Temporary Assistance for Needy Families (TANF) program administered by ACF. The statute and final rule establish requirements for State and local governments that administer or provide TANF services and benefits through contracts or through certificates, vouchers, or other forms of disbursement. The requirements and protections also apply to organizations, including faith-based organizations, that provide services and benefits with TANF funds and to the beneficiaries of those services.

The TANF Charitable Choice provisions of PRWORA were enacted to ensure that low-income families receive effective needed services, including services provided by faith-based organizations. In creating a Faith-Based and Community Initiative, President Bush has said: ''* * * when we see social needs in America, my administration will look first to faith-based programs and community groups, which have proven their power to save and change lives. We will not fund the religious activities of any group. But when people of faith provide social services, we will not discriminate against them.'' To carry out that commitment and to implement the statute, the final rules clarify the protections for beneficiaries of services, the rights and obligations of religious organizations that provide TANF-funded services, and the requirements and limitations of State and local governments.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: April Kaplan, Deputy Director, Office of Family Assistance, ACF, at (202) 401–5138. Deaf or hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: On December 17, 2002, ACF published a Notice of Proposed Rulemaking (NPRM) to implement the ''Charitable Choice'' statutory provisions of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193). 67 FR 77362 (2002). We provided a 60-day comment period that ended on February 18, 2003. We offered the public the opportunity to submit comments by surface mail, E-mail, or electronically via our Web site.

Comment Overview

After accounting for duplications, we received 38 comments on the NPRM. We heard from faith-based groups and associations, State welfare agencies and social services departments, national associations, advocacy groups, other State-level organizations, and the general public. Most commenters addressed all aspects of the statutory and regulatory framework and offered extensive suggestions. Some comments were generally positive, supportive of specific provisions and appreciative of our attempt to clarify the statutory requirements. In general, many commenters had mixed views on both the statutory provisions and proposed regulatory policies (where we had exercised regulatory discretion), supporting some provisions and opposing others. We have summarized the public comments and our response to them throughout sections I through XIII of the preamble of this final rule.

Table of Contents

I. The Charitable Choice Statutory Framework
II. Regulatory Authority
III. Constitutional Issues—Establishment and Free Exercise Clauses
IV. Equal Treatment for Religious Organizations
V. Restrictions on Inherently Religious Activities by Organizations that Receive Direct TANF Funding
VI. Religious Character and Independence of Religious Organizations
VII. Employment Practices
VIII. Nondiscrimination Against Beneficiaries
IX. Notice, Referral, and Provision of Services from Alternative Providers
X. Fiscal Accountability
XI. Effect on State and Local Funds
XII. Treatment of Intermediate Organizations
XIII. Regulatory Analyses
- Paperwork Reduction Act of 1995
- Regulatory Flexibility Analysis
- Regulatory Impact Analysis
- Unfunded Mandates Reform Act of 1995
- Congressional Review
- Assessment of Federal Regulation and Policies on Families
- Executive Order 13132

XIV. Final Rule

I. Charitable Choice Statutory Framework

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) sets forth certain ''Charitable Choice'' provisions in section 104, entitled ''Services Provided By Charitable, Religious, or Private Organizations.'' This section clarifies State authority to administer and provide TANF services through contracts with charitable, religious, or private organizations and to provide beneficiaries with certificates, vouchers, or other forms of disbursement, which are redeemable with such organizations. The provisions of section 104 are hereinafter referred to as ''TANF Charitable Choice provisions.'' In addition to giving States the ability to contract with a range of service providers and use optimal funding mechanisms, and giving families a greater choice of TANF-funded providers, section 104 sets forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds under the TANF program, without impairing the religious character of such organizations or diminishing the religious freedom of TANF beneficiaries.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, non-profit organizations, and neighborhood groups, offer a myriad of social services to those in need. The TANF Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and non-religious—to participate as partners in Federal programs to serve Americans in need.

This final rule implements the TANF Charitable Choice provisions applicable to State and local governments and to religious organizations in their use of

Federal TANF and State maintenance-of-effort (MOE) funds. The objective of this rule is to ensure that the TANF program is open to all eligible organizations, regardless of their religious affiliation or character, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding.

This final rule adds § 260.34, ''When do the Charitable Choice provisions of TANF apply?'' to 45 CFR Part 260, ''General Temporary Assistance For Needy Families Provisions.'' The introductory language addresses the applicability of the Charitable Choice provisions to the TANF program. We have slightly reformatted the flow of the regulatory provisions. The introductory language is now under § 260.34(a). Section 260.34(a) also includes the definitions of ''direct'' funding and ''indirect'' funding, originally proposed as additions to the definitions in 45 CFR 260.30. We placed the definitions under § 260.34 because these terms are used exclusively in this section and are not common terms used throughout parts 260–265.

Specifically, the rules provide that Charitable Choice applies whenever a State or local government:

- Uses Federal TANF funds or expends State or local funds claimed to meet the State's MOE requirement to procure services and benefits from non-governmental organizations; or,
- Provides clients with certificates, vouchers, or other forms of disbursement that can be redeemed for services in connection with the TANF program.

When State or local funds are used to meet the TANF MOE requirements, the provisions apply irrespective of whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs. However, pursuant to section 104(k) of PRWORA as amended (42 U.S.C. 604a(k)), nothing in the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations. Accordingly, States that are subject to such restrictions should segregate their Federal funds from the funds which are subject to the provisions of the statute.

The word ''assistance'' is used throughout the Charitable Choice provisions in section 104 of PRWORA as amended (42 U.S.C. 604a). When ''assistance'' is used in the Charitable Choice statutory provisions, it broadly refers to all kinds of help, services, and benefits. In other words, it is broader than the definition of ''assistance'' under 45 CFR 260.31(a) of this part. The Charitable Choice provisions apply to any and all of the services and benefits available to clients, through contracts, certificates, vouchers, or other forms of disbursement of TANF funds. Thus, we have used the term ''benefits'' and ''services'' in the final regulation to refer to the broad range of activities or help available to clients. We also want to avoid any misunderstanding that Charitable Choice is solely limited to the provision of the types of services that constitute ''assistance'' as defined in 45 CFR 260.31(a).

However, because the Charitable Choice provisions refer only to State and local governments, § 260.34 does not apply to Tribal governments operating TANF programs under section 412 of the Social Security Act.

II. Regulatory Authority

We are issuing this final regulation under the authority granted to the Secretary of Health and Human Services (the Secretary) by 42 U.S.C. 1302 and 42 U.S.C. 604a. Section 1302 of 42 U.S.C. authorizes the Secretary to publish regulations that may be necessary to the efficient administration of the functions for which he is responsible under this chapter—*i.e.*, 42 U.S.C., chapter 7 (Social Security). Section 604a of Title 42, chapter 7 of the United States Code sets forth provisions authorizing States to use faith-based groups, as well as other non-governmental charities, community groups and private organizations, to provide benefits and services under the TANF program that help families achieve self-sufficiency, and includes certain conditions related to such authority.

As we indicated in the NPRM, section 417 of the Social Security Act provides that the Federal government may not regulate the conduct of States under this part or enforce any of the provisions in this part, except to the extent expressly provided by law. Section 417 applies only to Federal regulation or enforcement of TANF provisions in Title IV, part A of the Social Security Act.

Comment: Several commenters questioned our authority to regulate under the Charitable Choice statutory provisions. Specifically, the commenters maintained that, while the Charitable Choice provisions are not part of Title IV–A of the Social Security Act (the TANF program), the provisions appear in the U.S. Code ''under this part''—*i.e.*, 42 U.S.C., Chapter 7 (Social Security), Subchapter IV (Grants to States for Aid and Services to Needy Families With Children and for Child-Welfare Services), Part A (the TANF program), section 604a. The limitation on our authority to regulate is also in this part of the U.S. Code, at 42 U.S.C. 617, which provides that ''no officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.'' Since section 604a is a provision ''of this part,'' and there is nothing in 604a that expressly provides for regulations, the commenters said that we have exceeded our authority.

Response: We disagree with the commenters' position that we have no authority to regulate in this area. The limitation on our authority to regulate was enacted as part of the Social Security Act, Title IV, Part A, Section 417. The provision limits our authority to issue regulations implementing any provision in ''this part'' of the Social Security Act (*i.e.*, Part A, Title IV). Since the Charitable Choice provisions are not in this, or any, part of the Social Security Act, they are not subject to the limitation on our authority to regulate.

Codification of both the limitation on our regulatory authority and the Charitable Choice provisions in the same section of the U.S. Code (Chapter 7, Part A) does not broaden the restriction on our authority to regulate. Nor does the codification make the Charitable Choice provisions a part of the Social Security Act that is subject to section 417. The Charitable Choice provisions remain distinguishable from those found in Part A, Title IV, of the Social Security Act notwithstanding the fact that both are codified in the same chapter. As recognized in The Historical and Statutory Notes accompanying the Charitable Choice provisions as codified, 42 U.S.C. section 604a, they were ''enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and not as part of the Social Security Act which comprises this chapter.'' We believe the placement of the Charitable Choice provisions in the same chapter as section 417 does not change the meaning of either provision.

In summary, Congress did not intend for the Charitable Choice provision to be included in the Social Security Act since PRWORA did not amend the Social Security Act to include Charitable Choice. Therefore, we conclude that the limitation on Federal authority to regulate conduct or enforce the Charitable Choice provisions does not apply.

Because the limitation in section 417 of the Social Security Act does not apply, the Secretary has used the

authority granted to him in 42 U.S.C. chapter 7, section 1302, to publish this regulation, necessary to the efficient administration of the functions for which he is responsible under chapter 7. The Charitable Choice provisions have been codified under chapter 7 of the United States Code at 42 U.S.C.604a.

Comment: One commenter pointed out that section 104 of PRWORA, as amended, begins as a State option. Therefore, it is not mandatory, as the NPRM implies.

Response: We recognize that section 104(a) of PRWORA as amended (42 U.S.C. 604a(a)(1)) does provide that a ''State may (A) administer and provide services * * * through contracts with charitable, religious, or private organizations; and (B) provide beneficiaries of assistance * * * with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.''

Essentially, this subsection permits a State to choose to conduct its TANF program by providing funding to help beneficiaries directly (*e.g.*, through contracts with social service providers) or indirectly (*e.g.*, with certificates, vouchers, or other forms of disbursement which are redeemable with charitable, religious, or private organizations). In other words, the State is not limited to providing all of the needed services itself, nor must it retain the administration of any or all of its TANF activities.

If a State does choose to involve any non-governmental providers, however, then the Charitable Choice provision at section 104(c) of PRWORA as amended (42 U.S.C. 604a(c)) requires involving religious organizations on the same basis as any other non-governmental providers. Therefore, when a State chooses to involve the non-governmental sector in the provision of benefits and services for or on behalf of TANF-eligible beneficiaries, then the TANF Charitable Choice provisions stipulate that a religious service provider may not be excluded from eligibility for contracts, subcontracts, vouchers, or the like.

III. Constitutional Issues—Establishment and Free Exercise Clauses

Background

The TANF Charitable Choice statutory provisions were enacted within the constitutional framework of government interaction with religious organizations. The goal of Charitable Choice is not to support or sponsor religion, but to ensure fair competition among providers of services for low-income families, whether they are public or private, secular or faith-based. The statute, the proposed rule, and this rule each requires that contracts with or vouchers redeemable with religious organizations must comport with the constitutional framework. Patterned after the statutory language, the proposed rule at § 260.34(a)(1) (now § 260.34(b)(1)) explicitly provided that: ''Religious organizations are eligible, on the same basis as any other organization, to participate in TANF programs as long as their TANF or MOE-funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.''

Comment: Several commenters opined that the proposed rule was an unconstitutional breach of the principle of separation of church and State, because it would allow public funds to be given to ''pervasively sectarian'' organizations, contrary to longstanding judicial precedent.

Response: We do not agree with the commenters. Religious organizations that receive direct TANF funds for social services cannot use such funds for inherently religious activities. These organizations must ensure that religious activities are separate in time or location from the treatment services and they must also ensure that participation in such religious activities is voluntary. Furthermore, they are prohibited from discriminating against a program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

The Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case set forth reasoning that is inconsistent with its underlying premises, see id. at 857–858 (O'Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of ''actual diversion of public support to religious uses''). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. We therefore believe that when current precedent is applied to a social service program, or to the TANF Charitable Choice provisions, government may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

Comment: Several commenters asked that the final rule include a more comprehensive definition and examples of a ''religious organization'' and a ''faith-based organization.''

Response: Throughout the proposed rule, we used the term ''religious organization'' and the term ''faith-based organization'' interchangeably. Neither the U.S. Constitution nor the relevant Supreme Court precedents contain a comprehensive definition of religion or a religious organization that must be applied to this rule. Yet, an extensive body of judicial precedent provides the practical guidelines that States and religious organizations need to conform to the Establishment and the Free Exercise Clauses of the First Amendment to the U.S. Constitution. Under the TANF Charitable Choice provisions, and as explained in the section that discusses fiscal accountability, a religious organization is not restricted to those that are ''non-profit.'' We have deleted the definition of ''religious organization'' from the final rule.

Comment: Several commenters asked that the final rule provide additional guidance on how to comply with the Establishment Clause and that it detail the scope of religious content that must be excluded from public funding.

Response: In enacting the Charitable Choice provisions, Congress did not include specific statutory provisions with guidance on how to meet constitutional requirements. Like Congress, we do not believe it is appropriate in this rule to provide either States or religious organizations with detailed guidance on how to comply with the Establishment or Free Exercise Clauses of the Constitution. States and faith-based organizations have years of experience and extensive practice in following case law and adhering to judicial precedent to conform to these provisions. In enacting PRWORA, Congress sought to conform the law to this precedent while providing maximum flexibility to States in carrying out statutory requirements. The requirement in the proposed rule closely mirrors the statutory provision and we have retained the identical language of the proposal in the final rule.

IV. Equal Treatment for Religious Organizations

Background

Under § 260.34(a)(2) of the proposed rule (§ 260.34(b)(2)), we clarified that organizations are eligible to participate in the TANF program without regard to their religious character or affiliation, and may not be excluded because they are religious. Federal, State and local governments administering TANF funds are prohibited from discriminating against organizations on the basis of religion or their religious character.

Comment: One commenter suggested that the final rule should also prohibit discrimination ''in favor of'' faith-based organizations. In selecting contractors, a government entity should not allow a provider's religious character to influence its selection.

Response: Like the commenter, we believe congressional intent was to ensure neutrality and to prohibit any discrimination. Therefore, we have modified the language of the final rule to read, ''Neither the Federal government nor a State or local government in its use of Federal TANF or State MOE funds shall, in the selection of service providers, discriminate for or against an organization that applies to provide, or provides TANF services or benefits on the basis of the organization's religious character or affiliation.''

Comment: A couple of commenters, noting the importance of this provision, which prohibits Federal, State and local governments administering TANF funds from discriminating against organizations on the basis of religion or their religious character, observed that the proposed rule is consistent with the statute and strongly supported retention in the final rule.

Response: We agree with these comments and have retained similar language in the final rule.

Comment: One commenter noted that the provisions under § 260.34(a)(1) and (2) (now § 260.34(b)(1) and (2)) equate religious and non-religious providers and seek to treat them as equals, thereby failing to recognize the unique place that religion has in our society. Religion should be above the fray of government funding, regulation and auditing, not reduced to it.

Response: This rule does not present any violation of the Establishment Clause or Free Exercise Clause. Rather, this rule governs the conscious decision of a religious organization to administer regulated activities, by accepting public funds to do so. Therefore, we have retained language that enables faith-based organizations to compete on an equal footing for funding, within the framework of constitutional church-State guidelines.

V. Restriction on Inherently Religious Activities by Organizations That Receive Direct TANF Funding

Background

Section 260.34(c) of this rule describes limitations on the use of Federal TANF and State MOE funding provided directly to an organization by a governmental entity or by an intermediate organization that has the same duties as a governmental entity, as opposed to those funds that an organization receives indirectly as the result of the genuine and independent private choice of a beneficiary. The Charitable Choice provisions allow, at State option, for direct or indirect forms of funding, or both, to provide benefits and services. Under a ''direct'' funding method, the government or an intermediate organization with the same duties as a governmental entity purchases the needed services straight from the provider (*e.g.*, via a contract). Under this scenario, there are no intervening steps in which the beneficiary's choice comes into play. The government or intermediate organization selects the provider which the beneficiary must attend. With an ''indirect'' funding method, by contrast, there is an intervening step in determining which social service provider receives the Federal TANF or State MOE funds. Under indirect funding, the individual in need of the service is given a voucher, coupon, certificate, or other means of free agency such that he or she has the power to select for himself or herself from among providers, whereupon the coupon (or other method of payment) may be ''redeemed'' and the services rendered. Hence, indirect funding means that individual private choice, rather than the government, determines which social service provider eventually receives the funds.

Section 260.34(c) states that Federal TANF and State MOE funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If an organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct Federal TANF or State MOE funds, and participation must be voluntary for the beneficiaries. This requirement ensures that such funds are not used to support inherently religious activities. Thus, direct Federal TANF and State MOE funds may not be used, for example, to conduct prayer meetings, devotional studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives direct Federal TANF or State MOE funds may not engage in inherently religious activities. It simply means that such an organization may not fund these activities with direct Federal TANF funds. Additionally, an organization may not fund these activities with funds that are used to meet the MOE requirements, since those funds must be spent consistent with the Charitable Choice requirements.

For example, suppose a church has a contract with the State's TANF agency to provide job preparation classes. The classes are held in the finished basement of the church, the same place where the pastor of the church holds a Bible study group at the end of the day, when all other classes have ended. The pastor has extended an open invitation for anyone who wishes to attend the study group. The church must use private funds to pay for the Bible study activity. Thus, faith-based organizations that receive direct Federal TANF or State MOE funds must take steps to separate, in time or location, their inherently religious activities from the Federal TANF or State MOE-funded services that they offer.

In addition, any participation by a program beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, directly funded religious organizations must be careful to inform program beneficiaries that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

On the other hand, these restrictions on inherently religious activities do not apply where Federal TANF or State MOE funds are indirectly provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive such funds as the result of a beneficiary's genuine and independent private choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using Federal TANF or State MOE funds under a program that is designed to give that individual a choice among providers. Thus, religious organizations that receive Federal TANF

or State MOE funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the Federal TANF or State MOE funded services they provide, provided they otherwise satisfy the requirements of the program.

Comment: Some commenters expressed concern that the ''inherently religious activities'' only need to be offered separately in time or location from the benefits and services provided with direct Federal TANF or State MOE funds. They recommended modifying the regulations to stipulate that if an organization conducts inherently religious activities, then it must offer them separately in both time and location.

Response: We decline to accept this recommendation. HHS believes that this is legally unnecessary and that it would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of the service(s). However, this does not preclude an organization that receives direct Federal TANF or State MOE funds from choosing to set apart such activities in both time and location.

Comment: One commenter considered the requirement of separating the inherently religious activities in time or location as insufficient guidance, and recommended that we define religious content and context and add these terms to the regulation. Another commenter asked what constituted an inherently religious activity. The commenter further stated that the exclusion of all ''inherently religious'' activities from government funding is flawed, and puts many faith-based organizations in the position of having to choose either to deny their core religious perspectives on social issues or to reject government funds for their programs that accomplish the government's objectives. A third commenter noted that the phrase ''inherently religious activities,'' coupled with ''such as'' opens the door to concluding that activities like providing food for the hungry, or shelter for the homeless, could be considered an inappropriate use of TANF funds, if such activities have been undertaken for religiously informed reasons.

Response: We decline to add definitions of religious content and context into the regulation. We also decline to define ''inherently religious,'' except through the examples given in the regulation. The examples are not all-inclusive, as indicated by the introductionary phrase ''such as.'' The examples include worship, religious instruction, or proselytization. These are the very examples given in PRWORA as amended, section 104(j) (42 U.S.C. 604a(j)), in the provision limiting the use of Federal TANF or State MOE funds provided directly to institutions or organizations for the delivery of services to TANF-eligible beneficiaries. (Other basic examples include prayer meetings and devotional studies of sacred texts.) As some of the commenters noted, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Our approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. The Court has explained, however, that prayer and worship are inherently religious, but that social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of ''ministry.'' We have added ''Federal'' and ''State'' where applicable, to clarify that the rule applies to both Federal TANF and State MOE funds.

In using the term ''inherently religious,'' we simply wanted to set forth a basic framework of understanding as to appropriate and inappropriate uses of direct Federal TANF or State MOE funds. In other words, direct Federal TANF and State MOE funds may only be used for the non-religious services and functions offered by a religious organization, but not for any part of those services constituting the group's ''inherently religious'' beliefs or practices. Hence, the organization's inherently religious functions must be separated—*i.e.*, in time or location, as expressed by the regulation. Any inherently religious activities must be funded entirely by private funds.

Some organizations may be unable or unwilling to structure their program by separating its inherently religious activities in time or location, as required. These organizations would not qualify to provide any of the State's directly funded social service activities, but could be considered candidates for providing assistance through indirect funding methods.

This limitation on the use of the direct funds is not meant to put an organization in the position of having to deny its core religious perspectives on social issues or reject government funds for its programs that are consistent with the purposes of the TANF program. We recognize that while the government regards services like feeding the hungry and housing the poor as social services or secular work, some organizations may regard these same activities as acts of mercy, spiritual service, fulfillment of religious duty, good works, or the like. Nevertheless, as a general matter, an activity such as providing food for the hungry or shelter for the homeless would constitute an appropriate use of funds, as long as any inherently religious activities offered by the organization are separate, privately funded, and voluntary.

Comment: One commenter hoped that we would retain the requirement that organizations offer inherently religious activities separately in time or location from the social services funded with direct Federal TANF or State MOE funds. The commenter also agreed that the beneficiary's participation must be voluntary. Other commenters expressed concern that § 260.34(b) (now § 260.34(c)) does not adequately protect participants who do not wish to participate in inherently religious activities. The commenters suggested that we strengthen the provision in this subsection so clients may not be coerced, explicitly or tacitly, to participate in religious activities, or feel pressured to participate in such activities. These commenters argued that individuals in need are not always in a condition to make a thoughtful and well-considered decision whether or not to participate in worship or similar activities offered by a religious social service provider, particularly when the individual is in great need of the service.

Response: We believe that the provision suffices as written. However, we will use this opportunity to reaffirm that a person's participation in any religious activities must be entirely voluntary or noncompulsory. Beneficiaries of directly funded Federal TANF or MOE social services have the right not to take part in any unwanted religious practice. Therefore, they may, at any time, refuse to participate in inherently religious activities. We recommend that States and organizations help to ensure that clients and prospective clients have a clear understanding of the services offered by an organization by having literature available to give to the client which fully explains the services offered, including any inherently religious activities, as well as the individual's rights.

Comment: One commenter wrote that the rules should clarify that individuals who refuse to participate in the inherently religious activities will not

be excluded from the program and will not suffer any discrimination in the administration of the program. Congress specified that Federal funds may not be used for religious purposes, but the rules provide no enforcement mechanism, so beneficiaries have no administrative relief if violations occur.

Response: The TANF Charitable Choice provision at section 104(g) of PRWORA as amended (42 U.S.C. 604a(g)) explicitly prohibits a religious organization from discriminating against a participant on the basis of religion, religious belief, or refusal to participate in a religious practice. The final rule reiterates this requirement in § 260.34(f). For example, if the service provider is a faith-based organization (FBO), the FBO may not discriminate against the individual on account of religion, a religious belief or a refusal to hold a religious belief. In addition, the FBO may not turn away a beneficiary from the organization's program solely because the beneficiary refuses to participate in an inherently religious practice. Hence, this provision insures the beneficiary's right not to take part in any unwanted religious practices. The individual's participation in an inherently religious activity must be entirely voluntary or noncompulsory. Under the TANF Charitable Choice provisions, government may not compel an individual, through loss of public benefit or advantage, to profess a religious belief or to observe an inherently religious practice. Furthermore, the TANF Charitable Choice provision at section 104(i) of PRWORA as amended (42 U.S.C. 604a(i)) states ''Any party which seeks to enforce its right under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.'' ''Any party'' includes the beneficiary. We inadvertently omitted the statutory right to assert a civil action in State court from the proposed regulation. We have added this provision to the final regulation at § 260.34(l).

Comment: One commenter wrote that individuals actually providing government-funded social services should not be involved in ''offering'' an inherently religious activity to program recipients. Another commenter expressed concern over allowing recipients to volunteer to participate in religious practices or services, because this will force administrative complexity on the State. A third commenter asked whether a participant could volunteer to participate in a religious activity in lieu of or during the time that TANF-funded activities are conducted.

Response: If the opportunity to participate in inherently religious activities is offered at all, then it would be the organization receiving the Federal TANF or State MOE funds that would offer it. Thus, while we recognize that staff working for the organization might offer the TANF beneficiary the opportunity to participate in an inherently religious activity, we believe that the act of ''offering'' is attributable to the organization and its own staff, not to the TANF agency. Therefore, we conclude that the ''offer'' does not violate the Charitable Choice requirement at § 260.43(c) provided participation is voluntary. The regulation at § 260.34(c) requires that ''If an organization conducts such (inherently religious) activities, it must offer them separately * * * and participation must be voluntary for the beneficiaries of those programs or services.''

In providing the direct funding to pay for social service benefits, the TANF agency or any other part of the government must neither support nor sponsor any of the organization's inherently religious activities. Also, the government may not encourage (or, for that matter, discourage) the beneficiary to participate in any inherently religious activities. Hence, we see no reason why a beneficiary's own choice to participate in an inherently religious activity provided by an organization should present an administrative complexity to the TANF agency. Additionally, neutral direct aid to an organization does not mean, absent evidence to the contrary, that the organization will divert any part of the Federal TANF or State MOE funds to pay for inherently religious activities that a beneficiary attends voluntarily. And, there is nothing in the TANF Charitable Choice provisions that prevents States from implementing reasonable and prudent procurement policies to prevent funds from being misapplied to finance such activities.

Finally, under TANF, States generally have broad discretion in establishing the objective eligibility criteria that the individual or family must meet in order to receive particular benefits (whether that benefit is directly or indirectly funded). We do not prescribe how a State determines the beneficiary's eligibility or continued eligibility for the benefits. States may even attach conditions to the beneficiary's receipt of the TANF or MOE-funded benefit (*e.g.*, attendance requirement/absentee limits for participation in a job training or job skills upgrade class). If the individual does not satisfy the conditions established for the receipt of the benefit, then the State could treat the expenditure as an overpayment subject to recovery.

Comment: One commenter wrote that the definition and distinction between direct funding and funding an organization receives as a result of the independent private choice of a beneficiary has significance for constitutional reasons and should be retained.

Response: We agree, and have retained the distinction applicable to the funding restrictions on inherently religious activities.

Comment: One commenter asked us to clarify that, where assistance is ''indirect,'' a faith-based organization may, consistent with the Establishment Clause, require beneficiaries to participate in its entire program, including the inherently religious components.

Response: Indirect Federal TANF or State MOE funding methods enable the individual to choose where he or she wants to receive the needed services. Therefore, the organization providing the service to the beneficiary may invite (not require) the beneficiary to participate in inherently religious activities as part of its entire program. This is because the statute at section 104(g) of PRWORA (42 U.S.C.604a(g)) prohibits an organization from discriminating against an individual in rendering assistance on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to actively participate in a religious practice. So, the individual has the right to refuse to participate in the religious practice and may not be deprived of the offered social services. Or, if the individual wants to receive the service from an alternative provider because he or she objects to the religious character of the organization or institution, then the State must use an alternative provider to furnish the service.

The TANF Charitable Choice prohibition at section 104(j) of PRWORA as amended (42 U.S.C. 604a(j)) speaks to funds ''provided directly to institutions or organizations.'' It does not include ''indirect funding.'' As a result, organizations that receive funds indirectly (*e.g.*, by means of vouchers or certificates) do not have to separate, in time or location, their inherently religious activities from the Federal TANF or State MOE funded services they furnish—provided they otherwise satisfy the requirements of the program.

However, the alternative provider requirement at section 104(e) of PRWORA as amended (42 U.S.C.

604a(e)) does not differentiate between direct and indirect funding of services. Therefore, we conclude that the alternative provider requirement applies whether Federal TANF or State MOE funds are provided directly or indirectly to the institution or organization. The beneficiary has a right to an alternative provider, regardless of funding method.

We recommend that States and organizations help to ensure that clients and prospective clients have a clear understanding of the services offered by an organization by having literature available to give to clients which fully explains the services offered, including any inherently religious activities, as well as expectations and requirements.

Comment: One commenter asked us to clarify the definition of indirect funding and its application to service providers and to provide examples.

Response: Essentially, indirect funding places the choice of service provider in the hands of the beneficiary. Then, the State pays for the cost of that service through a voucher, certificate, or other means of free agency. In this way, the government is providing assistance to beneficiaries by dealing ''indirectly'' with independent providers and directly with beneficiaries. For example, the TANF agency, operating under a neutral program of aid, could present the beneficiary with a list of all qualified providers at which the beneficiary could obtain services using a government-provided certificate. Or, the State could choose to allow the beneficiary to secure the needed service on his/her own. Either way, the State empowers the beneficiary to choose for himself or herself to receive the needed services through a religious organization or through some other provider. The State could pay for the individual's choice of provider by giving the individual a voucher or other business form that tells the provider that the TANF agency will pay for the service. Or, the State could choose to pay the provider directly after asking the beneficiary to indicate his/her choice. We have added the above definition in § 260.34(a) of the final regulation.

Comment: Several commenters wrote that the voucher program authorized by the proposed rule lacks adequate constitutional safeguards, including legitimate secular options and secular purpose. Another commenter wrote that the proposed rule did not mention the provision of secular alternatives in cases where the voucher provider is religious. Without reasonable secular alternatives, beneficiaries may be forced to use religious providers. Yet another commenter expressed concern that the ability of individuals to use government-sponsored vouchers for religiously based services erodes the traditional American value of separation of church and State. The commenter thinks that State and local governments will be subject to numerous lawsuits challenging the legality of the use of government funds for religiously-based programs.

Response: The TANF Charitable Choice provision at section 104(a)(1)(B) (42 U.S.C. 604a(a)(1)(B)) authorizes the use of ''certificates, vouchers, or other forms of disbursement,'' as a State option. But, neither the statute, the NPRM, nor the final rule, ''require'' a voucher program. Although States must have a policy of inclusion as discussed below, they also have the flexibility to decide the best methods of delivering the services to or on behalf of their clientele. States are obligated to ensure that they provide options in a manner consistent with the Establishment Clause of the First Amendment and may review any relevant precedents concerning vouchers to do so.

We do not agree with the contentions that vouchers for religiously based services erode the value of separation of church and State, force individuals to attend ''pervasively sectarian'' institutions, or lack secular purpose for the following reasons. First, the Supreme Court has consistently upheld the constitutionality of mechanisms of indirect aid, such as vouchers, distributed without regard to religion. Therefore, we think that it is reasonable to conclude that neutral, indirect aid to a religious organization does not violate the Establishment Clause.

Second, the goal is secular, namely, to fund social services that help TANF-eligible individuals and families attain and maintain self-sufficiency. The Charitable Choice provisions level the playing field for qualified providers of these services who are faith-based, by giving them the right to participate in the provision of those services. The TANF Charitable Choice provisions simply stipulate that a religious service provider may not be excluded from eligibility for contracts, subcontracts, vouchers, or the like, on the grounds that the provider is religious, too religious, or ''pervasively sectarian.'' This does not mean that the object of Charitable Choice is to support or sponsor religion or participating religious providers.

Furthermore, the TANF Charitable Choice provisions do not guarantee that Federal TANF or State MOE funds must automatically flow to religious providers. Whether funding is direct or indirect, the Charitable Choice provisions simply guarantee that religious providers will not be discriminated against in the procurement process, by requiring government to stop ''picking and choosing'' among groups on the basis of religion.

Finally, § 260.34 (g) states that if the applicant or recipient objects to the religious character of a TANF service provider, he or she is entitled to an alternative provider to which the individual has no religious objection. This is in keeping with the TANF Charitable Choice provision at section 104(e)(1) (42 U.S.C. 604a(e)(1)), which requires that the State provide the individual with assistance from ''an alternative provider.'' Hence, the alternative provider could, but does not have to be secular.

Comment: One commenter contends that there are numerous unresolved issues concerning the funding for the vouchers. For example, how would local governments measure ''comparable services'' between secular and religious-based programs if the individual used the TANF voucher in a ''pervasively sectarian'' program? Or, if the beneficiary redeems a voucher and dissents from the program because of its religious tone, is that voucher transferable? This commenter also asked whether a local government may object to the individual's ''genuine and independent private choice'' with regard to the program. Would such an act by the local government subject it to the loss of Federal funding?

Response: States may establish their own policies and procedures for establishing eligibility or continued eligibility for a particular social service benefit, as well as the method of delivery, management, and disposition of the benefit. In keeping with the flexibility afforded to States, States may determine for themselves how best to define which services are comparable to those that the TANF agency has determined an individual is eligible to receive.

We are confident that States are well-versed in collaborating with local jurisdictions, other State agencies, and appropriate social service providers, and therefore we do not anticipate problems with the quality of a person's free and independent choice under an indirect aid scenario.

Comment: One commenter wrote that the indirect-funding definition opens the door to government-funded worship and proselytization. This commenter asked us to require that all government-funded services are free of religious content. In addition, the commenter thinks that ''free and independent choice'' is a myth which incorrectly

assumes that people in need will be able to shop for services. Social services are not available on a scale that makes ''choice'' real. People use the most geographically accessible providers.

Response: We find no basis to require that indirectly funded services be free of religious content. Furthermore, we disagree that funding services indirectly opens the door to government-funded worship and proselytization. The Supreme Court has consistently held that governments may fund programs that place the benefit in the hands of individuals, who in turn have the freedom to choose the provider to which they take their benefit and ''spend'' it, whether that institution is public or private, nonreligious or religious. Therefore, any consequential aid to religion having its origin in such a program is the result of the beneficiary's own choice. In other words, indirect funding means that individual private choice, rather than the government, determines which social service provider eventually receives the funds. As a general matter, this removes involvement on the part of the government in worship and proselytization. We believe that this thinking played a part in Congress limiting the prohibition in section 104(j) of PRWORA as amended (42 U.S.C. 604a(j)), on the use of Federal TANF or State MOE funds for worship, religious instruction, or proselytization, to the direct funding of benefits and services.

One of the aims of Charitable Choice is that faith-based and community-based organizations will be able to expand their capacity to provide for the social service needs of under-served areas. Also, in soliciting competition for possible Federal TANF or State MOE funds, a State could, for example, include among the factors that it will weigh toward choosing a provider, the ability of a potential provider to provide beneficiaries with transportation to and from the point of service.

Additionally, even when a State operates within the required level playing field, there may still be occasions where no faith-based organizations successfully compete to provide the needed service, regardless of whether the State has chosen to pay for the service directly or indirectly. We expect and understand this. As we previously mentioned, Charitable Choice is not a guarantee that Federal TANF or State MOE funds must automatically flow to faith-based organizations. The TANF Charitable Choice provisions do not require that States favor religious organizations. The provisions simply require a level playing field in the procurement of benefits and services.

Also, the TANF Charitable Choice provisions leave it up to States to decide whether to involve the non-governmental social service sector or to provide all services through government agencies. In some areas, the latter may be the State's only choice, until non-governmental providers expand their service capabilities. But, if a State does choose to involve any non-governmental providers, then the Charitable Choice provision at section 104(c) of PRWORA as amended (42 U.S.C. 604a(c)) requires involving religious organizations on the same basis as any other non-governmental providers.

In addition, indirectly funded organizations must of course satisfy secular requirements of the program and provide otherwise eligible services through their programs.

VI. Religious Character and Independence of Religious Organizations

Background

Section 260.34(d) of the final rule clarifies that a religious organization that participates in the TANF program retains its independence from Federal, State, and local governments, provided that it does not use direct Federal TANF or MOE funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide TANF-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a religious organization that receives Federal TANF or State MOE funds may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

Comment: A number of commenters expressed concern that a religious organization in receipt of Federal TANF or State MOE funds does not have to remove the religious art, icons, scriptures, or other symbols. The commenters think that this provision is too broad. It could result in the organization providing services in a setting that may well constitute a ''pervasively sectarian'' atmosphere in which members of a different religion may not feel comfortable or welcome to receive their TANF-funded benefits. For example, the organization could conduct the government-funded program in a chapel, leading to a reasonable misperception of government endorsement of or support for religion.

Response: Section 104(d) of PRWORA as amended (42 U.S.C. 604a(d)) imposes on the government a duty not to intrude into the institutional autonomy of religious organizations. Each participating faith-based organization in receipt of Federal TANF or State MOE funds, whether directly or indirectly, shall retain its independence from Federal, State and local governments. This independence includes their control over the definition, development, practice, and expression of its religious beliefs. In addition, the statute expressly prohibits State, Federal, and local governments from requiring a religious organization to alter its form of internal governance or to remove religious art, icons, scripture, or other symbols in order to be eligible to receive directly or indirectly funded Federal TANF or State MOE funds to provide help to beneficiaries. If the beneficiary objects to the religious character, then he or she is entitled to receive the social service benefit at an alternate provider to which the beneficiary has no religious objection. In addition, as noted above, the Supreme Court's ''pervasively sectarian'' doctrine no longer enjoys the support of a majority of the Court. *See Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), *id.* At 857.858 (O'Connor, J.,) (requiring proof of ''actual diversion of public support to religious uses'').

Comment: Several commenters noted that the protections afforded in this subsection are consistent with the statute and should be maintained. One of the commenters requested that we add a statement essentially stating that ''contrary State and local procurement laws that would otherwise prohibit faith-based organizations (FBOs) from continuing to staff on a religious basis'' are preempted. Another commenter asked that we add language essentially stating that nothing in this section shall be construed to affect any State or local law or regulation that relates to discrimination in employment, including the provision of employee benefits.

Response: The protections in § 260.34(d) have been retained. We believe that the content of this subsection suffices as written.

As discussed under ''Employment Practices,'' the FBOs enjoy an exemption ''with respect to the employment of individuals of a particular religion,'' under Title VII of the Federal Civil Rights Act of 1964. Therefore, in keeping with the guarantees of institutional autonomy, a

religious organization may continue to select its own staff in a manner that takes into account its faith, without violating Title VII.

The Charitable Choice provision at section 104(f) of PRWORA as amended (42 U.S.C. 604a(f)) expressly guarantees that a religious organization's Title VII exemption shall not be affected by its participation in or receipt of TANF funds, whether the State or local government directly or indirectly uses Federal TANF funds or expends State or local funds claimed to meet the State's MOE requirement to pay for the services.

Comment: One commenter believes that all organizations receiving government funds to provide social services must be subject to consistent levels of government oversight so that standards and regulations pertaining to safety, performance, non-proselytization, quality of care, and financial management are followed.

Response: States are subject to an audit of their TANF programs in accordance with Office of Management and Budget (OMB) Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The audit examines use of Federal TANF and State MOE funds in accordance with applicable cost accounting and financial principles, as well as programmatic principles. The State is responsible for the appropriate use of its Federal TANF and State MOE funds. Therefore, any organization that receives Federal TANF or State MOE funds needs to be able to show to the State and the auditor that it used the funds, whether provided directly or indirectly, for the purpose intended by the State. These requirements are also addressed in our response to comments in Section X below, ''Fiscal Accountability.''

This is in keeping with the TANF Charitable Choice provision at section 104(h) of PRWORA as amended (42 U.S.C. 604a(h)) and this regulation in § 260.34(h), in which we stipulate that religious organizations receiving Federal TANF or State MOE funds will be subject to audit, just like any other non-governmental organization receiving such funds. Thus, all organizations receiving government funds to provide social services are subject to consistent levels of government oversight.

VII. Employment Practices

Background

In language similar to that in the statute, the proposed rule at § 260.34(d) (now § 260.34(e)) specified that the receipt of TANF or MOE funds does not affect a participating religious organization's exemption provided under 42 U.S.C. 2000–e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 permits a religious organization to hire employees who share its religious beliefs. This helps enable faith-based groups to promote common values, a unity of purpose, and shared service—thus protecting the religious liberty of communities of faith.

Comment: Several commenters agreed that the proposed rule reflects a proper understanding of civil rights law. When a faith-based organization receives government funding and hires staff on a religious basis, the law is not violated.

Response: We agree with these commenters and have retained the identical language in the final rule. This statutory and regulatory provision of Charitable Choice does not change the status quo; it simply clarifies the applicability of the exemption to the TANF program.

Comment: Several commenters believed that the proposed rule allows employment discrimination in violation of constitutional prohibitions and court decisions that have struck down government-funded discrimination. One commenter explicitly stated that this provision runs afoul of the ''no-religious-tests clause'' of the Constitution under which ''no religious test shall ever be required as a qualification to any office or public trust under the United States.''

Response: We do not agree with these commenters. The Equal Employment Opportunity Act of 1972 broadened Title VII of the Civil Rights Act of 1964 to free religious organizations from charges of religious discrimination, regardless of the nature of the job. In 1987, the Supreme Court addressed and unanimously upheld the constitutionality of the 1972 amendment or exemption for religious organizations. In addition, it is well settled that the receipt of government funds does not convert the employment decisions of private institutions into ''state action'' that is subject to constitutional restrictions such as the ''no religious test'' clause of the Constitution.

Comment: A number of commenters stated that the exemption from Title VII of the Civil Rights Act was never intended to permit a religious organization to favor co-religionists in hiring when using Federal funds to pay the salaries and wages of employees who are carrying out governmentally-funded social service programs.

Response: We do not agree that these comments accurately portray the law. Title VII of the Civil Rights Act, which applies to organizations regardless of whether they receive Federal funds, contains an explicit exemption for religious organizations, which allows them to hire, promote, and fire staff on a basis that takes into consideration the organization's religious beliefs and practices without violating Title VII. That exemption is not lost when a faith-based organization receives Federal TANF funds or State MOE funds to provide a secular service. Also, we would note that section 702(a) of the Civil Rights Act of 1964 is permissive. It allows religious staffing, but does not require it. And, religious organizations are subject to Federal civil rights laws that prohibit employment discrimination on the basis of race, color, national origin, sex, age, and disability.

Comment: Several commenters noted that State and local governments have contracting laws that prohibit employment discrimination, beyond the Civil Rights Act of 1964. These commenters asked that the final rule clarify that nothing in the rule is intended to modify or affect any State law or regulation that relates to discrimination in employment.

Response: The Charitable Choice provision at section 104(f) of PRWORA as amended (42 U.S.C. 604a(f)) expressly guarantees that a religious organization's Title VII exemption shall not be affected by its participation in or receipt of TANF funds. Hence, Charitable Choice applies whenever a State or local government uses Federal TANF funds or expends State or local funds claimed to meet the State's MOE requirement to procure services and benefits from non-governmental organizations, or provides clients with certificates, vouchers, or other forms of disbursement that can be redeemed for services in connection with the TANF program. When State or local funds are used to meet the State's MOE requirement, the provisions apply irrespective of whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs.

The only exception is found in section 104(k) of PRWORA as amended (42 U.S.C.604a(k)), which clarifies that the Charitable Choice requirements do not preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations. We do not believe that this ''preemption'' provision can be interpreted to cover State or local employment discrimination laws. (For a more detailed analysis of the

implications of Charitable Choice on State and local laws, see the analysis provided under the heading ''Effect on State and Local Funds''.)

VIII. Nondiscrimination Against Beneficiaries

Background

This provision applies to individuals who receive Federal TANF or State MOE-funded services. In § 260.34(f) of the final rule, we state that religious organizations are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion, a religious belief, refusal to hold a religious belief, or a refusal to actively participate in a religious practice. Accordingly, religious organizations, in providing services funded in whole or in part by Federal TANF or State MOE funds, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

Comment: Many of the commenters expressed concern over the use of the word ''active'' in setting forth the prohibition from discriminating against beneficiaries or potential beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice. They interpreted the word ''active'' to allow the delivery of religious messages using facilities and equipment funded by the government, and they believed that this word opens the door wherein vulnerable clients may be exposed to inappropriate ''passive'' religious practices. The commenters recommended removing the word ''actively'' from the final regulations.

Response: We disagree. In section 104(g) of PRWORA as amended (42 U.S.C. 604a(g)), Congress prohibited religious grantees from discriminating against program beneficiaries on three related grounds: ''religion, a religious belief, or refusal to actively participate in a religious practice.'' In addition, section 104(b) of PRWORA as amended (42 U.S.C. 604a(b)) stipulates that the religious freedom of beneficiaries may not be diminished, and section 104(e)(1) of PRWORA as amended (42 U.S.C. 604a(e)(1) provides that beneficiaries who object to the religious character of a service provider have a right to an alternative provider. These provisions are straightforward and are sufficient to protect the religious freedom of program beneficiaries. Accordingly, we have retained the language of the proposed rule, which is based on Congress's own language.

Comment: One commenter stated that it is unclear whether the discrimination prohibition applies to funds provided both directly and indirectly to the religious organization. The commenter also asked us to prohibit providers from inquiring about the religious affiliation of applicants, and to require a notice advising that any religious services offered to the beneficiary are voluntary.

Response: The prohibition in section 104(g) of PRWORA as amended (42 U.S.C. 604a(g)) makes no distinction in funding source or funding method. Therefore, religious organizations, in providing services funded directly or indirectly, in whole or in part, with Federal TANF or State MOE funds, may not discriminate against current or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice. As we mentioned in the discussion regarding ''Restrictions on Religious Activities By Organizations that Receive Direct TANF Funding,'' when Federal TANF or State MOE funds are disbursed indirectly to the organization providing the service, then the organization may invite (not require) the beneficiary's participation in inherently religious activities. But, if the individual objects to the religious character of the organization or institution, then he or she has a right to receive the services from an alternative provider. This allows the beneficiary to avoid unwanted religious practices and prevents the individual's religious freedom from being diminished.

We decline to add a statement prohibiting providers from inquiring about the religious affiliation of applicants. We believe that the provision as written, is adequate.

We also decline to require that religious organizations provide a notice to a beneficiary or potential beneficiary assuring that participation in religious activities would be entirely on a voluntary basis. We recommend that States and participating organizations work together to ensure that clients and potential clients have a clear understanding of the services offered by the organization, including any religious activities, as well as the organization's expectations and requirements. The requirement that participation be voluntary, however, is sufficient to address concerns about the religious freedom of program beneficiaries.

Comment: One commenter wrote that the proposed rule does not require a secular alternative. Therefore, it lacks constitutionally-required safeguards for beneficiaries.

Response: The proposed rule at § 260.34(f) (now § 260.34(g)(2)) provided that if the applicant or recipient objects to the religious character of a TANF service provider, he or she is entitled to an alternative provider to which the individual has no religious objection. This is in keeping with the TANF Charitable Choice provision at section 104(e)(1) (42 U.S.C. 604a(e)(1)), which requires that the State provide the individual with assistance from ''an alternative provider.'' Hence, the alternative provider could, but does not have to be, a secular alternative; it need only be a provider to which the beneficiary has no religious objection. We have retained the wording of this provision.

Comment: One commenter asked us to clarify that a beneficiary has the right to choose indirect government funding to enroll in a program that has a religious component. The commenter also asked us to add that ''nothing in this section shall be construed to prohibit a program beneficiary from using indirect government assistance to receive services from a participant whose program has a required religious component or to prohibit such participant from offering the required religious component.''

Response: We decline to add the suggested sentence to the final rule. The welfare reform law of 1996 (PRWORA) gave States unprecedented flexibility to design and conduct their own TANF programs. In addition, the TANF Charitable Choice provision at section 104(a)(1) (42 U.S.C. 604a(a)(1)) gave States the option to administer and provide services directly and/or indirectly. Further, each State is responsible for its own decisions regarding how to use its Federal TANF and State MOE funds, including the range of services it elects to provide and the method of paying for those services. But, this does not preclude a beneficiary from personally choosing to participate in any inherently religious activities that an organization offers, even if the social service benefit provided to him or her is directly funded by the TANF agency. It just means that, for directly funded social services, the inherently religious activities must take place separately, in time or location, from the provision of the Federal or State MOE funded social service benefit.

Comment: One commenter would like us to recognize that religious organizations and secular organizations sometimes discriminate on the basis of sexual orientation or gender identity. The commenter suggested that we

develop a regulation banning religious, sexual orientation and/or gender identity discrimination with Federal or other public funds.

Response: Religious organizations and secular organizations alike must follow Federal civil rights laws prohibiting discrimination on the bases of race, color, national origin, gender, age, and disability. However, the Federal civil rights laws are silent on discrimination on the basis of sexual orientation and/or gender identity, and we decline to impose such restrictions by regulation.

Comment: Several commenters noted that if religious organizations are providing program services and facilities, then they must be in compliance with the Americans with Disabilities Act (ADA). Persons with disabilities should not be assigned to alternative or substitute programs or services.

Response: Although it is beyond the scope of these regulations to address how various civil rights laws might apply in all situations, organizations providing services must comply with Federal civil rights laws to the extent that those laws are applicable. In particular, we note that Title III (Public Accommodations and Services Operated by Private Entities), section 307 of the Americans with Disabilities Act of 1990 excludes religious organizations or entities controlled by religious organizations, including places of worship, from the provisions. Yet, religious institutions are subject to several requirements designed to ensure services to persons with handicaps in section 504 of the Rehabilitation Act of 1973, and its implementing regulations at 45 CFR part 84, which prohibit discrimination on the basis of disability in programs or activities receiving Federal financial assistance.

IX. Notice, Referral, and Provision of Services From Alternative Providers

Background

Section 260.34(f) of the proposed rule (now § 260.34(g)) received more comments than any other provision. In this section, we stated that individuals applying for or receiving Federal TANF or MOE-funded services may object to the religious character of a religious provider. If so, they are entitled to receive services from an alternative provider. The State or local agency must refer the individual to an alternative provider of services within a State-defined, reasonable period of time. Alternative providers must be reasonably accessible and be able to provide comparable services, which are at least equal in value to those the individual would have received from the initial provider. The alternative provider does not have to be a secular organization, just one to which the program beneficiary has no religious objection. Since effective services need to take into consideration local conditions, we deferred to States on how to accomplish these statutory and regulatory objectives.

However, the proposed rule did clarify that State and local governments are responsible to ensure that clients are provided notice of their rights to alternative providers, and are referred to and provided alternative services within a reasonable period of time, if they object to a religious provider. And, while the responsibility for the notice, referral and provision of the alternative service rests with the State or local agency, each participating organization has a responsibility to help clients know and understand their rights. We also encouraged all involved organizations to develop and implement reasonable tracking procedures to ensure that clients do not ''fall through the cracks'' and lose timely services.

Comment: Several commenters noted that the requirement to provide alternative services places additional burdens on State agencies, especially in rural areas. A faith-based organization may be selected as the service provider for a particular geographic area. Ensuring that an alternative service provider is available could require the State to make dual sets of services available, and thus increase costs. As a result, many of these commenters suggested that the requirement to provide alternative services is unreasonable. Some suggested that exceptions be permitted or that the requirement should be eliminated. Others noted that with this requirement, some States may choose not to contract out or provide community-based services, especially in rural areas.

Response: In enacting the Charitable Choice provision, Congress had to carefully balance the rights of individuals with the duty of government to not discriminate with respect to religion when selecting non-governmental providers of social services. To accomplish these two principles, the statute imposes the requirement to provide accessible and comparable assistance or services within a reasonable period of time to an individual who has an objection to the religious character of an organization. In the proposed rule, with the exception of requiring notice and referral, we did not expand or enhance the rights of beneficiaries to assistance from an alternative provider, but simply clarified this statutory entitlement. We also left substantial discretion to States to define terms and carry out the statutory objective.

We also believe that commenters may have overestimated the impact and potential burden of this requirement. Many faith-based organizations have a long history of contracting with State and local governments to address the secular purpose of providing assistance and services to needy families. Few beneficiaries have objected to the religious nature of these providers, which is perhaps unsurprising in light of the fact that any inherently religious activities must be offered separately and on a voluntary basis. We also do not believe States will decide not to contract out or provide community-based services in order to avoid this requirement. Since the statutory Charitable Choice requirements have applied since 1996, we believe that State and local governments are providing alternative services, in compliance with the law, and discovering and enhancing procedures that efficiently and effectively address this requirement.

It is also worth noting that one of the aims of Charitable Choice is that faith-based and community-based organizations will be able to expand their capacity to provide for the social service needs of under-served areas. Also, in soliciting competition for possible Federal TANF or State MOE funds, a State could, for example, include among the factors that it will weigh toward choosing a provider, the ability of potential providers to provide beneficiaries with transportation to and from the point of service.

Finally, the TANF Charitable Choice provisions leave it up to States to decide whether to involve the non-governmental social service sector or to provide all services through government agencies. In some areas, the latter may be the State's only choice, until non-governmental providers expand their service capabilities. But, if a State does choose to involve any non-governmental providers, then the Charitable Choice provision at section 104(c) of PRWORA as amended (42 U.S.C. 604a(c)) requires involving religious organizations on the same basis as any other non-governmental provider.

Comment: Several commenters believed that the proposed rule left too much discretion to States to define the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and ''value that is not less than.'' These commenters asked that we either provide Federal definitions for these terms, or establish

baseline parameters or guidelines. Others appreciated the discretion we had provided to States, but were concerned that the expectation of alternative services may expose States to litigation based on availability and how they define comparable services.

Response: Since the enactment of the welfare reform legislation in PRWORA, we have learned two clear lessons:

- Operational details and procedures need to be developed taking into consideration community and local needs and constraints. Because State and local governments have the knowledge of these realities, they are better prepared to define and set realistic and effective parameters to meet these mandatory, statutory goals. Given the diverse and wide range of TANF services, benefits and programs offered by States, it would be nearly impossible for us to define these terms in ways that would accommodate the needs of different States and communities; and,
- When given the flexibility, opportunity and authority through devolution, States and communities have demonstrated tremendous creativity leading to beneficial results. When TANF was enacted, many people expressed concern that the flexibility granted States, without Federal regulation would lead to ''a race to the bottom.'' Experience has proven these fears to be completely unfounded; and, if anything, the converse is true. Through experimentation and innovation, States and communities have developed programs and services to enhance the ability of families to achieve independence—a true race to the top and to excellence.

We believe that States, faced with the challenge of how to offer clients this option, while at the same time guaranteeing other alternative providers, will again rise to the occasion and develop reasonable and effective definitions and operational procedures. We are convinced that families will be better served by providing this discretion to States.

Nevertheless, we do believe that States must conscientiously apply guidance to assure fair treatment and comparable provision of services to all eligible applicants and recipients requiring an alternative provider. We have revised § 260.34(g) of the final rule to help ensure that States adopt reasonable definitions of the terms in this section and to reflect our expectation that this section is implemented fairly.

Comment: One commenter, noting a potential tension between the protections provided to religious organizations and the alternative provider requirements on States, suggested regulatory language that explicitly prohibits governmental entities from considering the impact of the alternative service provider requirements when considering faith-based providers.

Response: Once a State or local government elects the option to provide services through non-governmental entities, then the Charitable Choice provisions ensure that ''* * * religious organizations are eligible, on the same basis as any other private organization * * *'' Implicitly, in that requirement, State or local governments are prohibited from considerations other than those leading to the selection of providers that can best achieve the secular purposes of the service or benefit. ACF believes State and local governments clearly understand this and that an explicit addition to the rules is not needed.

Comment: To protect beneficiaries, one commenter offered three suggestions: (1) That clients be held harmless from work requirements while the State seeks alternative services; (2) that there be no penalty for requesting alternative providers; and (3) that a State and Federal administrative complaint mechanism be created.

Response: The work participation requirements are set forth in section 407 of the Social Security Act, with implementing regulations at 45 CFR part 261. Under section 407, there are limited circumstances under which an individual may be exempted from work requirements. The commenter's suggestion is not among them. Nevertheless, States have the flexibility to develop additional exemption criteria, with the understanding that the State must still meet its required work participation rate target. Each State may also establish its own criteria for determining when not to impose a penalty on an individual—namely, when an individual has ''good cause'' for not engaging in required work activities.

Secondly, under the TANF Charitable Choice provisions, government may not compel an individual, through loss of public benefit or advantage, to profess a religious belief or to observe an inherently religious practice. Therefore, the State may not penalize an individual for requesting to receive a service from an alternative provider because he or she objects to the religious character of the organization or institution from which he or she receives or would receive the service.

Finally, while the Charitable Choice provisions do not include any statutory basis for us to create a Federal appeal process, we are confident that States conscientiously provide protections to beneficiaries. For example, States are required to outline in a State plan how they will require a parent or caretaker to engage in work activities, the objective criteria for the delivery of benefits, and an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in an administrative or appeal process. ACF has heard of few abuses or complaints about the adequacy of existing procedures.

Comment: One commenter suggested that the final rules clarify that an individual may not object to services provided by a secular, non-profit community-based organization and request alternative faith-based services.

Response: We agree that this individual right is not provided by the Charitable Choice statute or regulation. The right of a beneficiary to an alternative provider derives only when the individual has an objection to the ''religious character of the organization or institution from which the individual receives, or would receive assistance * * *'' Since secular organizations, by definition, do not have a ''religious character'', no right to an alternative is created. Nonetheless, we encourage states to respect the religious or nonreligious choices of all beneficiaries.

Comment: Several commenters suggested that the final rule specify that beneficiaries who object to the religious character of an organization have the right to a secular provider.

Response: The Charitable Choice statute does not specify that the alternative provider needs to be a secular organization. We have chosen not to adopt this suggestion for three reasons. First, the purpose of the statute is to respect beneficiary choice, and some beneficiaries may prefer an alternative religious provider to an alternative secular provider. Second, many faith-based organizations deliver services in a secular manner. As a result, most beneficiaries will not object to the religious character of these organizations, and we do not want to exclude them as potential providers of service. Third, under the permissive statutory language that we have retained, State and local governments may offer a secular alternative. We believe States will implement this requirement in a manner consistent with their obligation to ensure compliance with the Establishment Clause of the First Amendment.

Comment: One commenter noted that the proposed rule was unclear on whether the alternative provider

requirement applies to the designated, non-profit (under section 501(c)(3) of the tax code) arm of a religious organization.

Response: The statutory language clearly gives the beneficiary the right to object to the ''religious character of the organization or institution from which the individual receives, or would receive, assistance. * * *.'' We believe this gives the client the right to object, even when the services will be delivered without inherently religious activities by the non-profit arm of a faith-based group, so no clarification is necessary for the final rule.

X. Fiscal Accountability

Background

Section 260.34(h) of this rule sets forth the financial responsibility incurred through the receipt of Federal TANF or State MOE funds. Religious organizations that contract to provide TANF services or benefits are subject to the same requirements as other non-governmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. Religious organizations may segregate their TANF accounts from non-governmental funds for other activities. If religious organizations choose to segregate their Federal TANF or State MOE funds in this manner, only the segregated funds are subject to audit by the government.

Comment: Some commenters would like ACF to require that faith-based organizations separate the TANF funds they receive from other funds, and incorporate oversight mechanisms. One of the commenters recommended that we revise the regulation to conform to the standards adopted by the Substance Abuse and Mental Health Services Administration (SAMHSA). Other commenters recommended making the language stronger to stress the importance of creating separate records. One of the commenters wrote that faith-based organizations and government officials need guidance regarding the procedures required to separately fund the activities. Another commenter asked us to maintain the provision that if a religious organization establishes a separate account, then only the TANF funds are subject to audit by the government.

Response: Section 104(h)(2) of PRWORA as amended (42 U.S.C. 604a(h)(2)) gives a religious organization the option of segregating the Federal funds received into a separate account. Therefore, we do not think it is appropriate to require separate accounts because this would be stricter than the law stipulates. By contrast, the Charitable Choice provision applicable to SAMHSA, at 42 U.S.C 290kk-1(g)(2), specifically requires that the religious organization program participant segregate the Federal funds provided under award from non-Federal funds.

The religious organizations are responsible for deciding whether to establish separate account(s) to receive and to disburse the funds and for developing their own means of doing so. Organizations that are able and willing to separate the funds received from the State into a separate account will have only those funds subject to audit.

Comment: One commenter asked us to clarify whether only the Federal TANF funds, as opposed to State MOE funds, are subject to audit when religious organizations segregate the funds into a separate account.

Response: The limited audit authority applies to Federal TANF and State MOE funds, whether received directly or indirectly, unless State law expressly prohibits this flexibility from extending to State MOE funds. Both Federal TANF and State MOE funds are subject to the TANF Charitable Choice provisions.

We recognize that the TANF Charitable Choice provision at section 104(h)(2) of PRWORA as amended (42 U.S.C. 604a(h)(2)) refers only to Federal TANF funds. But, the intent of this provision is to enable the organization to opt to limit the scope of fiscal audits. Therefore, we have concluded that extending the option to include State MOE funds is consistent with the statutory intent. We have clarified this point in § 260.34(h).

Comment: Some commenters think that the regulation does not adequately guard against using the funds for religious activities. One commenter asked us to address the accounting and/or separation principles which must be followed with respect to the separate funding of permitted and restricted activities in order to demonstrate that the organization has not expended any government funds on restricted activities. Several of the commenters requested that the final rule require that the religious organization establish a separate corporate structure (*e.g.*, incorporate under 501(c)(3)) or other type of separate structure that would distinguish the religious entity from its government-funded social welfare organization. Another commenter is concerned that the option for religious organizations to commingle funds could make it more difficult and expensive for the State to ensure that public funds are not supporting ''inherently religious activities.'' This commenter noted that the Community Services Block Grant program proposed rule does not allow for the commingling of funds by religious organizations.

Response: Under the TANF Charitable Choice statute, religious organizations may, but are not required to, establish a separate account structure, including incorporating or operating the separated part as a non-profit organization under section 501(c)(3) of the Internal Revenue Code. Because religious organizations do not have to incorporate or operate as a non-profit organization, we have deleted the definition of religious organization—*i.e.*, ''a non-profit religious organization'' from the final regulation.

The final rule provides that religious organizations receiving Federal TANF or State MOE funds will be subject to audit, just like any other non-governmental organization receiving such funds. The State is responsible for the appropriate use of its Federal TANF and State MOE funds, so the organization needs to be able to show to the State and the auditor that it used the funds, whether provided directly or indirectly, for the purpose intended by the State. Specifically, as provided in 45 CFR 92.26, TANF grantees and sub-grantees are responsible for obtaining audits by an independent auditor following generally accepted government auditing standards, in accordance with both the Single Audit Act and OMB Circular A–133. These require that grantees spending more than $300,000 in Federal funds per year must obtain an annual independent audit, normally conducted by a private firm. This authority is in 31 U.S.C. section 7502(a)(1)(A) and (c). The State or local government must determine whether the grantee and sub-grantees have complied with all laws applicable to expenditures, which includes a determination as to whether the proscription against using direct funding for inherently religious practices has been followed. State officials may want to establish reasonable and prudent procurement policies, building in real and meaningful safeguards to prevent the diversion of funds to any ineligible purpose.

Moreover, HHS is authorized to conduct any additional audits or reviews that are warranted, irrespective of the amount of Federal funds expended by the grantee annually, in order to ensure compliance with program requirements including the restriction against direct funding of inherently religious activities. This authority is in 45 CFR 92.40(e). HHS may determine that such audits or reviews are warranted based upon any

information received by the agency that raises an issue concerning the propriety of expenditures.

As we noted in an earlier response, we do not think it is appropriate to require a separate corporate or other structure because this would be stricter than the TANF Charitable Choice statute stipulates. In contrast to the TANF Charitable Choice provisions, the Charitable Choice provisions applicable to SAMHSA at 42 U.S.C 290kk–1(g)(2) and the Community Services Block Grant program at 42 U.S.C. 9920(d)(2) specifically require that the religious organization program participant segregate the Federal funds it receives into a separate account.

Comment: One commenter noted that there is no requirement against using government funds to supplant church funds. Therefore, the final rule should make clear that ''pervasively sectarian'' organizations should not receive direct funding.

Response: We disagree with this recommendation. To begin with, it contradicts the very purpose of the TANF Charitable Choice provisions. The TANF Charitable Choice provisions provide a level playing field in the government's procurement of benefits and services that it has chosen to provide to TANF-eligible families and individuals. To this end, the Charitable Choice provisions give qualified religious organizations the right to participate in the provision of these services. Hence, as we have indicated in Sections III and IV of these comments, a religious organization may not be excluded from the procurement process on the basis that it is religious, too religious, or ''pervasively sectarian.'' In addition, the Supreme Court's ''pervasively sectarian'' doctrine no longer enjoys the support of a majority of the Court. *See Mitchell* v. *Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion); *id.* at 857–858 (O'Connor, J., concurring in judgment, joined by Breyer, J. (requiring proof of ''actual diversion of public support to religious uses'').

None of the Federal TANF or State MOE funds provided directly to the organization may be used for inherently religious activities. The government has purchased a service from the religious organization to deliver a specific social service benefit(s) to TANF applicants or recipients.

Comment: One commenter recommended that we define ''non-profit'' organization consistent with the definition provided in the SAMHSA proposed rule at 67 FR 77350 regarding the Charitable Choice Clause.

Response: We decline to add a definition of ''non-profit'' organization. As we explained, we have deleted the definition of ''religious organization'' that was in the NPRM, which contained a reference to ''non-profit.''

XI. Effect on State and Local Funds

Background

Section 104(a) of PRWORA as amended (42 U.S.C. 604a(a)) applies to ''a State program funded under part A of title IV of the Social Security Act'' (TANF) and also to ''any other program established or modified under title I or title II of this Act that permits contracts with organizations; or permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries as a means of providing assistance.'' Title I includes all TANF provisions, including the maintenance-of-effort (MOE) requirement that States continue to expend a specified level of State or local funds. Claimed expenditures must be spent on eligible families for activities that achieve a TANF purpose. (Title II is the Supplemental Security Income program.)

The proposed rule followed the statute in specifying that the Charitable Choice requirements apply both when a State or local government uses Federal TANF funds to procure services and benefits from non-governmental organizations, or to redeem certificates, vouchers, or other forms of disbursement or when the State claims those expenditures to meet the MOE requirement. We said that the Charitable Choice provisions apply whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs.

The proposed rule also clarified that, pursuant to section 104(k) of PRWORA as amended (42 U.S.C. 604a(k)), nothing in the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

Comment: A number of commenters opposed the application of Charitable Choice to the State and local funds claimed to meet the MOE requirement. Some believed that Charitable Choice should only apply to the use of Federal TANF dollars. Others believed that the rule covers commingled funds, but asked that we modify the rule with respect to both segregated funds and funds expended in separate State programs. Still others believed the rule should apply to funds expended in the TANF program (Federal funds, commingled and segregated MOE expenditures) but that it ought not apply to expenditures in separate State programs, like other TANF rules.

Response: Because ACF did not regulate on Charitable Choice or provide guidance earlier, we recognize that many may not have understood that the statutory provision applies to State and local funds claimed to meet the State's MOE requirement, just as it applies to Federal TANF funds. Given the nearly total flexibility provided to States with respect to separate State programs, we also acknowledge that the application of the Charitable Choice requirements to these funds is unusual, because only a few of the TANF rules apply to the expenditure of State funds in separate State programs.

But, while we recognize the frustration of some of the commenters with the interpretation in the NPRM and the preference of others to modify the rule, for the reasons explained in the ''Background'' above, we believe the better reading of the statute is that Charitable Choice applies to all State funds claimed to meet the maintenance-of-effort requirements.

Comment: Several commenters noted that the preemption clause did not address local laws and asked us to clarify in the final rule that the Charitable Choice provisions do not preempt any provision of a State constitution, State statute or local ordinances that prohibits or restricts the expenditure of State funds in or by religious organizations.

Response: Section 104(k) (42 U.S.C. 604a(k)) preserves ''a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations''; it contains no reference to ''local laws'' or ''ordinances.'' In addition, the TANF Charitable Choice statute, read as a whole, demonstrates that Congress was cognizant of the distinction between State and local law. For example, section 104(d)(1) (42 U.S.C. 604a(d)(1)) provides that a religious organization participating in a TANF program ''shall retain its independence from Federal, State, and local governments * * *.'' We therefore believe that the existing language faithfully implements the statute.

Comment: Several commenters noted that the proposed rule was confusing. If Charitable Choice applies to the use of Federal funds and all State and local expenditures claimed to meet MOE, what does the preemption provision mean?

Response: We understand the confusion. But, Congress recognized that some States have enacted laws to

ensure a more rigorous ''separation of church and state.'' These States either prohibit or restrict contracts with religious organizations or more broadly proscribe providing any State funding to them. In enacting Charitable Choice, Congress explicitly allowed these State prohibitions or restrictions, as they apply to State funds only, to take precedence over this Federal provision.

The provision at section 104(k) of PRWORA as amended (42 U.S.C. 604a(k)) which preserves ''a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations,'' only applies to the State's own funds, but not to Federal TANF funds. The ''preemption'' provision also does not apply to State funds that have been commingled with Federal TANF funds. (Federal requirements only affect the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If a State commingles its funds, the Federal and State funds become subject to the same rules.) A number of States may have general or specific provisions that prohibit or restrict providing direct or indirect State funds to religious organizations. Such States should use segregated Federal TANF funds to pay for any benefits and services provided by religious organizations, to avoid the risk of running afoul of a provision in their laws that prohibits or restricts the expenditure of State funds in or by religious organizations.

So, another way of expressing the requirements is that if a State's constitution or law prohibits or restricts State funds from going to religious organizations, or proscribes contracts with religious organizations, the Charitable Choice requirements do not apply to those State funds. We defer to the State to interpret the scope of its constitution or law. But, if a State does not have such prohibitions or restrictions, then Charitable Choice applies to both Federal TANF funds and State and local expenditures claimed for MOE purposes. This is faithful to Congress' expressed intention to preserve State constitutional or statutory restrictions on State funds, while ensuring that Federal rules apply to both Federal and State MOE funds in the absence of such State law provisions.

Comment: Several commenters asked that the final rule clarify that the provision at section 104(k) of PRWORA as amended (42 U.S.C. 604a(k)) which preserves ''a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations,'' also includes State and local nondiscrimination hiring provisions.

Response: We do not agree that the provision at section 104(k) of PRWORA as amended (42 U.S.C. 604a(k)) addresses employment nondiscrimination provisions. Rather, this provision explicitly covers provisions of a State constitution or State statute that prohibits or restricts the expenditure of State funds ''in or by religious organizations.'' Employment nondiscrimination provisions do not fall within this category.

XII. Treatment of Intermediate Organizations

Background

Section 260.34(k) of this rule provides that, if a non-governmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal government or a State or local government, is given the authority under the contract or agreement to select other non-governmental organizations to provide services under the program, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a non-governmental organization under the Charitable Choice provisions.

Comment: One commenter asked for clarification on whether these rules apply to Tribal governments that participate or contract with the State as part of a State's TANF program. Related to this question is the issue of whether these rules apply to a Tribal government or organization that has the authority under the contract or agreement with the State to select other organizations to provide services under the program.

Response: Tribes that operate their own TANF program under section 412 of the Social Security Act are not required to follow the Charitable Choice rules because the statutory provisions on Charitable Choice refer only to State and local governments. However, Tribes must adhere to these rules if they are under a contract or agreement with the State to operate some aspect of the State's TANF program and the Tribe has the authority to select other organizations and disburse funds to provide benefits and services. Under such an arrangement, a Tribe is functioning like any other intermediate organization and, is, therefore bound to ensure compliance with the statutory provisions of Charitable Choice and these implementing regulations.

Comment: Six commenters raised a number of different issues with respect to our regulatory provision on intermediate organizations. The first issue is whether or not a State's use of intermediate organizations to select TANF service providers is unconstitutional. The second issue is whether or not we should specifically regulate the requirements that intermediate organizations be held to the same standards of service, care, nondiscrimination, financial management and accounting rules as the agency receiving the direct grant. The third issue is whether or not we should regulate a requirement that intermediate organizations identify and describe basic information on each subgrantee. The fourth issue is whether or not religious organizations should be permitted to function as intermediate organizations.

Response: We do not agree that the use of an FBO as an intermediate organization is unconstitutional. Our review did not disclose any precedents, legal or otherwise, that would prevent a State from selecting an FBO as an intermediate organization. The purpose of the provision in § 260.34(k) is not to delegate authority to organizations to carry out tasks that are traditionally reserved for a governmental agency. States already have the authority to procure needed social services through the non-governmental sector. Nor is it uncommon for States to authorize non-governmental intermediaries to select TANF service providers by contracting with them to do so. Since the responsibility to select service providers is often vested in non-governmental organizations, it is not a duty that traditionally has been an exclusive function of the government , and intermediate organizations (whether religious or secular) are in any event obligated to act as the government itself must act when carrying out their intermediary functions under this program. We also wish to emphasize that a State's use of intermediate organizations does not relieve the State of its traditional responsibility to effectively monitor the actions of such organizations. The regulations at 45 CFR 92.40 hold a State accountable for managing the day-to-day operations of grant and subgrant supported activities to assure compliance with applicable Federal requirements and performance goals. Moreover, no provision of this rule relieves a State of its responsibility to ensure that providers are selected in a manner consistent with the Establishment Clause.

Regarding the issues related to standards of service, financial

management, accounting, and reporting on subgrantee activities, an intermediate organization, like a State grantee, is held to the requirements enunciated in the Federal regulations at 45 CFR Part 92 (which implements the provisions of OMB Circular A–103) and OMB Circulars A–87 and A–133 on the Single Audit Act. Given that both the State and its intermediate organization are subject to these existing requirements, we see no need to further regulate in this area. Regulating on nondiscrimination is also unnecessary since intermediate organizations are covered by the provisions at § 260.34(e) and (f) of this rule along with the protections offered by other Federal civil rights laws as listed at 45 CFR 260.35.

On the issue of whether or not we should permit an FBO to serve as an intermediate organization, we have decided to maintain the position taken in the NPRM—-*i.e.*, to allow a State to select an FBO as an intermediate organization. We believe that our rules on fiscal accountability, on the obligations of such intermediate organizations, and on the prohibition on the use of Federal TANF or State MOE funds for inherently religious activities are sufficient protections against the possibility that an FBO will use these funds to advance its religious beliefs.

This final rule corrects a typographical error in the NPRM. The lead sentence after the heading ''Treatment of Intermediate Organizations'' in the preamble to the NPRM incorrectly referred to paragraph (i); the correct paragraph in the NPRM was (j). This provision now appears in § 260.34(k) of in the final rule.

XIII.Regulatory Analysis

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect primarily the 50 States, the District of Columbia, and certain Territories. Therefore, we certify that this rule will not have a significant impact on small entities.

Comment: One commenter stated that the rule should be considered ''major'' because it will have a significantly adverse impact on employment by allowing for discrimination based on religion.

Response: We disagree. For years, section 702(a) of the Civil Rights Act of 1964 as amended has relieved religious organization from compliance with Title VII employment nondiscrimination requirements. Therefore, we believe that there will not be any significant adverse impact on employment.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order, and therefore has been reviewed by the Office of Management and Budget. This rulemaking implements statutory authority and reflects our response to comments received on the NPRM that we issued on December 17, 2002 in 67 FR 77362 (2002).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Comment: Two commenters mentioned that this rule would result in expenditures in excess of the $100 million threshold.

Response: We disagree. Conditions attached to federal grant programs are not generally considered ''mandates'' under The Unfunded Mandates Reform Act (UMRA) of 1995. Nevertheless, with a large program like the TANF program, a new grant condition or reduction in federal financial assistance could be considered a mandate if States lack the flexibility to offset the new costs or the loss of Federal funding with reductions or other design alternatives elsewhere in the program. For example, under the Charitable Choice provisions, when an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the State or local agency must refer the individual to an alternative provider of services. While this could be viewed as an additional expenditure for the State, we have concluded that this does not trigger the requirement under section 202 of the UMRA of 1995. In addition to the fixed amount of their own money that States must spend toward their maintenance-of-effort requirements, States also receive annual Federal funding. Furthermore, the welfare reform law gave States broad flexibility to provide a variety of benefits and services for their clientele. In determining which services to provide, States know that they have to prioritize the needs of their clientele by balancing funding options and strategies that best address these needs with budgetary considerations. For example, some providers are able to offer more than one service, including the service the individual is entitled to receive from an alternative provider.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulation and Policies on Families

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Government Appropriations Act of 1999. The purpose of the TANF program is to strengthen the economic and social stability of families, in part by supporting the formation and maintenance of two-parent families and reducing out-of-wedlock childbearing. This rule expands the pool of providers that States may contract with in order to deliver effective services that support the purpose of the TANF program.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. In the NPRM, we specifically solicited comments from State and local government officials.

Comment: Two commenters specifically mentioned that we should have consulted with State and local officials before the issuance of a final rule.

Response: We believe that our solicitation in the NPRM satisfied the

consultation requirement of Executive Order 13132. ACF provided a comment period during which time, the agency heard from many State welfare agencies and social service departments, and the rules have been drafted in a manner which provides States flexibility. Accordingly, we certify that the requirements of Executive Order 13132 have been satisfied.

List of Subjects in 45 CFR Part 260

Grant programs-social programs, Loan programs-social programs, Public assistance programs.

Dated: September 22, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

Tommy G. Thompson,

Secretary of Health and Human Services.

XIV. Final Rule

■ For the reasons discussed above, title 45 CFR chapter II is amended as follows:

PART 260—[AMENDED]

■ 1.The authority citation for 45 CFR part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

■ 2. A new § 260.34 is added to read as follows:

§ 260.34 When do the Charitable Choice provisions of TANF apply?

(a) These Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State and local funds used to meet maintenance-of-effort (MOE) requirements of the TANF program to directly procure services and benefits from non-governmental organizations, or provides TANF beneficiaries with certificates, vouchers, or other forms of indirect disbursement redeemable from such organizations. For purposes of this section:

(1) *Direct funding or funds provided directly* means that the government or an intermediate organization with the same duties as a governmental entity under this part selects the provider and purchases the needed services straight from the provider (*e.g.*, via a contract or cooperative agreement).

(2) *Indirect funding or funds provided indirectly* means placing the choice of service provider in the hands of the beneficiary, and then paying for the cost of that service through a voucher, certificate, or other similar means of payment.

(b)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in TANF as long as their Federal TANF or State MOE funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government in its use of Federal TANF or State MOE funds shall, in the selection of service providers, discriminate for or against an organization that applies to provide, or provides TANF services or benefits on the basis of the organization's religious character or affiliation.

(c) No Federal TANF or State MOE funds provided directly to participating organizations may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives direct Federal TANF or State MOE funds under this part, and participation must be voluntary for the beneficiaries of those programs or services.

(d) A religious organization that participates in the TANF program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend Federal TANF or State MOE funds that it receives directly to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide TANF-funded services without removing religious art, icons, scriptures, or other symbols. In addition, a Federal TANF or State MOE funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) The participation of a religious organization in, or its receipt of funds from, a TANF program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(f) A religious organization that receives Federal TANF or State MOE funds shall not, in providing program services or benefits, discriminate against a TANF applicant or recipient on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(g)(1) If an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the recipient is entitled to receive services from an alternative provider to which the individual has no religious objection. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State or local agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State or local agency.

(2) The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may adopt reasonable definitions of the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and ''value that is not less than.'' We expect States to apply these terms in a fair and consistent manner.

(3) The appropriate State or local governments that administer Federal TANF or State MOE funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

(h) Religious organizations that receive Federal TANF and State MOE funds are subject to the same regulations as other non-governmental organizations to account, in accordance with generally accepted auditing/accounting principles, for the use of such funds. Religious organizations may keep Federal TANF and State MOE funds they receive for services segregated in a separate account from non-governmental funds. If religious organizations choose to segregate their funds in this manner, only the Federal TANF and State MOE funds are subject to audit by the government under the program.

(i) This section applies whenever a State or local organization uses Federal TANF or State MOE funds to procure services and benefits from non-governmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them whether with Federal funds, or State and local funds

claimed to meet the MOE requirements of section 409(a)(7) of the Social Security Act. Subject to the requirements of paragraph (j), when State or local funds are used to meet the TANF MOE requirements, the provisions apply irrespective of whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs.

(j) Preemption. Nothing in this section shall be construed to preempt any provision of a State constitution, or State statute that prohibits or restricts the expenditure of segregated or separate State funds in or by religious organizations.

(k) If a non-governmental intermediate organization, acting under a contract or other agreement with a State or local government, is given the authority under the contract or agreement to select non-governmental organizations to provide Federal TANF or MOE funded services, the intermediate organization must ensure that there is compliance with the Charitable Choice statutory provisions and these regulations. The intermediate organization retains all other rights of a non-governmental organization under the Charitable Choice statute and regulations.

(l) Any party which seeks to enforce its right under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

[FR Doc. 03–24291 Filed 9–25–03; 12:15 pm]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1050

RIN 0970–AC13

Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the Charitable Choice statutory provisions in the Community Services Block Grant Act (''CSBG Act''). These provisions apply to programs authorized under the Act, including the Community Services Block Grant Program, Training, Technical Assistance and Capacity Building Program, Community Food and Nutrition Program, National Youth Sports Program, and discretionary grants for economic development, rural community development, and neighborhood innovation, which are all administered by the Administration for Children and Families (ACF). It is ACF's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for funding, and ACF supports the participation of faith-based organizations in these programs.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Clarence Carter, Director, Office of Community Services (OCS), Administration for Children and Families (ACF), United States Department of Health and Human Services, at (202) 401–9333.

SUPPLEMENTARY INFORMATION: On December 17, 2002, the Administration for Children and Families (ACF), Department of Health and Human Services (HHS), published in the **Federal Register** (67 FR 77368) a proposed rule to implement the Charitable Choice statutory provisions of section 679 of the Community Services Block Grant Act (''CSBG Act''). Title 42 U.S.C. Section 9920. Section 679 of the CSBG Act provides for the participation of religious organizations in programs authorized by the Act. ACF provided a 60-day comment period on the proposed rule, which ended on February 18, 2003.

The proposed rule was issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by Title 42 U.S.C. 9901. Section 9901 authorizes States to provide an opportunity for active participation by faith-based groups, as well as other charitable, private, and neighborhood-based organizations, in programs directed to eliminate poverty.

Title II of the Community Opportunities, Accountability, and Training and Education Services Act of 1998 (COATS) (Pub. L. 105–285) sets forth certain ''Charitable Choice'' provisions clarifying Federal, State, and local authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency in programs authorized under the CSBG Act. In addition to giving families a greater choice of providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds without impairing the religious character of such organizations and without diminishing the religious freedom of the CSBG Act recipients.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer numerous social services to those in need. The Charitable Choice provisions in the CSBG Act are consistent with the Administration's belief that there should be an equal opportunity for all organizations, both faith-based and nonreligious, to participate as partners in Federal programs to serve Americans in need.

The Charitable Choice provisions in the CSBG Act contain important protections both for religious organizations that receive funding, and for the individuals who receive their services. This Final Rule implements the Charitable Choice provisions applicable to Federal, State, and local governments when funding public and private organizations—including religious organizations. This final rule is intended to ensure that the CSBG Act programs are open to all eligible organizations, regardless of their religious affiliation or character.

Response to Comments Received on the Proposed Rule

Thirteen organizations submitted comments on the proposed rule. The majority of the comments were from organizations that focus on civil liberties and/or separation of church and state. Comments were also received from major national religious organizations that provide social services, and also representatives of community action agencies (CAAs).

While three national religious organizations supported the proposed rule as drafted, a majority of the comments took issue with major provisions, including those designed to keep religious activities separated from social services, safeguard the identity and functional options of religious organizations, protect the rights and options of beneficiaries, and assure appropriate accounting of expended funds.

The following is a summary of comments by issue, and the Department's response to those comments:

Eligibility of Religious Organizations (Section 1050.3(a)(1) and (2))

Comments: Several comments questioned the constitutionality of funding what could be ''pervasively'' religious organizations. They asked that the rule's language be strengthened to assure that religious programs that receive public funds for secular services ''provide such services in a completely secular manner and setting.'' Three comments supported the proposed rule as drafted.

Response: We do not agree with the commenters. Religious organizations that receive direct CSBG Act funds cannot use such funds for inherently religious activities. These organizations must ensure that religious activities are separate in time or location from the treatment services and they must also ensure that participation in such religious activities is voluntary. Furthermore, they are prohibited from discriminating against a program beneficiary on the basis of religion or a religious belief.

The Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case set forth reasoning that is inconsistent with its underlying premises, *see id.* at 857–858 (O'Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of ''actual diversion of public support to religious uses''). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. We therefore believe that when current precedent is applied to a social service program, or to the CSBG Act Charitable Choice provisions, government may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

Separating Religious Activity From Social Services (Section 1050.3(b))

Comments: Most of the comments asked for alternative language to ensure complete separation of religious activities from secular activities being provided by religious organizations. Several suggested changing the phrase ''separated, in time or location,'' to ''time and location.'' Three comments supported the rule as drafted.

Response: The language in the proposed regulation provides appropriate safeguards to separate religious activities from secular activities supported by programs covered by this statute and regulation. As stated in the explanation of the proposed rule, program funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct funding under the CSBG Act, and participation must be voluntary for the program participants. This requirement ensures that program funds provided directly to religious organizations are not used to support inherently religious activities. Thus, funds provided directly under the CSBG Act to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious. Additionally, organizations may not fund these activities with cost sharing or matching funds, which must be used in a manner consistent with the federal funds. Moreover, a requirement that participating faith-based organizations separate their inherently religious activities from HHS-funded activities in both time and location would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of HHS-funded services.

Independence of Religious Organizations (Section 1050.3(c))

Comments: Several comments questioned the ability of religious organizations to retain their governing structures, which may permit discrimination on the basis of religious belief, when the current CSBG statute calls for tripartite governing boards that represent the broad community to be served. Three comments supported the proposed rule as drafted.

Response: The Charitable Choice provisions must be implemented within the context of the authorizing legislation. The Community Services Block Grant Program under the CSBG Act contains specific requirements concerning CSBG ''eligible entities.'' The law requires that all ''eligible entities'' in that program administer CSBG Act funds ''through a tripartite board * * * that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.'' (Title 42 U.S.C. 9910). Section 9910 further requires that the tripartite board include equal representation from elected public officials, representatives of low-income families in the neighborhoods served, and officials or members of business, industry, labor, religious, law enforcement, education or other major groups interested in the community served. We believe that religious organizations that become ''eligible entities'' to receive CSBG Act funding can comply with the board requirements of the CSBG Act so long as the members of their boards that oversee services and programs funded by the CSBG Act are truly representative of the these three constituencies.

Employment Discrimination (Section 1050.3(d))

Comments: A majority of comments: (1) Objected to the proposed rule interpretation that religious organizations are exempt from Title VII of the Civil Rights Act that prohibits employment discrimination on the basis of religious belief; and (2) want applicable State and local antidiscrimination statutes to apply to religious organizations receiving social services funding. One comment objected to the ability of religious organizations to discriminate on the basis of sexual orientation and gender identity. Three comments support the proposed rule as drafted.

Response: The receipt of funds from programs authorized in the CSBG Act does not affect a participating religious organization's exemption provided under 42 U.S.C. 2000-e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberties of communities of faith. The CSBG Act's Charitable Choice provisions expressly preserve a religious organization's exemption from the religious nondiscrimination provisions of Title VII, 42 U.S.C. 9920(b)(3), and thus reflect the recognition that a religious organization may determine that, in

order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions. Title 42 U.S.C. 9918(c) prohibits persons from being excluded from participation in CSBG-funded programs or activities or subject to discrimination based on race, color, national origin, sex, age, or disability. We decline to impose additional restrictions by regulation.

Protection of Beneficiaries (Section 1050.3(e))

Comments: Most comments asked for alternative language that would provide stronger protections for beneficiaries of social services from being exposed to religious ceremonies or practices against their will. They recommended that the language protect such beneficiaries from both ''passive'' as well as ''active'' non-voluntary religious participation. Some suggest removing the word ''actively'' while others suggest adding the word ''passively'' to the rule. Three comments support the rule as drafted.

Response: We have chosen not to accept the change in response to these comments. It was not the intent of Congress to permit religious discrimination in the treatment of beneficiaries, and the CSBG Act charitable choice provisions adequately protect beneficiaries from discrimination. Although the statute does not specifically address this issue, the final rule prohibits discrimination against beneficiaries on the basis of ''religion or religious belief.'' This phrasing is slightly different from that in the proposed rule, but is substantively similar. In addition, no funds provided directly to religious organizations to provide assistance under any program may be used for sectarian worship, instruction or proselytization, and inherently religious activities must be voluntary for program beneficiaries. These requirements are sufficient to protect the religious freedom of beneficiaries.

Accounting and Auditing Requirements (Sections 1050.3(f) and (g))

Comments: Several commenters thought the language in the Supplemental Information section of the proposed rule needs to be moved to the rule itself, especially descriptions of what constitutes strong separation of religious from secular social service activities for purposes of auditing, recordkeeping, and reporting. Also, several commenters asked for alternative language that would clearly state that Federal, State and local funding for secular purposes must be separated and accounted for, and that State and local laws apply in such cases.

Response: The language in the rule is clear and provides for adequate accounting and auditing of funds. It also provides for appropriate safeguards for the fiscal accountability of such organizations. Religious organizations are subject to the same statutory and regulatory provisions as other non-governmental organizations to account for Federal funds in accordance with generally accepted accounting principles. For instance, States administering CSBG funds are obligated to conduct reviews of grantees as provided in Section 678B of the CSBG Act. Moreover, each State has an obligation under Section 678D of the Act to establish fiscal control and accounting procedures necessary to assure the proper accounting of funds paid to the State.

Regulations applicable to the CSBG program similarly require that States manage and monitor grant and sub-grant activities supported by the award. 45 CFR 74.51(a). Eligible entities are also required to obtain audits by an independent auditor in accordance with the Single Audit Act and OMB Circular A–133. 45 CFR 74.26(a). Expenditures must conform to the same Federal cost principles that are ordinarily applicable to each award in order to be allowable. 45 CFR 74.27(a).

Moreover we are authorized to conduct site visits as warranted. We may determine that such audits or reviews are warranted based upon any information received by the agency which raises an issue concerning the propriety of expenditures.

Religious organizations are also required to segregate government funds into a separate account, and those funds are subject to audit by the government. While the CSBG Act requires a separate account for government funds we note that non-profit status is not statutorily required in all programs authorized by the CSBG Act (*e.g.*, training and technical assistance awards). We have therefore deleted the definition of religious organization—*i.e.*, ''a non-profit organization''—from the regulation. We also made this change for consistency with the CSBG Act which does not define the term.

Religious Organizations as ''Intermediate Organizations'' (Section 1050.3(h))

Comments: Several commenters strongly opposed allowing religious organizations receiving government funds for social services to contract with other organizations to provide these services. They questioned the constitutionality of this subcontracting possibility arguing that it creates a situation in which religious organizations are serving a government responsibility of administration and oversight.

Response: The Department believes that faith-based organizations that are designated as ''eligible entities'' under the CSBG Act are not prohibited from operating in a manner consistent with the rights and responsibilities afforded other community-based organizations under the Act, including the opportunity to contract with other organizations to provide services or carry out other responsibilities of the grant. Religious groups, like any other groups that serve as intermediate organizations, will be subject to generally applicable requirements that ensure the fair and lawful administration of the program.

Vouchers

Comments: Discussion of the possible use of vouchers in the Supplemental Information section of the proposed rule caused several commenters to contend that the recent Supreme Court decision on educational vouchers would require several conditions not discussed or provided for in the proposed rule: (1) Availability of choice through an alternative service provider that is not a religious organization; and (2) Clear notification to a beneficiary that they had a choice of receiving comparable service in a non-religious organization setting. Comments either suggested that the rule require the availability of alternative service choices, or objected to the fact that by providing funds to religious organizations, a situation was created in which competing services would have to be created at considerable expense, or wanted stronger language regarding notification to beneficiaries that they had a choice of service providers.

Response: Mention of vouchers in the Supplemental Information section of the proposed rule was offered as an example of how a potential beneficiary might approach a faith-based organization for services, and was not intended to form the basis for establishing in this rulemaking criteria for social service voucher programs. Further, since vouchers are not currently used in programs funded by the CSBG Act, we anticipate few or no situations in which the issues raised by commenters would apply.

Regulatory Procedures

Comments: One commenter viewed the proposed rule as a ''major regulation,'' thereby requiring a

regulatory flexibility analysis, and subjected to the report requirements, pre-issuance assessment, and congressional review that are mandatory by statute.

Response: The Department does not agree that this is a ''major regulation'' thereby requiring a regulatory flexibility analysis and subjecting it to reporting requirements, pre-issuance assessment, and congressional review that are mandated by statute in certain circumstances. As indicated in the following section, this rule does not require the collection of new information, nor does it call for the creation of programs or services beyond those currently being provided. Rather, it establishes conditions of participation for faith-based organizations for programs and services already being funded through the CSBG Act.

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicited comment from State and local government officials on this rule.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Although it is not clear that the rule will have tribal implications, we specifically solicited comments on this rule from tribal officials.

List of Subjects in 45 CFR Part 1050

Grant programs-social programs.

(Catalog of Federal Domestic Assistance Programs No. 93569 Community Services Block Grant)

Dated: September 22, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons discussed above, we are adding to 45 CFR chapter X a new part 1050 to read as follows:

PART 1050—CHARITABLE CHOICE UNDER THE COMMUNITY SERVICES BLOCK GRANT ACT PROGRAMS

Sec.
1050.1 Scope.
1050.2 Definitions.
1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

Authority: 42 U.S.C. 9901 *et seq.*

§ 1050.1 Scope.

This part applies to programs authorized under the Community Services Block Grant Act (CSBG Act). Title 42 U.S.C. 9901, 9913, 9920, 9921, 9922, 9923.

§ 1050.2 Definitions.

Applicable program means any program authorized under Title II of the Community Opportunities, Accountability, and Training and Education Act of 1998, 42 U.S.C. 9901, *et seq.*

Direct funding, directly funded or funding provided directly means funding that is provided to an organization directly by a governmental entity or an intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as a result of the genuine and independent private choice of a beneficiary.

Intermediate organization means an organization that is authorized by the terms of a contract, grant or other agreement with the Federal Government, or a State or local government, to select other non-governmental organizations to provide assistance under an applicable program. For example, when a State uses CSBG Act funds to pay for technical assistance services provided by a private entity and also authorizes that entity to subcontract for a portion of the technical assistance effort, the private entity is an intermediate organization.

Program beneficiary or recipient means an individual who receives services under a program funded in whole or part by an applicable program.

Program participant means a public or private entity that has received financial assistance under an applicable program.

§ 1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

These Charitable Choice provisions apply whenever the Federal government, or a State or local government, uses funds under the CSBG Act to provide awards, contracts, or other assistance under any program authorized in the Community Services

Block Grant, 42 U.S.C. 9901, *et seq.* Additionally, these provisions apply whenever an intermediate organization acting under a contract, grant, or other agreement with a Federal, State, or local government entity selects nongovernmental organizations to provide assistance under any of the programs authorized under the Community Services Block Grant Act.

(a)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in the applicable programs as long as they use program funds consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government receiving funds under an applicable program shall discriminate against an organization that applies to provide, or provides, services or benefits on the basis of the organization's religious character or affiliation.

(b) No program participant that receives direct funding under an applicable program may expend the program funds for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services directly funded under any applicable program, and participation must be voluntary for program beneficiaries.

(c) A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend any direct funding under the applicable program to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, religious organizations may use space in their facilities to provide services funded under an applicable program without removing religious art, icons, scriptures, or other symbols. In addition, such a religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(e) A religious organization that receives funds under an applicable program, shall not, in providing program services or benefits, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or a religious belief.

(f) Religious organizations that receive funds under an applicable program are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds they receive for services segregated in a separate account from non-Federal funds. Only the segregated government funds are subject to audit by the government under the applicable program.

(g) If a State or local government contributes its own funds to supplement CSBG Act funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the Charitable Choice provisions apply to all of the commingled funds.

(h) If a nongovernmental intermediate organization, acting under a grant, contract, or other agreement with the Federal, State or local government, is given the authority to select nongovernmental organizations to provide services under an applicable program, then the intermediate organization must ensure that there is compliance with these Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

[FR Doc. 03–24290 Filed 9–25–03; 12:15 pm]

BILLING CODE 4184–01–P

Federal Register

Tuesday,
September 30, 2003

Part IX

Department of Education

Notice of Special Demonstration Programs—Model Demonstration Projects—Mentoring for Transition-Age Youth and Young Adults With Disabilities; Notice

DEPARTMENT OF EDUCATION

RIN 1820–ZA28

Special Demonstration Programs—Model Demonstration Projects—Mentoring for Transition-Age Youth and Young Adults With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority, definitions, and application requirements.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority, definitions, and application requirements for Special Demonstration Programs—Model Demonstration Projects—Mentoring for Transition-Age Youth and Young Adults With Disabilities. The Assistant Secretary may use this priority, definitions, and application requirements for competitions in fiscal year (FY) 2003 and later years. We take this action to focus attention on an area of national need. We intend the priority to increase meaningful postsecondary education and quality employment outcomes through a mentoring system within State vocational rehabilitation (VR) agencies.

EFFECTIVE DATE: This priority, definitions, and application requirements are effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Alfreda Reeves. Telephone: (202) 205–9361 or via Internet: *Alfreda.Reeves@ed.gov*.

Or Pamela Martin. Telephone: (202) 205–8494 or via Internet: *Pamela.Martin@ed.gov*.

Both individuals may be reached at the U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2645.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: These model demonstration projects would test whether increases in meaningful postsecondary education and quality employment outcomes can be achieved through the use of mentors by State VR agencies.

The authority for these projects is in title III, section 303(b) of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 762(b)(3)). Under this competition the Assistant Secretary makes awards to State VR agencies.

The educational and employment achievements of youth and young adults with disabilities lag significantly behind those of their peers without disabilities. The Office of Special Education Programs reports that only 57.4 percent of youth with disabilities graduate from high school with a standard diploma. In addition, the Final Report of the Presidential Task Force on Employment of Adults with Disabilities, July 2002, estimates that only one-third of youth and young adults with disabilities receive appropriate job training and assistance. Some of the barriers to autonomy and achievement encountered by youth and young adults with disabilities include uncoordinated approaches to transition across service systems, discontinuity between schools and adult disability services, poor preparation of teens for adult life, lack of incentives or supports for early transition planning, and lack of school and community supports.

For transitioning youth and young adults with disabilities, developing positive self-confidence, resilience, and an expectation for achievement in a competitive, high-quality career must take place early in their academic career. Mentors or role models with whom students can identify, and who have shared interests, can have a positive impact that will last a lifetime. These individuals can play a vital role in eliminating barriers to autonomy, community integration, and achievement by motivating youth and young adults with disabilities to develop social competence, academic motivation, career awareness, and other appropriate skills needed for employment and independent living. Successful mentoring programs under this model demonstration program will provide appropriate supports, based on the individual's unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice. An overall objective of the mentoring program is to encourage youth and young adults with disabilities in meeting and achieving a desired optimal career goal or postsecondary education.

We published a notice of proposed priority, definitions, and application requirements for this program in the **Federal Register** on August 5, 2003 (68 FR 46422). Except for minor editorial and technical revisions, there are no differences between the notice of proposed priority, definitions, and application requirements and this final notice.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, definitions, and application requirements, six parties submitted comments. An analysis of the comments and of any changes in the priority, definitions, and application requirements since publication of the proposed notice follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment: Two commenters supported the priority as written. One stated that the priority should retain the requirement for involvement by consumer-controlled organizations, since these organizations are better at ensuring that disabled individuals receive significant encouragement to achieve their highest level potential. In addition, this commenter supported the definition of ''mentor'' as it appears in the notice of proposed priority, definitions, and application requirements. The second commenter stated that research demonstrates that there is a greater potential for success if consumers are involved and, thus, the commenter supports the requirement that applicants collaborate with consumer-controlled organizations.

Discussion: We agree that consumer involvement is essential to the design of the demonstration projects funded under this priority and that consumer-controlled organizations may be best situated to identify and provide appropriate mentors for transition-age youth and young adults with disabilities.

Change: None.

Comment: Three commenters stated that we are excluding a vast array of individuals with diverse backgrounds that could serve as exceptional mentors by limiting mentors to individuals with disabilities. One of these commenters suggested revising the definition of ''mentor'' and ''mentoring'' to mean a more successful, experienced person, preferably with a disability. Another of these commenters suggested expanding the definition of ''mentor'' and ''mentoring'' to include parents of disabled youth. The third objection to the definition of mentor suggested that it should include both adults who have disabilities and adults who do not have disabilities. This commenter believes that it is a challenge to recruit and retain qualified adult mentors from the general

population let alone requiring that those mentors have a condition that the Department of Education would define as a disability.

Discussion: We believe that mentors with whom students can identify, and who have shared interests, can play a vital role in eliminating barriers to autonomy, community integration, and achievement. Connecting individuals with mentors who have disabilities and who possess practical knowledge and firsthand experience in achieving high-quality employment and independence will greatly assist those individuals to make positive and accurate choices regarding their programs and their lives. Mentors not only offer critical guidance and information, but also serve as positive role models of independence and success. We are currently reviewing the applications we received under this competition for this year and intend to assess the response to this definition of mentor, and other issues on which we received comments, in determining whether changes are needed in future competitions.

Changes. None.

Comment: One commenter suggested that the term ''consumer-controlled'' organization be revised to ''consumer-focused'' organization and that the requirement that a majority of the officers and members of the board of directors be individuals with disabilities be deleted.

Discussion: Consumer-controlled organizations are an invaluable resource for State VR agencies in empowering persons with disabilities to achieve their employment and independent living goals. Consumer-controlled organizations represent the collective voice and experiences of their members (individuals with disabilities) who have practical knowledge and firsthand experience in achieving high-quality employment and independence. These organizations are a concentrated source of successful individuals with disabilities who are committed to assisting other consumers to achieve their personal and professional goals, specializing in empowering individuals with disabilities to achieve independence and self-sufficiency. By requiring that a majority of the officers and members of the board of directors be individuals with disabilities, we ensure that the organization is truly consumer-controlled and vests power and authority in individuals with disabilities themselves. As stated earlier, we will assess the proposals we received to determine whether the model and definitions reflected in the priority are workable and yield an adequate number of high quality applications.

Changes: None.

Comment: Two commenters expressed concern about limiting the eligibility under this competition to VR agencies, and one further objected to the requirement to involve consumer-controlled organizations. One commenter stated that consumer organizations, by design, are more capable of matching mentees with appropriate mentors, and that these organizations should be the grantee, not the VR agency. The other commenter also objected to limiting eligibility to VR agencies and believes that the Department should not require the involvement of consumer-controlled organizations but should focus on reaching out to include institutions of higher education, chambers of commerce, community and faith-based organizations and State and local workforce boards. The active involvement of State and local workforce boards as well as chambers of commerce is critical because of their strong ties to business and industry.

Discussion: We have limited eligibility under this competition to State VR agencies in order to create systemic change in the VR system. The goal of these demonstrations is to improve services to consumers of VR services through the development of models that can be implemented by State VR agencies. The priority requires that VR agencies clearly describe how the project will collaborate with consumer-controlled organizations that have in-depth knowledge of the rehabilitation process, the outreach methods used to select project participants, and the criteria by which individuals with disabilities will be recruited as mentors by the consumer-controlled organizations. We asked for specific comment on the requirement to collaborate with a consumer-controlled organization, and we will assess the response to this requirement in conjunction with our review of the applications that were received under this competition for this year.

Change: None.

Comment: One commenter suggested that this priority should not be limited to serving youth with disabilities, but should include youth who do not have disabilities for integration purposes.

Discussion: While we see the importance of integrated settings and initiatives, we are restricted legislatively to serving individuals with disabilities. The Act, which is the Federal law and basis for this priority, is meant to serve and empower individuals with disabilities so that they may maximize employment, economic self-sufficiency, independence, and inclusion and integration into society. Funds authorized for grant funding under the Act must be used for the benefit of individuals with disabilities.

Changes: None.

Comment: One commenter suggested that the priority allow for the expenditure of funds for the purpose of enabling transition-age youth and young adults with disabilities to access information such as newspapers, computers, Braille, note taking devices, etc. The commenter stated that statistics show that people who have daily access to current events, social activities, and economic changes have a better chance to achieve a high employment outcome.

Discussion: The purpose of this priority is to establish mentoring models that provide appropriate supports for transition-age youth and young adults with disabilities. Since transition-age youth and young adults with disabilities to be served under these demonstrations will be VR consumers, mentors working with VR counselors could, if appropriate for the consumer, identify the need to access information as a service within the consumer's Individualized Plan for Employment. The Rehabilitation Services Administration (RSA) would view this expense as allowable and would assess the merits of all expenses and activities identified within an application submitted for funding under this priority.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, definitions, and application requirements, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority, definitions, and application requirements as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Model Demonstration Projects—Mentoring for Transition-Age Youth and Young Adults With Disabilities

Under 34 CFR 75.105(b)(2)(v) and 34 CFR 373.6(b)(2) and (c)(8), this priority supports projects that demonstrate mentoring models focusing on transitioning youth and young adults with disabilities that will be effective in increasing meaningful community integration, postsecondary education, and employment outcomes. The mentoring models developed under this program must incorporate effective, research-based mentoring methods. An external evaluation of these projects will be initiated in FY 2004. The projects must cooperate with the external evaluator including establishing a common data system.

A. Definitions

Mentor means a more successful, experienced person with a disability, who can be most appropriately matched with the youth with a disability and who can impart advice, support, insight, and knowledge on employment and other life activities to a less experienced person. State VR agencies should match mentors and mentees using the best individualized information possible.

Mentoring means the act of a more successful, experienced person or persons with a disability, working with a less experienced youth or young adult, or a group of individuals, by providing guidance in the form of teaching and support, encouraging and motivating, assisting with career and professional development, assisting with goal achievement, and linking the less experienced youth to others who can help enhance growth and development.

Youth and young adults with disabilities, as defined in 34 CFR 373.4, means individuals with disabilities who are between the ages of 16 and 26 inclusive when entering the program.

Consumer-controlled organization is an organization that vests power and authority in individuals with disabilities and a majority of the officers and members of the board of directors are individuals with disabilities.

B. General Requirements for Applicants

These model demonstration projects must focus on research-based mentoring methods that provide appropriate supports for transition-age youth and young adults with disabilities. The projects must demonstrate research-based mentoring models that will be effective in increasing meaningful community integration, postsecondary education, and employment outcomes through collaboration between State VR agencies and consumer-controlled organizations. To meet the requirements an applicant must—

(1) Describe the manner in which mentoring will increase academic achievement, participation in postsecondary education, and high-quality employment outcomes for transitioning youth and young adults with disabilities by including information on the expected impact and outcomes of the project. More specifically, an applicant must project a goal of how many youth and young adults with disabilities will transition into postsecondary education or will achieve high-quality employment outcomes. An applicant also must be specific about what data it will collect in order to measure project outcomes against the goal;

(2) Describe the research-based mentoring models that will be demonstrated through its project;

(3) Describe clear program goals and intended program outcomes and well-defined operational guidelines that will support these goals;

(4) Describe how the project will collaborate with consumer-controlled organizations that have in-depth knowledge of the rehabilitation process, the outreach methods used to select project participants, and the criteria by which individuals with disabilities will be recruited as mentors by the consumer-controlled organizations;

(5) Describe how the proposed project will increase self-advocacy, high-level personal and career expectations, decisionmaking, and adjustment to disability of the mentored individuals. At a minimum, the project must describe how mentors will help consumers—

(a) navigate through service delivery systems; and

(b) develop and improve self-confidence, community integration skills, work skills, self-determination skills, advocacy, and decisionmaking;

(6) Describe the design and implementation of an internal evaluation plan for which—

(a) The methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the project;

(b) The methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(c) The methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(d) The methods of evaluation will be consistent with and can support the program assessment that will be implemented by RSA; and

(7) Include a plan to widely disseminate the results of the project, including any mentoring methods that demonstrated positive results, so the mentoring model may be adapted, replicated, or integrated into other State VR agencies and disability organizations.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a proposed rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). In order to make timely grant awards, the Secretary has determined that a delayed effective date is impracticable.

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 actions for this program.

Applicable Program Regulations: 34 CFR part 373.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.235Q, Special Demonstration Programs—Model Demonstration Projects—

Mentoring for Transition-Age Youth and Young Adults With Disabilities).

Program Authority: 29 U.S.C. 773(b).

Dated: September 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–24706 Filed 9–29–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
September 30, 2003

Part X

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Hospice Wage Index for Fiscal Year 2004; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1233–N]

RIN 0938–AM67

Medicare Program; Hospice Wage Index for Fiscal Year 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by statute. This fiscal year 2004 update is effective from October 1, 2003 through September 30, 2004. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the August 8, 1997 **Federal Register**.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Terri Deutsch, (410) 786–9462.

SUPPLEMENTARY INFORMATION:

I. Background

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR part 418 establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised in the August 8, 1997 final rule (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on the methodology. We included the resulting committee statement, describing that consensus, as an appendix to the August 8, 1997 final rule (62 FR 42883). The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be calculated using the most current available hospital wage data.
- The revised hospice wage index was phased in over a 3-year transition period. For the first year of the transition period, October 1, 1997 through September 30, 1998, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, October 1, 1998 through September 30, 1999, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. We fully implemented the revised wage index during the third year of the transition period, October 1, 1999 through September 30, 2000.

Payments to hospices under the revised wage index (as published in the August 8, 1997 final hospice wage index rule) are subject to a budget neutrality adjustment to ensure that aggregate payments are not greater than they would have been using the original 1983 wage index. To achieve this budget neutrality, the hospice wage index is multiplied by a budget-neutrality factor. The budget neutrality factor is computed and applied annually.

The hospice budget-neutrality adjustment is not applied uniformly to all providers in calculating payments. Based on the methodology developed and signed by the negotiated rulemaking committee and adopted by CMS, a hospice's area wage index is adjusted using either the budget-neutrality factor or the hospice wage index floor described below.

Hospice wage index values of 0.8 or greater are multiplied by the budget neutrality factor.

Hospice wage index values below 0.8 are adjusted by the greater of: (1) the hospice budget neutrality factor; or (2) the hospice wage index floor (a 15 percent increase, subject to a maximum wage index value of 0.8).

The wage index is to be updated annually, in the **Federal Register**, based on the most current available hospital wage data. These data will include any changes to the definitions of Metropolitan Statistical Areas (MSAs).

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for fiscal years (FYs) 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. However, neither the BBA nor subsequent legislation specified the market basket adjustment to be used to compute payment for FY 2004. Therefore, payment rates for FY 2004 will be updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates after 2002 will be the market basket percentage for the FY. Accordingly, the FY 2004 rates will be the full market basket percentage increase for the FY 2004. This rate update is implemented through a separate program memorandum and is not part of this notice. Historically the rate update has been published through a separate program memorandum issued annually in July to provide adequate time to implement system change requirements. For FY 2004 the hospice rates were published on July 3, 2003. The wage index in this notice is applied to the labor portion of the rates published in the program memorandum in order for providers to determine their payment rates.

II. Provisions of the Notice

A. Update to the Hospice Wage Index

This annual update is effective October 1, 2003 through September 30, 2004. In accordance with the agreement we signed with other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current hospital data available to us, including any changes to the

definitions of MSAs. The FY 2003 hospital wage index was the most current hospital wage data available when the FY 2004 wage index values were calculated. We used the pre-reclassified and pre-floor hospital area wage index data.

All wage index values are adjusted by a budget-neutrality factor of 1.061238 and are subject to the wage index floor adjustment, if applicable. We have completed all of the calculations described above and have included them in the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 proposed rule (61 FR 46579) and the August 8, 1997 final rule (62 FR 42860).

1. Metropolitan Statistical Areas (MSA)

As explained in the September 4, 1996 hospice wage index proposed rule, each hospice's labor market area would be established by the MSA definitions issued by the Office of Management and Budget (OMB) on December 28, 1992 based on the 1990 census, and updated by OMB based on the decennial census. Any changes to the MSA definitions would be effective annually and announced in the notice updating the hospice wage index.

2. MSA Wage Index Values Lower Than Rural Values

As explained above, any area not included in an MSA is considered to be nonurban and receives the statewide rural rate. We are aware that in the past, a number of MSAs have had wage index values that were lower than their rural statewide value. This difference is due to variations in local wage data as compared to national wage data. The hospice wage index is computed by dividing the hourly wage rate for an MSA or nonurban area by a national hourly wage rate. Nonurban areas could receive a higher wage index value than urban areas in the same State if the hourly wage rate in the nonurban area increased at a greater rate.

B. Tables

BILLING CODE 4120–01–P

TABLE A--HOSPICE WAGE INDEX FOR URBAN AREAS

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
0040	*Abilene, TX* Taylor, TX	0.8269
0060	*Aguadilla, PR* Aguada, PR Aguadilla, PR Moca, PR	0.5275
0080	*Akron, OH* Portage, OH Summit, OH	1.0188
0120	*Albany, GA* Dougherty, GA Lee, GA	1.1243
0160	*Albany-Schenectady-Troy, NY* Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8897
0200	*Albuquerque, NM* Bernalillo, NM Sandoval, NM Valencia, NM	0.9885
0220	*Alexandria, LA* Rapides, LA	0.8340
0240	*Allentown-Bethlehem-Easton, PA* Carbon, PA Lehigh, PA Northampton, PA	1.0331
0280	*Altoona, PA* Blair, PA	0.9790
0320	*Amarillo, TX* Potter, TX Randall, TX	0.9587
0380	*Anchorage, AK* Anchorage, AK	1.3115
0440	*Ann Arbor, MI* Lenawee, MI Livingston, MI Washtenaw, MI	1.1783
0450	*Anniston, AL* Calhoun, AL	0.8537
0460	*Appleton-Oshkosh-Neenah, WI* Calumet, WI Outagamie, WI Winnebago, WI	0.9548
0470	*Arecibo, PR* Arecibo, PR Camuy, PR Hatillo, PR	0.8490

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
0480	*Asheville, NC* Buncombe, NC Madison, NC	1.0481
0500	*Athens, GA* Clarke, GA Madison, GA Oconee, GA	1.0836
0520	*Atlanta, GA* Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	1.0603
0560	*Atlantic-Cape May, NJ* Atlantic, NJ Cape May, NJ	1.1692
0580	*Aubrn-Opelika, AL* Lee, AL	0.8835
0600	*Augusta-Aiken, GA-SC* Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	1.0893
0640	*Austin-San Marcos, TX* Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	1.0227
0680	*Bakersfield, CA* Kern, CA	1.0505
0720	*Baltimore, MD* Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	1.0537
0733	*Bangor, ME* Penobscot, ME	1.0256

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
0743	*Barnstable-Yarmouth, MA* Barnstable, MA	1.4010
0760	*Baton Rouge, LA* Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8802
0840	*Beaumont-Port Arthur, TX* Hardin, TX Jefferson, TX Orange, TX	0.8834
0860	*Bellingham, WA* Whatcom, WA	1.3034
0870	*Benton Harbor, MI* Berrien, MI	0.9596
0875	*Bergen-Passaic, NJ* Bergen, NJ Passaic, NJ	1.2894
0880	*Billings, MT* Yellowstone, MT	0.9574
0920	*Biloxi-Gulfport-Pascagoula, MS* Hancock, MS Harrison, MS Jackson, MS	0.9293
0960	*Binghamton, NY* Broome, NY Tioga, NY	0.8852
1000	*Birmingham, AL* Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9787
1010	*Bismarck, ND* Burleigh, ND Morton, ND	0.8460
1020	*Bloomington, IN* Monroe, IN	0.9452
1040	*Bloomington-Normal, IL* McLean, IL	0.9667
1080	*Boise City, ID* Ada, ID Canyon, ID	0.9880
1123	*Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH* Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1923
1125	*Boulder-Longmont, CO* Boulder, CO	1.0282
1145	*Brazoria, TX* Brazoria, TX	0.9058

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
1150	*Bremerton, WA* Kitsap, WA	1.1614
1240	*Brownsville-Harlingen-San Benito, TX* Cameron, TX	0.9424
1260	*Bryan-College Station, TX* Brazos, TX	0.9361
1280	*Buffalo-Niagara Falls, NY* Erie, NY Niagara, NY	0.9938
1303	*Burlington, VT* Chittenden, VT Franklin, VT Grand Isle, VT	1.0668
1310	*Caguas, PR* Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.5027
1320	*Canton-Massillon, OH* Carroll, OH Stark, OH	0.9479
1350	*Casper, WY* Natrona, WY	1.0283
1360	*Cedar Rapids, IA* Linn, IA	0.9611
1400	*Champaign-Urbana, IL* Champaign, IL	1.1286
1440	*Charleston-North Charleston, SC* Berkeley, SC Charleston, SC Dorchester, SC	0.9801
1480	*Charleston, WV* Kanawha, WV Putnam, WV	0.9443
1520	*Charlotte-Gastonia-Rock Hill, NC-SC* Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	1.0453
1540	*Charlottesville, VA* Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.1077
1560	*Chattanooga, TN-GA* Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9526
1580	*Cheyenne, WY* Laramie, WY	0.9156

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
1600	*Chicago, IL* Cook, IL DeKalb, IL Du Page, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.1720
1620	*Chico-Paradise, CA* Butte, CA	1.0342
1640	*Cincinnati, OH-KY-IN* Brown, OH Clermont, OH Hamilton, OH Warren, OH Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Dearborn, IN Ohio, IN	0.9955
1660	*Clarksville-Hopkinsville, TN-KY* Christian, KY Montgomery, TN	0.8921
1680	*Cleveland-Lorain-Elyria, OH* Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	1.0262
1720	*Colorado Springs, CO* El Paso, CO	1.0523
1740	*Columbia, MO* Boone, MO	0.9016
1760	*Columbia, SC* Lexington, SC Richland, SC	0.9877
1800	*Columbus, GA-AL* Chattahochee, GA Harris, GA Muscogee, GA Russell, AL	0.8887
1840	*Columbus, OH* Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	1.0348
1880	*Corpus Christi, TX* Nueces, TX San Patricio, TX	0.9264

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
1890	*Corvallis, Oregon* Benton, OR	1.2154
1900	*Cumberland, MD-WV* Allegany, MD Mineral, WV	0.8328
1920	*Dallas, TX* Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	1.0610
1950	*Danville, VA* Danville City, VA Pittsylvania, VA	0.9402
1960	*Davenport-Moline-Rock Island, IA-IL* Scott, IA Henry, IL Rock Island, IL	0.9376
2000	*Dayton-Springfield, OH* Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9850
2020	*Daytona Beach, FL* Flagler, FL Volusia, FL	0.9617
2030	*Decatur, AL* Lawrence, AL Morgan, AL	0.9522
2040	*Decatur, IL* Macon, IL	0.8548
2080	*Denver, CO* Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.1250
2120	*Des Moines, IA* Dallas, IA Polk, IA Warren, IA	0.9329
2160	*Detroit, MI* Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.1088
2180	*Dothan, AL* Dale, AL Houston, AL	0.8635
2190	*Dover, DE* Kent, DE	0.9929
2200	*Dubuque, IA* Dubuque, IA	0.9334

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
2240	*Duluth-Superior, MN-WI* St. Louis, MN Douglas, WI	1.1003
2281	*Dutchess County, NY* Dutchess, NY	1.1338
2290	*Eau Claire, WI* Chippewa, WI Eau Claire, WI	0.9500
2320	*El Paso, TX* El Paso, TX	0.9832
2330	*Elkhart-Goshen, IN* Elkhart, IN	1.0317
2335	*Elmira, NY* Chemung, NY	0.8931
2340	*Enid, OK* Garfield, OK	0.8889
2360	*Erie, PA* Erie, PA	0.9472
2400	*Eugene-Springfield, OR* Lane, OR	1.1614
2440	*Evansville-Henderson, IN-KY* Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8678
2520	*Fargo-Moorhead, ND-MN* Clay, MN Cass, ND	1.0277
2560	*Fayetteville, NC* Cumberland, NC	0.9433
2580	*Fayetteville-Springdale-Rogers, AR* Benton, AR Washington, AR	0.8596
2620	*Flagstaff, AZ-UT* Coconino, AZ Kane, UT	1.1336
2640	*Flint, MI* Genesee, MI	1.1817
2650	*Florence, AL* Colbert, AL Lauderdale, AL	0.8269
2655	*Florence, SC* Florence, SC	0.9318
2670	*Fort Collins-Loveland, CO* Larimer, CO	1.0682
2680	*Ft. Lauderdale, FL* Broward, FL	1.0928
2700	*Fort Myers-Cape Coral, FL* Lee, FL	1.0273
2710	*Fort Pierce-Port St. Lucie, FL* Martin, FL St. Lucie, FL	1.0425
2720	*Fort Smith, AR-OK* Crawford, AR Sebastian, AR Sequoyah, OK	0.8378

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
2750	*Fort Walton Beach, FL* Okaloosa, FL	1.0287
2760	*Fort Wayne, IN* Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	1.0036
2800	*Forth Worth-Arlington, TX* Hood, TX Johnson, TX Parker, TX Tarrant, TX	1.0024
2840	*Fresno, CA* Fresno, CA Madera, CA	1.0842
2880	*Gadsden, AL* Etowah, AL	0.9026
2900	*Gainesville, FL* Alachua, FL	1.0475
2920	*Galveston-Texas City, TX* Galveston, TX	1.0045
2960	*Gary, IN* Lake, IN Porter, IN	1.0171
2975	*Glens Falls, NY* Warren, NY Washington, NY	0.8788
2980	*Goldsboro, NC* Wayne, NC	0.9437
2985	*Grand Forks, ND-MN* Grand Forks, ND Polk, MN	0.9442
2995	*Grand Junction, CO* Mesa, CO	1.0035
3000	*Grand Rapids-Muskegon-Holland, MI* Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0108
3040	*Great Falls, MT* Cascade, MT	0.9498
3060	*Greeley, CO* Weld, CO	0.9803
3080	*Green Bay, WI* Brown, WI	1.0084
3120	*Greensboro-Winston-Salem-High Point, NC* Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9850
3150	*Greenville, NC* Pitt, NC	0.9657

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
3160	*Greenville-Spartanburg-Anderson, SC* Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9681
3180	*Hagerstown, MD* Washington, MD	0.9836
3200	*Hamilton-Middletown, OH* Butler, OH	0.9995
3240	*Harrisburg-Lebanon-Carlisle, PA* Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9788
3283	*Hartford, CT* Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2256
3285	*Hattiesburg, MS* Forrest, MS Lamar, MS	0.8128
3290	*Hickory-Morganton-Lenoir, NC* Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9581
3320	*Honolulu, HI* Honolulu, HI	1.2159
3350	*Houma, LA* Lafourche, LA Terrebonne, LA	0.8898
3360	*Houston, TX* Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	1.0498
3400	*Huntington-Ashland, WV-KY-OH* Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	1.0226
3440	*Huntsville, AL* Limestone, AL Madison, AL	0.9448

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
3480	*Indianapolis, IN* Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	1.0312
3500	*Iowa City, IA* Johnson, IA	1.0174
3520	*Jackson, MI* Jackson, MI	1.0116
3560	*Jackson, MS* Hinds, MS Madison, MS Rankin, MS	0.9134
3580	*Jackson, TN* Madison, TN Chester, TN	0.9843
3600	*Jacksonville, FL* Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9955
3605	*Jacksonville, NC* Onslow, NC	0.8744
3610	*Jamestown, NY* Chautauqua, NY	0.8464
3620	*Janesville-Beloit, WI* Rock, WI	1.0452
3640	*Jersey City, NJ* Hudson, NJ	1.1875
3660	*Johnson City-Kingsport-Bristol, TN-VA* Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8774
3680	*Johnstown, PA* Cambria, PA Somerset, PA	0.8839
3700	*Jonesboro, AR* Craighead, AR	0.8224
3710	*Joplin, MO* Jasper, MO Newton, MO	0.9140
3720	*Kalamazoo-Battlecreek, MI* Calhoun, MI Kalamazoo, MI Van Buren, MI	1.1244
3740	*Kankakee, IL* Kankakee, IL	1.1451

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
3760	*Kansas City, KS-MO* Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	1.0332
3800	*Kenosha, WI* Kenosha, WI	1.0279
3810	*Killeen-Temple, TX* Bell, TX Coryell, TX	1.1036
3840	*Knoxville, TN* Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.9519
3850	*Kokomo, IN* Howard, IN Tipton, IN	0.9520
3870	*La Crosse, WI-MN* Houston, MN La Crosse, WI	0.9976
3880	*Lafayette, LA* Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8994
3920	*Lafayette, IN* Clinton, IN Tippecanoe, IN	0.9846
3960	*Lake Charles, LA* Calcasieu, LA	0.8453
3980	*Lakeland-Winter Haven, FL* Polk, FL	0.9930
4000	*Lancaster, PA* Lancaster, PA	0.9634
4040	*Lansing-East Lansing, MI* Clinton, MI Eaton, MI Ingham, MI	1.0322
4080	*Laredo, TX* Webb, TX	0.8991
4100	*Las Cruces, NM* Dona Ana, NM	0.9281
4120	*Las Vegas, NV-AZ* Mohave, AZ Clarke, NV Nye, NV	1.2227
4150	*Lawrence, KS* Douglas, KS	0.8408

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
4200	*Lawton, OK* Comanche, OK	0.8824
4243	*Lewiston-Auburn, ME* Androscoggin, ME	0.9741
4280	*Lexington, KY* Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.9106
4320	*Lima, OH* Allen, OH Auglaize, OH	1.0064
4360	*Lincoln, NE* Lancaster, NE	1.0498
4400	*Little Rock-North Little Rock, AR* Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.9654
4420	*Longview-Marshall, TX* Gregg, TX Harrison, TX Upshur, TX	0.9157
4480	*Los Angeles-Long Beach, CA* Los Angeles, CA	1.2736
4520	*Louisville, KY-IN* Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9844
4600	*Lubbock, TX* Lubbock, TX	1.0237
4640	*Lynchburg, VA* Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.9784
4680	*Macon, GA* Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9768
4720	*Madison, WI* Dane, WI	1.1108
4800	*Mansfield, OH* Crawford, OH Richland, OH	0.9445

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
4840	*Mayaguez, PR* Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.5651
4880	*McAllen-Edinburg-Mission, TX* Hidalgo, TX	0.8944
4890	*Medford-Ashland, OR* Jackson, OR	1.1141
4900	*Melbourne-Titusville-Palm Bay, FL* Brevard, Fl	1.0881
4920	*Memphis, TN-AR-MS* Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.9466
4940	*Merced, CA* Merced, CA	1.0439
5000	*Miami, FL* Dade, FL	1.0402
5015	*Middlesex-Somerset-Hunterdon, NJ* Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1900
5080	*Milwaukee-Waukesha, WI* Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	1.0499
5120	*Minneapolis-St. Paul, MN-WI* Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherbune, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI	1.1571
5140	*Missoula, MT* Missoula, MT	0.9718
5160	*Mobile, AL* Baldwin, AL Mobile, AL	0.8605
5170	*Modesto, CA* Stanislaus, CA	1.1141
5190	*Monmouth-Ocean, NJ* Monmouth, NJ Ocean, NJ	1.1328
5200	*Monroe, LA* Ouachita, LA	0.8635

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
5240	*Montgomery, AL* Autauga, AL Elmore, AL Montgomery, AL	0.8208
5280	*Muncie, IN* Delaware, IN	0.9853
5330	*Myrtle Beach, SC* Horry, SC	0.9526
5345	*Naples, FL* Collier, FL	1.0351
5360	*Nashville, TN* Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford TN Sumner, TN Williamson, TN Wilson, TN	1.0165
5380	*Nassau-Suffolk, NY* Nassau, NY Suffolk, NY	1.4175
5483	*New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT* Fairfield, CT New Haven, CT	1.3168
5523	*New London-Norwich, CT* New London, CT	1.2488
5560	*New Orleans, LA* Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA	0.9600
5600	*New York, NY* Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY	1.5297
5640	*Newark, NJ* Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.2078
5660	*Newburgh, NY-PA* Orange, NY Pike, PA	1.2084

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
5720	*Norfolk-Virginia Beach-Newport News, VA-NC* Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA James City, VA Isle of Wight, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City VA Williamsburg City, VA York, VA	0.9099
5775	*Oakland, CA* Alameda, CA Contra Costa, CA	1.5995
5790	*Ocala, FL* Marion, FL	0.9978
5800	*Odessa-Midland, TX* Ector, TX Midland, TX	0.9972
5880	*Oklahoma City, OK* Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.9445
5910	*Olympia, WA* Thurston, WA	1.1631
5920	*Omaha, NE-IA* Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	1.0589
5945	*Orange County, CA* Orange, CA	1.2177
5960	*Orlando, FL* Lake, FL Orange, FL Osceola, FL Seminole, FL	1.0230
5990	*Owensboro, KY* Daviess, KY	0.8855
6015	*Panama City, FL* Bay, FL	0.9408
6020	*Parkersburg-Marietta, WV-OH* Washington, OH Wood, WV	0.8625
6080	*Pensacola, FL* Escambia, FL Santa Rosa, FL	0.9174

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
6120	*Peoria-Pekin, IL* Peoria, IL Tazewell, IL Woodford, IL	0.9274
6160	*Philadelphia, PA-NJ* Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.1369
6200	*Phoenix-Mesa, AZ* Maricopa, AZ Pinal, AZ	1.0421
6240	*Pine Bluff, AR* Jefferson, AR	0.8450
6280	*Pittsburgh, PA* Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.9938
6323	*Pittsfield, MA* Berkshire, MA	1.0862
6340	*Pocatello, ID* Bannock, ID	0.9946
6360	*Ponce, PR* Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.5944
6403	*Portland, ME* Cumberland, ME Sagadahoc, ME York, ME	1.0394
6440	*Portland-Vancouver, OR-WA* Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.1320
6483	*Providence-Warwick-Pawtucket, RI* Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.1519
6520	*Provo-Orem, UT* Utah, UT	1.0595
6560	*Pueblo, CO* Pueblo, CO	0.9360

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
6580	*Punta Gorda, FL* Charlotte, FL	0.9783
6600	*Racine, WI* Racine, WI	0.9906
6640	*Raleigh-Durham-Chapel Hill, NC* Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	1.0602
6660	*Rapid City, SD* Pennington, SD	0.9388
6680	*Reading, PA* Berks, PA	0.9864
6690	*Redding, CA* Shasta, CA	1.1817
6720	*Reno, NV* Washoe, NV	1.1300
6740	*Richland-Kennewick-Pasco, WA* Benton, WA Franklin, WA	1.2195
6760	*Richmond-Petersburg, VA* Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	1.0057
6780	*Riverside-San Bernardino, CA* Riverside, CA San Bernardino, CA	1.2061
6800	*Roanoke, VA* Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.9142
6820	*Rochester, MN* Olmsted, MN	1.2882
6840	*Rochester, NY* Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9757
6880	*Rockford, IL* Boone, IL Ogle, IL Winnebago, IL	1.0214

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
6895	*Rocky Mount, NC* Edgecombe, NC Nash, NC	0.9793
6920	*Sacramento, CA* El Dorado, CA Placer, CA Sacramento, CA	1.2204
6960	*Saginaw-Bay City-Midland, MI* Bay, MI Midland, MI Saginaw, MI	1.0241
6980	*St. Cloud, MN* Benton, MN Stearns, MN	1.0294
7000	*St. Joseph, MO* Andrew, MO Buchanan, MO	0.8512
7040	*St. Louis, MO-IL* Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL	0.9397
7080	*Salem, OR* Marion, OR Polk, OR	1.1002
7120	*Salinas, CA* Monterey, CA	1.5518
7160	*Salt Lake City-Ogden, UT* Davis, UT Salt Lake, UT Weber, UT	1.0554
7200	*San Angelo, TX* Tom Green, TX	0.8887
7240	*San Antonio, TX* Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.9289
7320	*San Diego, CA* San Diego, CA	1.1813
7360	*San Francisco, CA* Marin, CA San Francisco, CA San Mateo, CA	1.5008
7400	*San Jose, CA* Santa Clara, CA	1.5011

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
7440	*San Juan-Bayamon, PR* Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.5452
7460	*San Luis Obispo-Atascadero-Paso Robles, CA* San Luis Obispo, CA	1.1961
7480	*Santa Barbara-Santa Maria-Lompoc, CA* Santa Barbara, CA	1.1123
7485	*Santa Cruz-Watsonville, CA* Santa Cruz, CA	1.4482
7490	*Santa Fe, NM* Los Alamos, NM Santa Fe, NM	1.1368
7500	*Santa Rosa, CA* Sonoma, CA	1.3845
7510	*Sarasota-Bradenton, FL* Manatee, FL Sarasota, FL	1.0002
7520	*Savannah, GA* Bryan, GA Chatham, GA Effingham, GA	0.9950
7560	*Scranton--Wilkes-Barre--Hazleton, PA* Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.9126
7600	*Seattle-Bellevue-Everett, WA* Island, WA King, WA Snohomish, WA	1.2177

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
7610	*Sharon, PA* Mercer, PA	0.8351
7620	*Sheboygan, WI* Sheboygan, WI	0.9230
7640	*Sherman-Denison, TX* Grayson, TX	0.9822
7680	*Shreveport-Bossier City, LA* Bossier, LA Caddo, LA Webster, LA	0.9537
7720	*Sioux City, IA-NE* Woodbury, IA Dakota, NE	0.9600
7760	*Sioux Falls, SD* Lincoln, SD Minnehaha, SD	0.9824
7800	*South Bend, IN* St. Joseph, IN	1.0402
7840	*Spokane, WA* Spokane, WA	1.1517
7880	*Springfield, IL* Menard, IL Sangamon, IL	0.9189
7920	*Springfield, MO* Christian, MO Greene, MO Webster, MO	0.8940
8003	*Springfield, MA* Hampden, MA Hampshire, MA	1.1596
8050	*State College, PA* Centre, PA	0.9489
8080	*Steubenville-Weirton, OH-WV* Jefferson, OH Brooke, WV Hancock, WV	0.9343
8120	*Stockton-Lodi, CA* San Joaquin, CA	1.1149
8140	*Sumter, SC* Sumter, SC	0.8780
8160	*Syracuse, NY* Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	1.0309
8200	*Tacoma, WA* Pierce, WA	1.1610
8240	*Tallahassee, FL* Gadsden, FL Leon, FL	0.9025
8280	*Tampa-St. Petersburg-Clearwater, FL* Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9620

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
8320	*Terre Haute, IN* Clay, IN Vermillion, IN Vigo, IN	0.9126
8360	*Texarkana, AR-Texarkana, TX* Miller, AR Bowie, TX	0.8583
8400	*Toledo, OH* Fulton, OH Lucas, OH Wood, OH	1.0411
8440	*Topeka, KS* Shawnee, KS	0.9762
8480	*Trenton, NJ* Mercer, NJ	1.1071
8520	*Tucson, AZ* Pima, AZ	0.9457
8560	*Tulsa, OK* Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8842
8600	*Tuscaloosa, AL* Tuscaloosa, AL	0.8628
8640	*Tyler, TX* Smith, TX	1.0104
8680	*Utica-Rome, NY* Herkimer, NY Oneida, NY	0.8983
8720	*Vallejo-Fairfield-Napa, CA* Napa, CA Solano, CA	1.4172
8735	*Ventura, CA* Ventura, CA	1.1776
8750	*Victoria, TX* Victoria, TX	0.9292
8760	*Vineland-Millville-Bridgeton, NJ* Cumberland, NJ	1.0645
8780	*Visalia-Tulare-Porterville, CA* Tulare, CA	1.0006
8800	*Waco, TX* McLennan, TX	0.8567

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
8840	*Washington, DC-MD-VA-WV* District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpeper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.1515
8920	*Waterloo-Cedar Falls, IA* Black Hawk, IA	0.8563
8940	*Wausau, WI* Marathon, WI	1.0381
8960	*West Palm Beach-Boca Raton, FL* Palm Beach, FL	1.0548
9000	*Wheeling, WV-OH* Belmont, OH Marshall, WV Ohio, WV	0.8140
9040	*Wichita, KS* Butler, KS Harvey, KS Sedgwick, KS	1.0103
9080	*Wichita Falls, TX* Archer, TX Wichita, TX	0.9018
9140	*Williamsport, PA* Lycoming, PA	0.9067
9160	*Wilmington-Newark, DE-MD* New Castle, DE Cecil, MD	1.1857
9200	*Wilmington, NC* Brunswick, NC New Hanover, NC	1.0230
9260	*Yakima, WA* Yakima, WA	1.1216
9270	*Yolo, CA* Yolo, CA	1.0012
9280	*York, PA* York, PA	0.9579

MSA Code Number	Urban Area (Constituent Counties or County Equivalents)[1]	Wage Index[2]
9320	*Youngstown-Warren, OH* Columbiana, OH Mahoning, OH Trumbull, OH	0.9931
9340	*Yuba City, CA* Sutter, CA Yuba, CA	1.0905
9360	*Yuma, AZ* Yuma, AZ	0.9115

[1]This column lists each MSA area name and each county or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2]Wage index values are based on FY 2000 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment calculated by multiplying the hospital wage index value for a given area by a budget-neutrality factor of 1.061238. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or a budget-neutrality adjustment calculated by multiplying the hospital wage index value for a given area by the budget-neutrality factor. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B--WAGE INDEX FOR RURAL AREAS

MSA Code Number	Nonurban Area	Wage Index[3]
9901	Alabama	0.8129
9902	Alaska	1.3046
9903	Arizona	0.9013
9904	Arkansas	0.8135
9905	California	1.0443
9906	Colorado	0.9567
9907	Connecticut	1.3153
9908	Delaware	0.9687
9910	Florida	0.9354
9911	Georgia	0.8734
9912	Hawaii	1.0883
9913	Idaho	0.9283
9914	Illinois	0.8706
9915	Indiana	0.9291
9916	Iowa	0.8824
9917	Kansas	0.8408

MSA Code Number	Nonurban Area	Wage Index[3]
9918	Kentucky	0.8574
9919	Louisiana	0.8030
9920	Maine	0.9417
9921	Maryland	0.9494
9922	Massachusetts	1.1979
9923	Michigan	0.9551
9924	Minnesota	0.9711
9925	Mississippi	0.8150
9926	Missouri	0.8512
9927	Montana	0.9000
9928	Nebraska	0.8706
9929	Nevada	1.0164
9930	New Hampshire	1.0396
9931	New Jersey[4]	.....
9932	New Mexico	0.9415
9933	New York	0.9065
9934	North Carolina	0.9197
9935	North Dakota	0.8265
9936	Ohio	0.9140
9937	Oklahoma	0.8055
9938	Oregon	1.0934
9939	Pennsylvania	0.8980
9940	Puerto Rico	0.5009
9941	Rhode Island[4]	.....
9942	South Carolina	0.9134
9943	South Dakota	0.8294
9944	Tennessee	0.8359
9945	Texas	0.8300

MSA Code Number	Nonurban Area	Wage Index[3]
9946	Utah	0.9882
9947	Vermont	0.9917
9948	Virgin Islands	1.0200
9949	Virginia	0.9025
9950	Washington	1.0802
9951	West Virginia	0.8463
9952	Wisconsin	0.9723
9953	Wyoming	0.9559
9965	Guam	0.8325

[3] Wage index values are based on FY 2000 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment calculated by multiplying the hospital wage index value for a given area by a budget-neutrality factor of 1.061238. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or a budget-neutrality adjustment calculated by multiplying the hospital wage index value for a given area by the budget-neutrality factor. We have completed all of these adjustments and included them in the wage index values reflected in this table.

[4] All counties within the State are classified as urban.

BILLING CODE 4120–01–C

III. Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date

We are waiving notice and comment rulemaking, as well as the 30-day delay in the effective date, before the provisions of this notice take effect. We may waive notice and comment rulemaking procedures if we find good cause to do so (that is, notice and comment procedures are impracticable, unnecessary, or contrary to the public interest) and the agency incorporates a statement of the finding and the reasons for waiver in the notice issued.

In addition, under the Administrative Procedure Act (5 U.S.C. section 553 (d)), an agency may waive the 30-day delay in the effective date if the agency finds good cause to do so (meaning, once again, that the delay is impracticable, unnecessary, or contrary to the public interest), and the agency incorporates a statement of the finding and its reasons in the rule at the time it is issued.

We find it unnecessary to undertake notice and comment rulemaking because the methodologies used to determine the hospice wage index have been previously subjected to public comments, and this notice merely reflects the application of those previously established methodologies. In this notice, we are not changing the methodologies, but merely performing the ministerial function of applying methodologies previously subject to notice and public comment. Therefore, we believe it is unnecessary to engage in notice and comment rulemaking and for good cause, we waive notice and comment procedures.

We also believe that good cause exists to waive both notice and comment rulemaking and the 30-day delay in the effective date, because it is in the public interest to make this notice effective on October 1, 2003. The statute in 1814(i)(1)(C)(ii)(VII) of the Act requires annual updates to the hospice payment rates and wage indices. In addition, the Federal Regulations at 42 CFR 418.306(b)(2) and (c) require annual updates to hospice wage indices and require that such updates be effective for the FY, beginning on October 1. We do not have sufficient time to either engage in notice and comment rulemaking or apply a 30-day delay in the effective date prior to such date. Moreover, if we do not make this notice effective on the implementation date of October 1, 2003, the hospice agencies would be required to continue to use the previous 2003 FY wage index for the 2004 payment rates.

Finally, for the reasons stated above, at this time, we believe it would be impracticable to both meet the requirement that updated rates be in effect by October 1, 2003, and also engage in notice and comment rulemaking or apply the 30-day delay in the effective date prior to that date.

Therefore, for the reasons stated above, we find there is good cause to waive notice and comment procedures, as well as the 30-day delay in the effective date of the Administrative Procedure Act.

IV. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. In this notice, we identified the impact on hospices as a result of updating the hospice wage index. The methodology for computing the wage index for FY 2004 was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). This notice only updates the hospice wage index in accordance with that methodology. We

believe these changes to be insignificant. As Table C below indicates, we estimate that the total hospice payments will increase from last year by 0.6 percent, or $24,271,000.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this notice is not an economically significant rule under this Executive Order.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year (for details, see the Small Business Administration's regulation at 65 FR 69432. that sets forth size standards for health care industries). For purposes of the RFA, most hospices are small entities. Approximately 70 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 79 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, rural hospices will receive a slight increase in payment. Overall rural hospices will receive an increase of 0.9 percent and urban hospices will receive an increase of 0.6 percent. Urban hospices in New England, Middle-Atlantic, and Puerto Rico regions will experience a decrease of 0.4 percent, 1.1 percent, and 0.5 percent respectively. Middle Atlantic and Puerto Rico rural regions will also experience a decrease of 0.7 and 5.1 percent respectively. Of the urban hospices, the Pacific region will experience the greatest increase of 2.3 percent. The remaining rural regions will experience an increase in payment ranging from 0.2 in New England to a 2.6 increase in West South Central. Puerto Rico will experience decreased payment in both its urban and rural areas. Overall, Puerto Rico rural hospices will receive the largest decrease of 5.1 percent. The Middle Atlantic rural and urban hospices will also receive decreased payment. Most regions will experience an increase in payment in both urban and rural regions. The South Atlantic urban and East North Central rural hospices will experience a slight increase of 0.1 percent respectively. Therefore, based upon analysis of the wage index changes for FY 2004, the urban and rural Puerto Rico and Middle Atlantic hospices will be negatively impacted the most. The Pacific and West South Central urban regions as well as the West South Central and South Atlantic rural regions will be positively impacted. The payment decreases in certain areas indicate that this notice will have an impact on a small number of small entities. However, nationwide, hospices will receive an overall increase in estimated payments. We estimate that total hospice payments will increase by 0.6 percent, or $24,271,000. Rural hospices, with the exception of Puerto Rico and Middle Atlantic regions will receive the largest increase in payments for FY 2004. We estimate that rural hospice payments overall will increase by $4,284,000. We believe the anomaly of Puerto Rico rural region, with the greatest decrease overall in payment, the West South Central rural region increase of 2.6 percent, and the Pacific urban region increase of 2.3 percent are attributable to changes in the MSA hospital wage indices.

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care days. Therefore, the number of routine home care days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. Using routine home care days as a proxy for size, our analysis indicates that the impact of the wage index update on small hospices (those that provide up to 1,754 days of routine home care) will experience a 1.3 percent increase. Rural Puerto Rico with 4 hospices and 28,000 routine care days will experience a decrease of 5.1 percent while rural West North Central with 178 hospices and 492,000 routine home care days will have an increase of 0.8 percent. However, most small entities will experience a slight increase in payment. Therefore, we certify that this rule will not have a significant impact on a substantial number of small entities, in accordance with the RFA.

Furthermore, the wage index methodology was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and it was adopted into regulation in the August 8, 1997 final rule. The committee also agreed that this was favorable for the hospice community, as well as for beneficiaries. In developing the process for updating the wage index in the 1997 final rule, we fully considered the impact of this methodology on small entities and attempted to mitigate any potential negative effects.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside an MSA and has fewer than 100 beds. We have determined that this notice will not have a significant impact on a substantial number of small rural hospices.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice has no substantial effect on State, local or tribal governments or on the private sector. We have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2004 wage index and determined the current hospice rates to be budget

neutral. This impact analysis compares hospice payments using the FY 2003 hospice wage index to the estimated payments using the FY 2004 wage index. The data used in developing the quantitative analysis for this notice were obtained from the March 2003 update of the national claims history file of all bills submitted during FY 2002. We deleted bills from hospices that have since closed.

Table C below demonstrates the results of our analysis. In column 2 of Table C, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C indicates payments that were made using the FY 2003 wage index. Column 4 of Table C is based on FY 2003 claims (for hospices in business during that time period) and estimates payments to be made to hospices using the FY 2004 wage index. The final column, which compares columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicted that there are 1,314 hospices located in urban areas and 840 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 2002. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis shows that the majority of hospices are in urban areas and provide the vast majority of routine home care days. However rural hospices will receive a larger percent increase in payment of 0.9 percent in contrast to 0.6 percent for urban hospices.

The greatest increases in payment are for urban Mountain and rural West Central regions with a 2.3 percent and 2.6 percent increase, respectively. The greatest decrease in payment is for rural Puerto Rico with a 5.1 percent decrease and the urban Middle Atlantic region with a 1.1 percent decrease. With the exception of the Middle Atlantic with a 0.7 percent decrease, the remainder of the rural areas range from 0.1 percent increase in the East North Central to an increase of 2.6 percent in the West South Central. The remainder of the urban areas varies from a decrease of 0.5 percent in Puerto Rico to an increase of 1.8 percent in the West South Central region.

The breakdown by size indicates an increase of 1.3 percent in payment are for hospices with routine home care day under 9,681 while large size hospices with the greatest number of routine home care days will increase by 0.5 percent.

Government owned hospices will have a 1.9-percent increase while voluntary owned hospices with the largest number of routine home care days will receive 0.2-percent increase in payment.

Home health agency based hospices will have a 1 percent payment increase in contrast to a decrease of 0.1 percent for skilled nursing facility based hospices with the lowest number of routine home care days. In contrast, freestanding hospices, which represent the largest number of hospices agencies, with the greatest number of routine home care days will have an estimated 0.7 percent increase in payment.

BILLING CODE 4120–01–P

TABLE C - IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of Hospices (1)	Number of Routine Home Care Days in Thousands (2)	Payments using FY 2003 Wage Index in Thousands (3)	Estimated Payments using FY 2004 Wage Index in Thousands (4)	Percent Change in Hospice Payments (5)
(BY GEOGRAPHIC LOCATION):					
ALL HOSPICES	2,154	28,090	3,775,993	3,800,264	0.6
URBAN HOSPICES	1,314	23,590	3,280,633	3,300,620	0.6
RURAL HOSPICES	840	4,500	495,360	499,645	0.9
BY REGION – URBAN:					
NEW ENGLAND	87	747	119,620	119,109	-0.4
MIDDLE ATLANTIC	163	2,576	380,516	376,322	-1.1
SOUTH ATLANTIC	183	5,155	777,378	777,871	0.1
EAST NORTH CENTRAL	225	3,875	529,378	533,941	0.9
EAST SOUTH CENTRAL	96	1,686	204,225	204,519	0.1
WEST NORTH CENTRAL	96	1,440	176,145	176,441	0.2
WEST SOUTH CENTRAL	179	3,327	419,312	427,056	1.8
MOUNTAIN	88	1,612	234,455	236,124	0.7
PACIFIC	170	2,905	418,030	427,760	2.3
PUERTO RICO	27	267	21,575	21,477	-0.5
BY REGION – RURAL:					
NEW ENGLAND	27	84	10,337	10,357	0.2
MIDDLE ATLANTIC	34	196	23,147	22,980	-0.7
SOUTH ATLANTIC	128	940	104,853	105,942	1.0
EAST NORTH CENTRAL	133	677	75,843	75,908	0.1
EAST SOUTH CENTRAL	86	780	81,929	82,694	0.9
WEST NORTH CENTRAL	178	492	54,986	55,445	0.8
WEST SOUTH CENTRAL	103	714	71,014	72,875	2.6
MOUNTAIN	91	299	34,523	34,606	0.2
PACIFIC	56	290	36,483	36,706	0.6
PUERTO RICO	4	28	2,246	2,132	-5.1
ROUTINE HOME CARE DAYS:					
0-1,754 DAYS	334	301	36,887	37,350	1.3
1,754 – 4,373 DAYS	436	1,309	151,924	153,921	1.3
4,373 – 9,681 DAYS	534	3,621	436,072	441,791	1.3
9,681 + DAYS	849	22,493	3,105,116	3,120,788	0.5
TYPE OF OWNERSHIP:					
VOLUNTARY	1,301	17,331	2,344,877	2,349,041	0.2
PROPRIETARY	638	9,988	1,337,387	1,355,906	1.4
GOVERNMENT	182	662	80,489	82,036	1.9
OTHER	33	108	13,241	13,281	0.3
HOSPICE BASE:					
FREESTANDING	970	17,850	2,419,663	2,435,738	0.7
HOME HEALTH AGENCY	627	5,960	802,388	810,231	1.0
HOSPITAL	542	4,144	532,409	532,792	0.1
SKILLED NURSING FACILITY	15	136	21,533	21,503	-0.1

BILLING CODE 4120–01–C

C. Conclusion

Our impact analysis compared hospice payments by using the FY 2003 wage index to the estimated payments using the FY 2004 wage index. Through the analysis, we estimate that total hospice payments will increase from last year by 0.6 percent or by $24,271,000. Additionally, we compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2004 wage index and determined the current hospice wage index to be budget neutral, as required by the negotiated rulemaking committee. We have determined that this rule is not an economically significant rule under Executive Order 12866. Although we believe that this rule will not have a significant economic impact on a substantial number of small entities, we took any negative effects into consideration during the negotiated rulemaking process. We have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Finally, this rule will not have a consequential effect on State, local, or tribal governments.

OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this notice.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 28, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–24817 Filed 9–29–03; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Tuesday,
September 30, 2003

Part XI

The President

Proclamation 7708—National Farm Safety and Health Week, 2003

Proclamation 7709—Gold Star Mother's Day, 2003

Executive Order 13317—Volunteers for Prosperity

Federal Register
Vol. 68, No. 189
Tuesday, September 30, 2003

Presidential Documents

Title 3—

The President

Proclamation 7708 of September 25, 2003

National Farm Safety and Health Week, 2003

By the President of the United States of America

A Proclamation

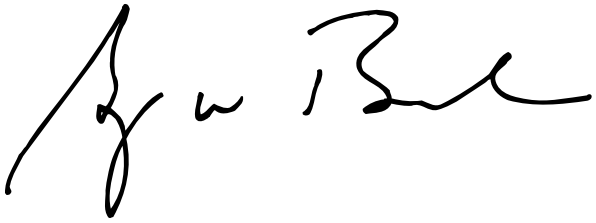
Almost half of the land in the United States is used for agricultural production, and our Nation depends on our hard-working farm and ranch families for food, fiber, and the good stewardship of our environment. As we celebrate National Farm Safety and Health Week, we give thanks for their dedication, sacrifice, and contributions to our country, and we renew our commitment to the health and livelihoods of American farm and ranch families.

America must continue to promote the safety of our farmers and ranchers. Farming and ranching can be dangerous work; in 2002, the agriculture industry had the second-highest rate of deaths due to accidents. Proper education and training are critical to protecting the safety of farmers and ranchers. By working together to encourage careful use of equipment and facilities, America helps our farm and ranch families remain healthy and more productive than any other farmers in the world.

This year's theme for National Farm Safety and Health Week, ''Secure Your Farming through Safety and Health,'' also encourages farmers and ranchers to focus on farm security issues. Farm and ranching communities play a vital role in protecting America's food supplies, water resources, and farm chemicals. Their efforts are important to the safety and security of our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 21 through September 27, 2003, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge all Americans to honor our agricultural heritage and to recognize our farmers and ranchers for their remarkable contributions to our Nation's vitality and prosperity.

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



[FR Doc. 03–24917
Filed 9–29–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7709 of September 25, 2003

Gold Star Mother's Day, 2003

By the President of the United States of America

A Proclamation

As members of America's Armed Forces now protect our country by engaging the enemies of freedom in Iraq, in Afghanistan, and on other fronts in the war against terrorism, they carry on a noble legacy. Today, Americans and millions around the world enjoy freedom because of the service and sacrifice of our military men and women.

The cost of America's freedom is often personal. Few pay more dearly than our Gold Star Mothers, who have endured the death of a son or daughter in service to our country.

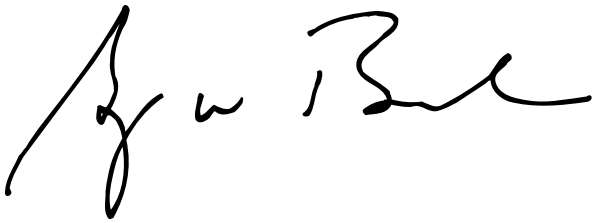
More than 75 years ago, one mother's determination to transform her personal loss into good works led to the creation of the American Gold Star Mothers. After receiving notice of her son's death in aerial combat during World War I, Grace Darling Seibold devoted her energy to volunteering in a local hospital. She began reaching out to other mothers whose sons had died in military service to the Nation. She organized a group of these special mothers to help them comfort each other and care for hospitalized veterans. Their organization was named after the gold star service flag that families hung in their windows in honor of family members who had died in military service. After years of planning, it became a national organization in 1928. Since then, brave women have continued to come together as Gold Star Mothers to ease the burden of their loss and to serve others.

Today, numerous chapters of Gold Star Mothers across our Nation offer important programs and services to enhance the lives of veterans and provide support for their families. Their civic education programs and help for those in need honor the lives of their sons and daughters and strengthen America.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as ''Gold Star Mother's Day,'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Sunday, September 28, 2003, as Gold Star Mother's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this solemn day. I also encourage the American people to display the flag and hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and respect that our Nation holds for our Gold Star Mothers.

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



[FR Doc. 03–24918
Filed 9–29–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13317 of September 25, 2003

Volunteers for Prosperity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage volunteer service by highly skilled Americans to support major initiatives by the United States for promoting health and prosperity around the world, it is hereby ordered as follows:

Section 1. (a) *Policy.* A part of USA Freedom Corps, ''Volunteers for Prosperity'' is a call to service to support major U.S. initiatives that promote health and prosperity around the world. Deploying highly skilled volunteers abroad is an efficient way to use our resources consistent with the objectives of the United States Government's global prosperity agenda. United States volunteers will help to achieve the objectives of the global prosperity agenda, including providing clean water to the poor, promoting democratic governance, developing economic freedom, promoting free and open markets, and stemming the spread of HIV/AIDS.

The investment of Federal resources to enable U.S. volunteers to work with nongovernmental and voluntary service organizations overseas is a preferred use of our resources and also will help leverage private sector resources. United States citizens who are skilled professionals and who volunteer, when matched with organizations working on specific U.S. prosperity initiatives overseas, can provide invaluable support for these initiatives and will supplement and complement the traditions and accomplishments of the Peace Corps.

United States prosperity initiatives that can benefit from volunteer service include, but are not limited to, the Emergency Plan for AIDS Relief, the Digital Freedom Initiative, the Water for the Poor Initiative, the Trade for African Development and Enterprise Initiative, and the Middle East Partnership Initiative.

Volunteer service in support of other initiatives, consistent with U.S. foreign policy, shall be considered as well.

(b) *Applicability.* The following agencies are subject to the requirements of this order: the United States Agency for International Development (USAID), the Department of State, the Department of Commerce, the Department of Health and Human Services, and such other Federal agencies as the President may designate in the future.

Sec. 2. *Establishment.* (a) Agencies subject to this order shall each establish within their respective organizations an Office for Volunteers for Prosperity (Office) or, as appropriate, an operating unit within an office.

(b) Each agency subject to this order shall provide its Office or unit with appropriate staff, administrative support, and resources to meet its responsibilities under this order.

(c) Each of these Offices or units shall begin operations no later than 30 days from the date of this order.

(d) Agencies subject to this order shall consider, in evaluating grant applications for assistance activities to be implemented abroad, the applicant's use of highly skilled U.S. volunteers to support U.S. prosperity objectives and initiatives.

Sec. 3. *Purpose.* To the extent permitted by law, the purpose of the Offices will be to promote, expand, and enhance well-defined volunteer service

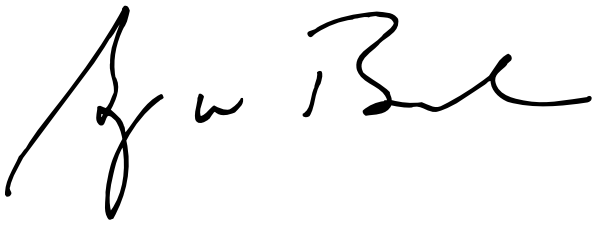
opportunities for highly skilled U.S. professionals who wish to work with nongovernmental and voluntary service organizations around the world in support of major U.S. prosperity initiatives as identified in section 1 of this order. Such promotion, expansion, and enhancement would include actively participating in the design and selection processes for grants within their agencies, tracking the use of U.S. private volunteer organizations by their agencies, and coordinating with White House Offices including the USA Freedom Corps, the Office of National AIDS Policy, and the Office of Faith-Based and Community Initiatives, as appropriate.

Sec. 4. *Funding.* Agencies subject to this order are hereby directed to use their best efforts to use funds available for the U.S. prosperity initiatives listed in section 1 of this order to provide appropriate support to organizations that use highly skilled U.S. volunteers to accomplish the objectives identified in those initiatives.

Sec. 5. *Coordination.* The USAID shall serve as the inter-agency coordinator for the Volunteers for Prosperity initiative. In that capacity, the USAID shall coordinate the activities that fall within the scope of the initiative and report on the progress of the initiative to the USA Freedom Corps Office, within the White House Office. The reports shall be submitted within 180 days after the date of this order and annually thereafter. The USA Freedom Corps Council shall encourage consistency in policies and practices within the agencies subject to this order, as appropriate, for purposes related to the Volunteers for Prosperity initiative.

Sec. 6. *Administration.* The actions directed by this order shall be carried out subject to the availability of appropriations, to the extent permitted by law, and consistent with the agencies' missions.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch of the Federal Government, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
September 25, 2003.

[FR Doc. 03–24919
Filed 9–29–03; 8:45 am]
Billing code 3195–01–P

Federal Register

Tuesday,
September 30, 2003

Part XII

The President

Notice of September 29, 2003—Report to the Congress on the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002

Federal Register
Vol. 68, No. 189
Tuesday, September 30, 2003

Presidential Documents

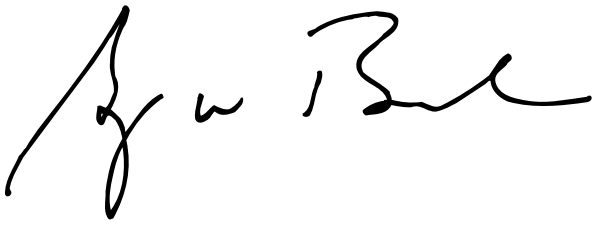
Title 3—

The President

Notice of September 29, 2003

Report to the Congress on the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002

I have today submitted a report to the Congress setting forth a Memorandum of Understanding between the Secretary of State and the Secretary of Homeland Security governing the implementation of section 428 of the Homeland Security Act of 2002 (Public Law 107–296). The Memorandum of Understanding will allow the Departments of State and Homeland Security to work cooperatively to create and maintain an effective, efficient visa process that secures America's borders from external threats and ensures that our borders remain open to legitimate travel to the United States.



THE WHITE HOUSE,
September 29, 2003.

[FR Doc. 03–25023
Filed 9–29–03; 1:28 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 68, No. 189

Tuesday, September 30, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

52077–52312 2
52313–52484 3
52485–52678 4
52679–52830 5
52831–53010 8
53011–53280 9
53281–53482 10
53483–53664 11
53665–53870 12
53871–54122 15
54123–54326 16
54327–54650 17
54651–54796 18
54797–54978 19
54979–55190 22
55191–55260 23
55261–55298 24
55299–55432 25
55433–55806 26
55807–56136 29
56137–56520 30

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 10, 2003) 53665
7697 52313
7698 52825
7699 52827
7700 52829
7701 53011
7702 53013
7703 54321
7704 54323
7705 54977
7706 55253
7707 55259
7708 56511
7709 56513

Executive Orders:
11145 (See EO 13316) 55255
11183 (See EO 13316) 55255
11287 (See EO 13316) 55255
12131 (Amended by EO 13316) 55255
12196 (See EO 13316) 55255
12216 (See EO 13316) 55255
12367 (See EO 13316) 55255
12382 (See EO 13316) 55255
12905 (See EO 13316) 55255
12958 (See Order of September 17, 2003) 55257
12975 (Revoked by EO 13316) 55255
13018 (See EO 13316) 55255
13046 (See EO 13316) 55255
13111 (Revoked in part by EO 13316) 55255
13137 (See EO 13316) 55255
13147 (Revoked by EO 13316) 55255
13167 (See EO 13316) 55255
13177 (Revoked in part by EO 13316) 55255
13188 (See EO 13316) 55255
13210 (Revoked by EO 13316) 55255
13214 (Revoked by EO 13316) 55255
13218 (See EO 13316) 55255
13223 (See Notice of September 10, 2003) 53665
13224 (See Notice of September 18, 2003) 55189
13225 (Superseded by EO 13316) 55255
13227 (Revoked by EO 13316) 55255
13231 (See EO 13316) 55255
13235 (See Notice of September 10, 2003) 53665
13237 (See EO 13316) 55255
13253 (See Notice of September 10, 2003) 53665
13255 (See EO 13316) 55255
13256 (See EO 13316) 55255
13263 (Revoked by EO 13316) 55255
13265 (See EO 13316) 55255
13270 (See EO 13316) 55255
13278 (Revoked by EO 13316) 55255
13286 (See Notice of September 10, 2003) 53665
13303 (See EO 13315) 52315
13315 52315
13316 (See EO 13316) 55255
13317 56515

Administrative Orders:
Memorandums:
Memorandum of March 28, 2001 (See Memorandum of August 29, 2003) 52323
Memorandum of August 29, 2003 52323
Memorandum of July 22, 2003 53869
Memorandum of September 12, 2003 53969
Notices:
Notice of September 10, 2003 53665
Notice of September 18, 2003 55189

Notice of September 29, 2003 56519
Presidential Determinations:
No. 2003–33 of August 27, 2003 52679
No. 2003–34 of September 9, 2003 54967
No. 2003–35 of September 9, 2003 53871
No. 2003–36 of September 12, 2003 54325
No. 2003–37 of September 14, 2003 54971
No. 2003–37 of September 15, 2003 54973
Orders:
Order of September 17, 2003 55257

5 CFR

575 53667
1201 54651
6501 52681
6601 52682
7201 52485
Proposed Rules:
300 53054
310 55012
930 52528

7 CFR

245 53483
301 53873
905 ..... 52325, 53015, 53021, 55807
922 52329
923 52329
924 52329
944 53021
948 ..... 52332, 53281
987 55809
993 54979
996 53490
1150 52334
1412 55433
1421 55433
1439 55433
1480 55433
1951 55291
2903 56137
Proposed Rules:
51 52857
246 53903
319 53910
931 53306
991 52860
1000 52860
1001 52860
1005 52860
1006 52860
1007 52860
1030 52860
1032 52860
1033 52860
1124 52860
1126 52860
1131 52860
1135 52860
1210 55556

9 CFR

82 54797
94 53873
Proposed Rules:
381 55902

10 CFR

50 54123
52 54123
72 ..... 54143, 55304
Proposed Rules:
52 55905

11 CFR

Proposed Rules:
106 52529
110 52531
113 52531
9004 52531
9034 52531

12 CFR

11 54981
202 53491
206 53283
220 52486
229 ..... 52077, 53672
545 53024
550 53024
562 52831
Proposed Rules:
614 53915
620 53915
630 53915
900 54396
932 54396
955 54396
998 54396

14 CFR

21 54520
25 ..... 52684, 53026, 53028, 53672, 54800
39 ..... 52078, 52081, 52083, 52085, 52087, 52337, 52487, 52688, 52832, 52833, 52975, 53030, 53032, 53284, 53496, 53498, 53499, 53501, 53503, 54327, 54653, 54985, 54987, 54990, 54992, 54994, 54996, 55191, 55193, 55196, 55433, 55811, 55812, 55814, 56143, 56152, 56154, 56156
61 54520
71 ..... 52088, 52487, 53032, 53033, 53034, 53035, 53674, 53675, 53676, 54328, 54329, 55435, 55817, 55818, 55819
91 ..... 54520, 55819
95 54802
97 ..... 53035, 53287, 54998, 56157
119 54520
121 ..... 53877, 55819, 56166
125 ..... 53877, 54520
129 56166
135 ..... 53877, 54520, 55819
142 54520
145 55819
250 52835
1260 54654
Proposed Rules:
39 ..... 52145, 52148, 52539, 52720, 52862, 52864, 52865, 52868, 52870, 53055, 53058, 53061, 53309, 54400, 54680, 54682, 54684, 54686, 54688, 54690, 54691, 54694, 54862, 54864, 54866, 54869, 54872, 54874, 55321, 56216
71 ..... 52148, 52150, 53925, 55012, 55013, 55015, 55911, 55913, 55914, 55915

15 CFR

772 54655
774 54655
Proposed Rules:
764 54402
766 54402
801 (2 documents) 55202, 55204

16 CFR

305 55820
1512 52690

17 CFR

4 ..... 52836, 53430
232 53289
Proposed Rules:
239 54644
240 54590
249 54590

18 CFR

4 52089
16 52089
141 52089
157 52089

19 CFR

10 56166
12 55000

20 CFR

416 ..... 53219, 53506
422 55304
Proposed Rules:
404 55323
408 55323
416 55323
667 56386

21 CFR

201 55822
510 ..... 55822, 55823
520 ..... 54658, 54803, 54804, 55199, 55308, 55822, 55823, 55824
522 ..... 54804, 54806, 55199, 55200, 55823
524 ..... 55201, 55825
556 54658
558 ..... 54658, 54806, 55825
573 52339
1308 ..... 53289, 53677
1310 53290
Proposed Rules:
1301 53529
1308 52872

22 CFR

230 53878
Proposed Rules:
96 54064
98 54119

23 CFR

Proposed Rules:
650 53063

24 CFR

50 56116
58 56116
92 56396
570 56396
572 56396
574 ..... 56116, 56396
576 56396
582 ..... 56116, 56396
583 ..... 56116, 56396
585 56396
970 56116
972 54600
982 54335
Proposed Rules:
972 54624
1000 53926

25 CFR

Proposed Rules:
Ch. 1 ..... 52151, 55916

26 CFR

1 ..... 52487, 52496, 52975, 52986, 53219, 54336
31 54336
301 55436
602 ..... 52463, 52496, 54336, 54660
Proposed Rules:
1 ..... 52466, 52542, 52543, 52544, 52545, 52546, 53008, 53348, 53926, 54062, 54876
31 53448
301 ..... 52466, 53687

27 CFR

555 53509
Proposed Rules:
9 ..... 52875, 54696
252 55281

28 CFR

Proposed Rules:
31 56410
33 56410
38 56410
90 56410
91 56410
93 56410

29 CFR

31 54268
37 56386
4022 53880
4044 53880
Proposed Rules:
1910 53311
1915 53311
1917 54298
1918 54298
1926 ..... 53311, 53927

30 CFR

48 53037
75 53037
946 53292
Proposed Rules:
57 52151
206 55556
210 55556
938 ..... 55106, 55134

31 CFR

1 55309

500 53640
501 53640
505 53640
515 53640
535 53640
536 53640
537 53640
538 53640
539 53640
540 53640
545 53640
550 53640
560 53640
575 53640
585 53640
586 53640
587 53640
588 53640
590 53640
591 53640
594 53640
595 53640
596 53640
597 53640
598 53640

Proposed Rules:

1 55016
103 55335
500 53662
501 53662
505 53662
515 53662
535 53662
536 53662
537 53662
538 53662
539 53662
540 53662
545 53662
550 53662
560 53662
575 53662
585 53662
586 53662
587 53662
588 53662
590 53662
591 53662
594 53662
595 53662
596 53662
597 53662
598 53662

32 CFR

2001 55168
2004 55168

Proposed Rules:

179 ....53430, 53532
199 52722
806b 55337

33 CFR

26 55826
100 ....54660, 54662
117 ....53050, 53513, 54807, 55005, 56173
126 55436
147 55443
161 55826
164 55826
165 ....52096, 52098, 52340, 52508, 53677, 55312, 55445, 55826

Proposed Rules:

100 53533
117 ....52722, 53079, 55020
147 55557
151 55559
165 ....53928, 53930, 53932, 53935, 54177, 54700

34 CFR

Proposed Rules:

74 56418
75 56418
76 56418
80 56418

36 CFR

7 ....55315, 55448
219 53294
242 55006
1280 ....53680, 53882

Proposed Rules:

800 55354

37 CFR

2 55748
7 55748

Proposed Rules:

1 53816
5 53816

38 CFR

1 55317
3 55466
17 55467
20 ....53681, 53682
61 55467

Proposed Rules:

1 54704
2 54704
61 56426

39 CFR

111 ....52100, 54664

Proposed Rules:

3001 52546

40 CFR

52 ....52104, 52106, 52110, 52510, 52512, 52691, 52837, 52838, 53515, 53883, 53887, 53891, 54160, 54163, 54167, 54362, 54366, 54672, 55469, 56174, 56176, 56180, 56181
61 54790
62 54369
70 ....52517, 52691, 54170, 54366, 54374
81 ....53515, 54672, 55008, 55469
82 ....52841, 54677
94 54956
136 54934
180 ....52343, 52353, 52354, 52695, 53297, 54377, 54386, 54961, 55261, 55269, 55475, 55485, 55494, 55503, 55513, 55519, 55826, 55833, 55849, 55858, 55870, 56184, 56189
261 53517
271 52113
281 53520
300 ....55875, 56195
355 52978

Proposed Rules:

Ch. I 53687, 55563
30 54405
31 54405
33 54405
35 54405
40 54405
51 ....52373, 53081
52 ....52152, 52154, 52155, 52555, 52724, 52879, 53937, 54179, 54181, 54182, 54186, 54190, 54194, 54195, 54406, 54705, 55917, 55920, 56219, 56220
61 54794
62 54407
70 ....52724, 54195, 54406, 54407, 56220
81 ....54705, 55022
87 56226
94 54961
141 55023
142 55023
143 55023
194 52724
228 53687
261 55206
271 52156
300 55563
432 55925
437 53432

41 CFR

51–3 53684
51–4 53684
60–1 56392
102–28 53219
102–192 56112

42 CFR

54 56430
54a 56430
409 55882
411 55882
413 ....53222, 55882
440 55882
447 55527
482 53222
483 ....55528, 55882
488 ....55528, 55882
489 ....53222, 55882

Proposed Rules:

410 55566
412 53266
414 55566
1001 53939

44 CFR

62 52700
65 ....54843, 54845
67 ....54851, 54852

Proposed Rules:

67 54877

45 CFR

74 52843
92 52843
96 56430
260 56449
302 53052
303 53052
1050 56466
1105 52701
1626 55539

47 CFR

0 52517
1 53523
2 54173
20 54173
51 ....52276, 53524
54 52363
64 ....53891, 55898
73 ....53052, 53304, 54394, 54854, 54855, 54856
76 52127
90 ....54678, 55319

Proposed Rules:

Ch. I 53696
1 ....52156, 52879
2 ....52156, 52879
15 52156
25 53702
27 52156
51 ....52307, 53311
73 ....54408, 54878, 54879
74 55566
87 52156
95 52879
97 52156

48 CFR

538 52127
552 52127
923 52129
970 52129
1804 53525

Proposed Rules:

1 54294
25 54296
36 54294
53 54294
225 53945
246 53946
252 53945
806 53705
9904 53312

49 CFR

105 52844
107 ....52844, 55542
171 52844
172 52363
178 52363
180 ....52363, 55542
192 53895
195 53526
365 56196
374 56196
375 56208
387 56196
391 56196
393 56196
395 56208
396 56196
541 54857
571 ....54861, 55544
585 55319
593 55545
596 54861

Proposed Rules:

71 53082
171 53314
173 53314
180 53314
385 53535
390 53535
571 ....54879, 55217
1152 52168

50 CFR

17 55140
20 ....55784, 56048, 56102
100 55006
216 52132
223 54934

226.....55900
622.....55554
635.....52140, 56212
648 .....52141, 53528, 55010
660 .....52519, 52523, 52703, 53053, 53685
679 .....52141, 52142, 52718, 52856, 53686, 54395, 55901, 56213, 56214

Proposed Rules:

13.....52727, 53320
16.....53705, 54409
17 .....52169, 53083, 53320, 53327, 53947, 56251
21.....52727
223.....53947, 55023
224.....53947
226.....55926
622 .....53706, 55573, 56252
635.....54410, 54885
648.....55283, 55358
660 .....52732, 53101, 55240, 53334
679.....52173, 52378

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 30, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Dates (domestic) produced or packed in—
California; published 9-29-03
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; published 9-29-03

AGRICULTURE DEPARTMENT
Biodiesel Fuel Education Program; administrative provisions; published 9-30-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 9-30-03
Pesticide programs:
Tolerance reassessment decisions—
Vinclozolin; published 9-30-03
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Zinc phosphide; published 9-30-03

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Reports and guidance documents; availability, etc.:
Preferential treatment of brassieres under the Caribbean Basin Economic Recovery Act; published 9-30-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
San Francisco Bay, CA—
Security zones; published 9-25-03
Security zones; published 9-26-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Large cargo airplanes; flightdeck security
Correction; published 9-30-03
Airworthiness directives:
MD Helicopters, Inc.; published 8-26-03
Rolls-Royce Deutschland Ltd. & Co. KG; published 8-26-03
Standard instrument approach procedures; published 9-30-03

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Drivers' hours of service—
Technical amendments; published 9-30-03
Miscellaneous technical amendments; published 9-30-03

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Penalty guidelines and civil penalties for guidelines violations; published 9-8-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Fresh fruits, vegetables, and other products; inspection and certification:
Fees and charges increase; comments due by 10-8-03; published 9-8-03 [FR 03-22682]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 10-9-03; published 9-9-03 [FR 03-23045]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in—
California; comments due by 10-6-03; published 8-6-03 [FR 03-19969]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Gentically engineered organisms and products:
Introductions of plants genetically engineered to encode compounds for industrial use; permit requirements; comments due by 10-6-03; published 8-6-03 [FR 03-19877]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Tree Assistance Program; comments due by 10-10-03; published 8-11-03 [FR 03-20345]

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Guaranteed loanmaking:
Secondary market sales; fiscal and transfer agent; comments due by 10-6-03; published 8-6-03 [FR 03-19987]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, scup, and black sea bass; comments due by 10-9-03; published 9-24-03 [FR 03-24249]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 10-6-03; published 9-5-03 [FR 03-22571]
Pacific Coast groundfish; Groundfish Observer Program; comments due by 10-10-03; published 9-10-03 [FR 03-22570]

DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Individual Case Management Program withdrawn, Persons with Disabilities Program renamed Extended Care Option Program, and other administrative amendments; comments due by 10-6-03; published 8-6-03 [FR 03-19822]

DEFENSE DEPARTMENT
Engineers Corps
Enforcement:
Permit regulations; Class I administrative civil penalties; inflation adjustment; comments due by 10-6-03; published 8-20-03 [FR 03-21331]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
State operating permit programs—-
Nebraska; comments due by 10-6-03; published 9-5-03 [FR 03-22540]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
State operating permit programs—
Nebraska; comments due by 10-6-03; published 9-5-03 [FR 03-22539]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 10-6-03; published 9-4-03 [FR 03-22445]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 10-6-03; published 9-4-03 [FR 03-22446]
Nevada; comments due by 10-8-03; published 9-8-03 [FR 03-22646]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Nevada; comments due by 10-8-03; published 9-8-03 [FR 03-22647]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2,6-Diisopropylnaphthalene; comments due by 10-7-03; published 8-8-03 [FR 03-20307]

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Spinosad; comments due by 10-6-03; published 8-6-03 [FR 03-20017]

ENVIRONMENTAL PROTECTION AGENCY
Radiation protection programs:

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—
Hanford Site, WA; comments due by 10-6-03; published 9-5-03 [FR 03-22638]
Water pollution; effluent guidelines for point source categories:
Centralized waste treatment industry; comments due by 10-10-03; published 9-10-03 [FR 03-22930]

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations, etc.—
Other financial institutions and investments in Farmers' notes; comments due by 10-10-03; published 8-11-03 [FR 03-20360]

FEDERAL COMMUNICATIONS COMMISSION
Radio broadcasting:
Definition of radio markets for areas not located in an arbitron survey area; comments due by 10-6-03; published 8-25-03 [FR 03-21652]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Hospital outpatient prospective payment system and 2004 CY payment rates; comments due by 10-6-03; published 8-12-03 [FR 03-20280]
Physician fee schedule (2004 CY); payment policies and relative value unit adjustments; comments due by 10-7-03; published 8-15-03 [FR 03-20662]
Correction; comments due by 10-7-03; published 9-26-03 [FR 03-24548]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; footnote or disclosure statements; comments due by 10-9-03; published 7-11-03 [FR 03-17526]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Freedom of Information Act; implementation:
Confidential commercial information; comments due by 10-10-03; published 8-11-03 [FR 03-20328]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 10-6-03; published 8-5-03 [FR 03-19900]
Ports and waterways safety:
Charleston Harbor, Cooper River, SC; regulated navigation area; comments due by 10-7-03; published 8-8-03 [FR 03-20196]

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
National Flood Insurance Program:
Private sector property insurers; assistance; comments due by 10-6-03; published 9-5-03 [FR 03-22659]

HOMELAND SECURITY DEPARTMENT
Immigration:
Orphan petitions; advance processing application; validity period; discretionary extension; comments due by 10-6-03; published 8-7-03 [FR 03-20173]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Peirson's milk-vetch; comments due by 10-6-03; published 8-5-03 [FR 03-19670]
Migratory bird permits:
Application fee schedule; revision; comments due by 10-10-03; published 8-26-03 [FR 03-21489]
Wild Bird Conservation Act:
Non-captive-bred species; approved list; additions—
Blue-fronted Amazon parrots from Argentina; comments due by 10-6-03; published 8-6-03 [FR 03-19945]

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulfur operations:
Incident reporting requirements; comments due by 10-6-03; published 7-8-03 [FR 03-16782]

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Canyonlands National Park, Salt Creek Canyon, UT; motor vehicle prohibition; comments due by 10-10-03; published 8-11-03 [FR 03-19964]

JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
2,5-Dimethoxy-4-(n)-propylthiophenethylamine, etc.; placement into Schedule I; comments due by 10-8-03; published 9-8-03 [FR 03-22684]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
D.C. Code; civil contempt of court commitments; comments due by 10-6-03; published 8-5-03 [FR 03-19853]

ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities
Supplemental standards of ethical conduct for National Endowment for the Arts employees; comments due by 10-6-03; published 9-5-03 [FR 03-22653]
Supplemental standards of ethical conduct for National Endowment for the Humanities employees; comments due by 10-6-03; published 9-5-03 [FR 03-22654]
Conflicts of interest; cross reference provision; comments due by 10-6-03; published 9-5-03 [FR 03-22655]

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Emergency planning and preparedness; comments due by 10-7-03; published 7-24-03 [FR 03-18845]

PERSONNEL MANAGEMENT OFFICE
Federal computer systems; security awareness and training for employees responsible for management or use; comments due by 10-6-03; published 9-4-03 [FR 03-22487]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 10-8-03; published 9-8-03 [FR 03-22704]
Cessna; comments due by 10-6-03; published 7-28-03 [FR 03-19059]
Honeywell International Inc.; comments due by 10-7-03; published 8-8-03 [FR 03-20231]
McDonnell Douglas; comments due by 10-6-03; published 8-21-03 [FR 03-21414]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 10-7-03; published 8-8-03 [FR 03-19682]
MD Helicopters Inc.; comments due by 10-7-03; published 8-8-03 [FR 03-19976]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Special conditions—
Gulfstream Aerospace LP 1125 Westwind Astra airplanes; comments due by 10-9-03; published 9-9-03 [FR 03-22797]
Sabreliner Model NA-265 Series airplanes; comments due by 10-9-03; published 9-9-03 [FR 03-22798]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 10-5-03; published 8-21-03 [FR 03-21459]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:

Occupant crash protection—
Belted frontal barrier crash test; maximum test speed and phase-in schedule; comments due by 10-6-03; published 8-6-03 [FR 03-20054]
Integral lap/shoulder safety belts; rear seats requirement; comments due by 10-6-03; published 8-6-03 [FR 03-20024]

TREASURY DEPARTMENT

Comptroller of the Currency

Bank activities and operations and real estate lending and appraisals:
National banks; State law applicability; comments due by 10-6-03; published 8-5-03 [FR 03-19906]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
At-risk limitations; interest other than that of creditor; comments due by 10-6-03; published 7-8-03 [FR 03-17090]
Defined contribution plans; distribution forms elimination; comments due by 10-6-03; published 7-8-03 [FR 03-17089]
Multi-step transactions; effect of elections; cross-reference; comments due by 10-7-03; published 7-9-03 [FR 03-17227]
Notarized statements of purchase; comments due by 10-8-03; published 7-10-03 [FR 03-17088]
Stock basis after group structure change; comments due by 10-6-03; published 7-8-03 [FR 03-17091]
Vans and light trucks; depreciation; cross-reference; comments due by 10-6-03; published 7-7-03 [FR 03-17086]
Procedure and administration:
Fees for copies of exempt organizations' material open to public inspection; authorization; cross-reference; comments due by 10-7-03; published 7-9-03 [FR 03-17228]
Information reporting penalties waiver; prompt correction determination; comments due by 10-7-03; published 7-9-03 [FR 03-17229]
Return information disclosure by officers and employees for investigative purposes; cross-reference; comments due by 10-8-03; published 7-10-03 [FR 03-17385]
Testimony or production of records in court or other proceeding; comments due by 10-7-03; published 7-9-03 [FR 03-17230]

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. 13/P.L. 108–81

Museum and Library Services Act of 2003 (Sept. 25, 2003; 117 Stat. 991)

Last List September 23, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.